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Crl.R.C.No.1488 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2023

PRONOUNCED ON: 23.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1488 of 2022

K.B.George

...

Petitioner

/vs/

The State Represented by
The Labour Enforcement Officer (Central)
Government of India,
Ministry of Labour & Employment,
Shastri Bhavan, No.26, Haddows Road,
Chennai – 600 006.

...

Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure to call for the records relating to the case in C.C.No.101 of 2020 on the file of the learned Chief Judicial Magistrate, Chengalpet, now Chengalpet District and set aside the impugned judgment of conviction and sentence passed on 09.06.2022

For Petitioner

...

Mr.G.Saravanan

For Respondent

...

Mr.K.Subbu Ranga Bharathi



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ORDER

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Challenging the impugned Judgment dated 09.06.2022 passed in C.C.No.101 of 2020 by the learned Chief Judicial Magistrate, Chengalpet, Chengalpet District, the present criminal revision case has been filed.

2.The fact of the case is that the petitioner/accused No.1 is in Indian Railway Traffic Service (IRTS) and now on deputation, working as Chairman and Managing Director of HLL Lifecare Limited (HLL) a Centre Public Sector Enterprise functioning under Ministry of Health and Family Welfare (MoHFW), Government of India. The case under dispute is related to HLL Biotech Limited (HBL), which was one of the subsidiary companies of HLL and now, a separate Centre Public Sector Enterprise. At the time of filing the case in C.C.No.101 of 2020 by Labour Enforcement Officer before the learned Chief Judicial Magistrate, Chengalpet, the petitioner/accused No.1 was only the Non-Executive Chairman of the HBL, without any executive power and was not involved in any of the day to day activities/affairs of the HBL.



WEB COPY 3.The respondent/complainant filed the complaint against the petitioner for offences under Section 23 r/w Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 and the complaint was taken on file in C.C.No.101 of 2020 by the Chief Judicial Magistrate, Chengalpet. The petitioner/accused pleaded guilty through an advocate and accepting the plea of guilty, the Chief Judicial Magistrate sentenced him to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment of one week. Aggrieved by this, this criminal revision case has been filed.

4.The learned counsel for the petitioner submitted that the learned Chief Judicial Magistrate, Chengalpet had apparently failed to notice that the written complaint in C.C.No.101 of 2020 was barred by the period of limitation stipulated in Section 27 of the Act, as he had not filed the said complaint within the period of three months from the date on which the alleged commission of offence (08.11.2019) came to the knowledge of an Inspector (who was the complainant herein) and the same was filed on 18.02.2020 with a delay of 11 days and as such the complaint itself was



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time barred one and ought not to have been entertained and registered by the Trial Court at the outset. Further, Section 473 of Code of Criminal Procedure, 1973 shall not help the respondent/complainant herein to condone the delay in filing the complaint beyond the stipulated period of three months as provided in Section 27 of the Act which is a special Act which prevails over general Acts. Hence, the impugned judgment of conviction and sentence is liable to be set aside in its entirety.

5.Further, the learned counsel for the petitioner submitted that the petitioner/accused No.1 shall not come under definition of the Principal Employer or the Owner or Occupier of the Factory as defined in Section 2 (1) (g) (i) & (ii) of the Act and hence, the petitioner could not be prosecuted under the Act. Further, the respondent/Complainant had wantonly and wilfully arrayed the petitioner as Accused No.1 contrary to the admitted fact (in their own Inspection Report dated 08.11.2019 annexed with the complaint) that the Principal Employer has been named/identified as



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Dr.V.Vijayan, CEO, M/s. HLL Biotech Ltd, Integrated

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Vaccine Complex, S.No.192 & 195, Meleripakkam (Village & Post), Chengalpet 603 003. Therefore, adding /arraying the petitioner as an accused is not at all sustainable or tenable under the law and as such the impugned judgment of conviction and sentence is liable to be set aside.

6.Further, the learned counsel for the petitioner submitted that there are several orders from the Hon'ble Supreme Court and High Court that even Director cannot be held vicariously liable, unless there are specific allegations and averments against them with respect to their individual role. In this case petitioner/Accused No.1 was only a non-executive Chairman of the HBL Company and was not involved in any of the day to day activities/affairs of the Company. Hence, petitioner/Accused No.1 was wrongly arrayed as an accused by the respondent/complainant, as no specific role was attributable to the petitioner/accused No.1 in the capacity as non-executive Chairman.



