



Crl.O.P(MD).No.3506 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 15.03.2023

Delivered On :02.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.3506 of 2020

and

Crl.M.P.(MD)Nos.1883 and 1884 of 2020

R.Ramesh
S/o, S.Ramachandran,
Commissioner,
Kannangudi Panchayat Union,
Kannangudi,
Sivagangai District.

Commissioner,
Panchayat Union,
Kannangudi,
Devakottai Taluk,
Sivagangai District.

...Petitioner

Vs

The State Represented by,
Assistant Commissioner of Labour (Enforcement),
Sivagangai.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in S.T.C.No.434 of 2019 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District and quash the same.



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For Petitioner
For Respondent

: Mr.M.Saravanakumar
: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

ORDER

This petition is filed to quash the chargesheet in S.T.C.No.434 of 2019, on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District.

2.The respondent herein has filed a private complaint against the petitioner herein stating that one Sornam who was working under the petitioner herein was suspended for damaging a pipe. Even after the criminal case against him was ended in acquittal, he was not reinstated in the job and he filed a case under Section 2(A)(2) of the Industrial Disputes Act against the petitioner and the same was taken on file as I.D.No.44 of 2008 and the Labour Commissioner passed an order to reinstate the said Sornam within a period of three months and to pay him salary and the costs of the case. The petitioner did not comply the order of the Labour Commissioner and a petition under Section 34 of the Industrial Disputes Act was filed claiming a sum of Rs.2,78,000/- (Rupees Two Lakhs Seventy Eight Thousand only) as subsequent salary. The petitioner failed to pay the amount. E.P. Was filed. The property that belonged to the petitioner was attached. The case was referred to Lok Adalath wherein the said Sornam received a sum of Rs.1,00,000/-



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(Rupees One Lakh only) as compensation and the petition was closed. Even after several petition for reinstatement, the petitioner failed to reinstate the said Sornam. A report was filed to the Government and the respondent herein was permitted to take action under Section 29(a) of the Labour Act. As per G.O.Ms.No.535 dated 26.09.2019, the private complaint was filed to take action against the petitioner herein.

3.On the side of the petitioner, it is stated that the said Sornam was engaged by TWAD Board as a casual labourer and he was allotted to work in the drinking water scheme under the petitioner Panchayat Union and on the basis of the criminal complaint, he was suspended from service on 18.03.1992. Thereafter, the Panchayat suspended the said Sornam and other six employees as per the proceedings dated 01.04.1993. After a lapse of the 15 years, the said Sornam has filed a petition before the Labour Court in I.D.No.44 of 2008 and he obtained an exparte award on 09.01.2005. Though the said question regarding the limitation was raised, the Labour Court without answering the limitation point has allowed the I.D.

4.On the side of the petitioner, it is stated that based on the exparte award, the said Sornam filed a claim petition in C.P.No.45 of 2015 and the same was referred to Lok Adalath and on compromise, the said Sornam was



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given Rs.1,00,000/- (Rupees One Lakh only) as full and final settlement. The said Sornam had undertaken that he would not file any petition in future against the award made in the Lok Adalath. Suppressing all these facts, the said Sornam has filed a writ petition in W.P.(MD)No.6782 of 2018 with a prayer to direct the State to act upon his complaint dated 29.09.2017 and to take action against the petitioner under Section 29 of the Industrial Disputes act for non implementing the order passed by the Labour Court in I.D.No.44 of 2008. The writ petition was allowed at the admission stage without issuing notice to the petitioner herein. The said Sornam has subsequently made an endorsement that he would not have any further action against the award and he would not file any CP petition. Suppressing the above version, he has filed a writ petition and he obtained an order at the admission stage.

5.On the side of the petitioner, it is stated that the petitioner joined as the Commissioner in Kanangudi Panchayat Union on 03.08.2017. The writ petition was allowed on 28.03.2018 without notice to the petitioner herein. The order copy was received on 06.06.2018. Thereafter the petitioner addressed the State on 20.07.2018 for suitable instructions in this regard. There was no reply from the State. Thereafter, the petitioner addressed the Assistant Commissioner of Labour on 14.08.2018. There was no reply from the Assistant Commissioner. Thereafter the petitioner addressed the District



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Collector on 23.08.2018. But the second respondent passed a G.O. in G.O.Ms.No.535 dated 26.09.2019 directing the respondent to initiate proceedings under Section 29 of Industrial Disputes Act against the petitioner. Based on the G.O., the respondent filed a private complaint before the learned Judicial Magistrate, Devakottai without waiting for the verdict to be passed in the writ appeal filed against the order dated 28.03.2018.

