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Crl.O.P.No.33951 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.Nos.33951 & 33813 of 2019 and
Crl.M.P.Nos.18743, 18744, 18651 & 18652 of 2019

Shri Uday Kotak
Managing Director,
M/s.Kotak Mahindra Bank Limited,
27BKC, Plot No.C-27 G Block,
Bandra Kurla Complex,
Mumbai-400 051.

... Petitioner in
Crl.O.P.No.33951/2019

N.Ganesh,
Associate Vice President, RL Branch Head,
M/s.Kotak Mahindra Bank Limited, Adyar Branch,
Krishna Manasi, Old No.45, New No.97,
Gandhi Nagar, 1st Main Road, Chennai-20
and
M/s.Kotak Mahindra Bank Limited
No.41, Ground Floor, Shree Essar Towers,
Venkatarayanana Road, T.Nagar,
Chennai-60 017.

... Petitioner in
Crl.O.P.No.33813/2019

Vs.

State, Represented by the
Deputy Chief Labour Commissioner (Central)
Government of India, Ministry of Labour and Employment,
Shastri Bhavan, No.26, Haddows Road,
Chennai-600 006.

... Respondent in both OPs



Crl.O.P.No.33951 of 2019

PRAYER in both OPs: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.3511 of 2019 pending on the file of the Learned XI Metropolitan Magistrate Court, Saidapet, Chennai and quash the same along with the complaint preferred by the Respondent.

For Petitioner : Mr.P.H.Arvind Pandian,
(in both OPs) Senior Counsel for
Mr.Varun Srinivasan

For Respondent : Mr.N.Ramesh,
(in both OPs) Central Government Panel Counsel

COMMON ORDER

These petitions are filed to quash the proceedings in C.C.No.3511 of 2019 on the file of the learned XI metropolitan Magistrate Court, Saidapet, Chennai for the offence under Section 28 read with Section 29 of the Payment of Bonus Act, 1965 (hereinafter referred to as the Act) for the breach of Rule 4(c) of the Payment of Bonus Rules, 1975 (hereinafter referred to as the Rules) read with Section 26 of the Act.

2. The petitioner in Crl.O.P.No.33951 of 2019 is the Managing Director and the petitioner in Crl.O.P.No.33813 of 2018 is the Associate Vice President of M/s.Kotak Mahindra Bank. It is alleged in the complaint that the



CrI.O.P.No.33951 of 2019

respondent inspected the premises of the Adyar Branch, M/s.Kotak Mahindra Bank Limited on 27.12.2018 and during inspection, it was found that the register showing payment of bonus to the employees for the accounting year ending 2018-2019 was not maintained in Form C and that was in breach of Rule 4(c) of the Rules. It is also alleged that the petitioner had submitted the reply. They once again inspected the premises and the employers failed to produce the concerned register.

3. Mr.P.H.Arvind Pandian, learned senior counsel for the petitioners would submit that in response to the show cause notice dated 27.12.2018, the bank had sent a reply on 18.01.2019 wherein they had stated that all the registers were maintained centrally at Mumbai; and that they had also enclosed the copy of registers maintained in Form C along with the reply to the said show cause notice; and that this reply has been acknowledged by the respondent herein. The learned senior counsel further submitted that as per Section 3 of the Payment of Bonus Act, the departments or branches shall be treated as parts of the same establishment and registers need not be kept at all times in all the branches; that the only requirement is the register has to be maintained in Form C and D by the employer; and that the impugned



Crl.O.P.No.33951 of 2019

complaint has not considered the reply sent by the Bank on behalf of the petitioner. Hence, he submitted that since the petitioners have sent the necessary documents and the registers along with their reply to show that they were maintained in accordance with the provisions of the Act, the impugned complaint is liable to be quashed.

4. Mr.N.Ramesh, learned Central Government Standing Counsel would submit that in the complaint, there are specific allegations that even after sending the notice, the petitioners did not comply with the requirement under the Act; and that when the officers went for verification for the second time, the petitioners failed to produce the concerned register and hence, the petitioners are punishable under Section 28 of the Act. He would further submit that since there are disputed facts it has to be adjudicated only during trial and prayed for dismissal of the quash petition.

5. Heard the learned senior counsel for the petitioners and the learned Central Government standing counsel for the respondent and perused the materials available on record.



6. This Court finds that pursuant to the show cause notice issued by the respondent herein, the Bank sent a reply dated 18.01.2019 enclosing the copies of the registers maintained in Form C as required under the Act. The fact that the reply notice has been sent by the petitioner is not disputed by the respondent. The Reply is shown as the second document in the “List of Documents relied upon” by the complainant. However, there is no reference to the contents of the reply in the complaint. Further, in the impugned order, it is not mentioned as to when verification was done for the second time. The petitioners in compliance have produced the required registers. The respondent cannot justifiably refute the reply and the annexures to the reply. Those documents show that the registers were maintained. Further, this Court finds that there is no requirement to maintain the registers at all branches of an establishment. The Act states only requires the employer to maintain the registers. Since the petitioner had shown that the employer has maintained the registers and has produced proof in support of the same, the alleged offences are not made. Hence, the impugned complaint in C.C.No.3511 of 2019 on the file of the learned XI metropolitan Magistrate Court, Saidapet, Chennai, deserves to be quashed.



Crl.O.P.No.33951 of 2019

7. Hence, these Criminal Original Petitions are allowed. Consequently,
connected miscellaneous petitions are closed.

16.03.2023

Index: Yes/No

Speaking / Non Speaking Order

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To

1. The XI Metropolitan Magistrate Court,

Saidapet, Chennai



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Crl.O.P.No.33951 of 2019

SUNDER MOHAN, J

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