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7.The learned counsel appearing for the respondent supported the judgment of the trial Court and submitted that only on the plea of guilty, the trial Court sentenced him to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment of one week and further submitted that a petition to condone the delay was filed by the complainant, it was accepted by the trial Court. Hence, the complaint is not barred by period of limitation stipulated in Section 27 of the Act and conceded that the company is not impleaded as an accused in this case.

8.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent.

9.On perusal of the records, it is noticed that the petitioner/accused No.1 is in Indian Railway Traffic Service (IRTS) and now on deputation, working as Chairman and Managing Director of HLL Lifecare Limited



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(HLL) a Centre Public Sector Enterprise functioning under Ministry of

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Health and Family Welfare (MoHFW), Government of India. The case under dispute is related to HLL Biotech Limited (HBL), which was one of the subsidiary companies of HLL and now, a separate Centre Public Sector Enterprise. At the time of filing the case in C.C.No.101 of 2020 by Labour Enforcement Officer before the learned Chief Judicial Magistrate, Chengalpet, the petitioner/accused No.1 was only the Non-Executive Chairman of the HBL, without any executive power and was not involved in any of the day to day activities/affairs of the HBL.

10.Further the records reveal that the complaint was filed with a delay of 11 days. The inspection took place on 08.11.2019. In the inspection report column No.4 name and address of principal employer is mentioned as Dr.V.Vijayan, CEO, M/s. HLL Biotech Ltd., Integrated Vaccine Complex, S.No.192 & 195, Meleripakkam (Village & Post), Chengalpattu – 603 003. For the violation of non-payment of salaries, the complaint has been filed before the Court on 18.02.2020 with a petition



under Section 473 Cr.P.C. for condoning the delay in filing the complaint.

The delay of 11 days is not disputed by the parties. In this regard, Section 27 of the Contract Labour (Regulation and Abolition) Act, 1970, runs as follows:

27. Limitation of prosecutions.—No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint, thereof may be made within six months of the date on which the offence is alleged to have been committed.

11. In view of the above provision, a complaint has to be filed within a period of three months from the date on which the alleged commission of the offence came to the knowledge of an inspector. It is not disputed that the Inspector inspected the premises and came to the knowledge of the commission of the offence on 08.11.2019. Under these circumstances, the



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complaint must have been filed within 30 days. Admittedly, complaint has been filed with a delay of 11 days and also filed an application under Section 473 Cr.P.C for condoning the delay in filing the complaint.

12. Now, the issue is, whether the Chief Judicial Magistrate is having power to condone the delay by invoking Section 473 of Cr.P.C. The issue has been settled by the Hon'ble Supreme Court in ***P.P.Unnikrishnan and another Vs. Puttiyottil Alikutty and another*** reported in **(2000) 8 Supreme Court Cases 131**. In the decision, the Hon'ble Supreme Court held that the extension of period contemplated in Section 473 Cr.P.C. is only by way of an exception to the period fixed as per the provision of Chapter XXXVI of the Code. Section 473 Cr.P.C. therefore cannot operate in respect of any period of limitation prescribed under any other enactment.

13. In view of the above, the complaint is barred by limitation. Further, in this case, the person committed the offence is the company. If the person committing an offence under this Act is a company, the company as well as every person in charge of and responsible to, the company for the



conduct of its business at the time of the commission of the offence has to be prosecuted. The company is not prosecuted Section 25 of the Act runs as follows:

“25. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the



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consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

14. In view of the above provision, in the absence of compliance with the above Section 25, others cannot be prosecuted for offence. The trial Court overlooking the provision under Section 27 of the Act taking cognizance of the complaint beyond the period of limitation stipulated under Section 27 of the Act and also overlooking the provision under Section 25 of the Act taking cognizance against the employee of the company. On these two grounds, the impugned judgement has to be set aside.



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WEB COPY 15.In view of the above, the impugned judgment dated 09.06.2022

passed in C.C.No.101 of 2020 by the Chief Judicial Magistrate, Chengalpet is hereby set aside and the judgment of conviction and sentence passed on 09.06.2022 imposing a fine of Rs.1,000/-, in default, to undergo one week simple imprisonment against the petitioner is also hereby set aside. Accordingly, the criminal revision case is allowed. Fine amount paid by the petitioner,if any, is ordered to be refund to the petitioner.

Index : Yes/No
Internet : Yes/No
sms

23.06.2023

To

- 1.The learned Chief Judicial Magistrate,
Chengalpet, Chengalpet District.
- 2.The Labour Enforcement Officer (Central)
Government of India,
Ministry of Labour & Employment,
Shastri Bhavan, No.26, Haddows Road,
Chennai – 600 006.

V.SIVAGNANAM,J.



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Pre-delivery order made in
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23.06.2023