6.On the side of the petitioner, it is stated that in a identical issue, this Court has dismissed W.P.(MD)No.16757 of 1998 on 11.04.2008 on the ground that the petition was filed after a lapse of two years.

7.Against the order made in W.P(MD)No.6782 of 2018 dated 28.03.2018, the petitioner herein has filed an appeal before this Court in W.A. (MD)No.SR75298 of 2019 with a condone delay petition and notice was ordered and the same is pending. The respondent herein has filed a private complaint under Section 190(1)(1) of Cr.P.C., r/w. Section 29 of Industrial Disputes Act and the same is to be quashed.

8.On the side of the petitioner, it is further stated that the award of the Industrial Tribunal was not against any individual. It was only against the company viz Kannangudi Panchayat Union. The award should be satisfied



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only by the company namely, Kannangudi Panchayat Union. There was no vicarious liability unless there is specific provision to that effect. The exparte award was made on 09.01.2015. The petitioner joined the present place only on 11.07.2017. The order was passed without affording any opportunity to the petitioner. Under Section 32 of the Industrial Disputes Act, it is absolutely necessary that the company should be arrayed as an accused. After the amendment made in Section 11 of the Industrial Disputes Act, the present petition filed by the respondent herein is not maintainable. Initiating a criminal proceedings is frivolous and the same is to be quashed.

9.On the side of the petitioner, it is further stated that the entire issue was already settled before the Lok Adalath. The settlement in the Lok Adalath was not brought to the knowledge of this Court. The reinstatement of the person was not claimed before the Lok Adalath.

10.On the side of the prosecution, it is stated that two separate proceedings were taken. Lok Adalath is only for payment and not for the other relief.

11.It is seen that one Sornam was an employee of the TWAD and he was deputed for service of Commissioner, Panchayat Union Kannangudi



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District. He was given the work in the drinking water project in Kannangudi

Panchayat Union. He was suspended from service on 18.03.1992. It is seen that the said Sornam filed a case in I.D.No.44 of 2008 before the Labour Court and the Labour Court has passed an order that the said Sornam must be reinstated within a period of three months and subsequent salary and other benefits are to be given to him. To implement the order of the Labour Court, the said Sornam has filed a petition in C.P.No.45 of 2015. The matter was referred to Lok Adalath and a sum of Rs.1,00,000/- (Rupees One Lakh only) was given to said Sornam. During the settlement in Lok Adalath, the said Sornam has made an endorsement that he will not take any further action and that he promised to withdraw all the cases pending and he is ready to withdraw any other cp petition pending.

12.It is seen that subsequently, the said Sornam has filed a complaint under Section 34 of the Industrial Disputes Act. The said Sornam has filed a writ petition in W.P.(MD)No.6782 of 2018 to reinstate him as an employee wherein this Court has passed an order directing the petitioner to decide the request in accordance with law within a time frame.

13.On the side of the petitioner, it is stated that the said Sornam who was originally the employee of TWAD, was deputed to the Panchayat Union



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and later his service returned back to the Parent Department and anything with regard to the service can only be done by the TWAD and not by the Panchayat Union. The petitioner has joined the duty in the year 1988 and he was not at all in service in the year 2008.

14.The original employer was the TWAD Board. After the said Sornam was suspended, the Panchayat Union returned back his service to the original Department I.e. TWAD Board. Since the original employer is the TWAD Board, the proceedings against the petitioner for reinstatement of the said Sornam is not maintainable. How the individual is criminally liable is not explained in the private complaint. No criminal liability can be fixed on the petitioner in his personal capacity. Hence, the proceeding against the petitioner is quashed.

15.In the above circumstance, this Criminal Original Petition is **allowed** and the proceedings in S.T.C.No.434 of 2019 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

02.06.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

- 1.The Assistant Commissioner of Labour (Enforcement),
Sivagangai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI,J.

Mrn

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