



Crl.O.P(MD).No.5189 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 28.03.2023

Delivered On : 08.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.5189 of 2020

and

Crl.M.P.(MD)Nos.2994 and 2995 of 2020

S.Nagarathinam

...Petitioner

Vs

S.Dhayanithi

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the case in S.T.C.No.163 of 2018 pending on the file of the learned Judicial Magistrate No.VI, Madurai and to quash the same.

For Petitioner

: Mr.Babu Rajendran

For Respondent

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

ORDER

This petition is filed to quash the proceedings in S.T.C.No.163 of 2018 on the file of the learned Judicial Magistrate No.VI, Madurai.

2.The allegation against the petitioner is that the respondent



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inspected the premises on 03.07.2017 at about 01.30 p.m., and he found that there was violation under Rule 16(4)(a) that the petitioner has not exhibit (Form "S") and Rule 11(4) r/w. Rule 16(b) that has not exhibit Form 'S' and Rule 11(5) r/w. Rule 16(b) that has not exhibit Form 'R' and thereby liable to be punished under Section 45(1) r/w. Rule 18 of the Act.

3.On the side of the petitioner, it is stated that there was no such establishment in the name of Yes Yen Aroma Private Limited under Section 26 of the Act. The petitioner was not an employer as defined under Section 25 of the Act. Door No.35/7 is a residential place of one of his son, N.Karthikeyan and he is having family card, voter ID, aadhaar card and PAN card in the said address. The establishment referred by the respondent was closed as early as 2012 and neither the State Government's Value Added Tax nor the Income Tax Return was submitted after 2012. The residential building was constructed only in the place, in which the establishment was earlier functioning. The persons referred by the respondent in the show cause notice are only the Computer Operators and Assistants of the petitioner's another son Rajendran, who was residing at 35/8, Aruppukkottai Main Road, Villapuram, Madurai. No such establishment was opened for the service of any customer. No flower bags was available or trade was running in the said address.



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4.On the side of the petitioner, it is stated that only due to some personal vengeance, the respondent foisted five false cases against the petitioner and the petitioner is aged about 85 years. Even on the date of alleged inspection, the son of the petitioner, by name Rajendran, lodged a complaint against the respondent. The Ministry of Corporate Affairs, Government of India issued Form No.STK 1 on 17.03.2017 striking the name of M/s.Yes Yen Aroma Private Limited from the Registrar of Companies under the Companies Act. The office of the Income tax has sent a notice to the petitioner's establishment on 23.06.2015 regarding the non payment of IT return for the assessment years 2013-2014 and 2014-2015. For the letter, the petitioner has sent a reply on 09.07.2015 stating that establishment has become defunct for several years and requested the authorities to close the file from the records.

5.On the side of the petitioner, it is stated that the charge against the petitioner was under Section 16(4)(a) of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and Establishment Rules, 1948 and Section 11(4) r/w. 16(b) of the of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and Establishment Rules, 1948 and Section 11(5) r/w. 16(b) of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and Establishment Rules,



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1948, but the learned Magistrate has taken the case on file, under Section 16(b), 3(11)(5) r/w. 16(b) of the Labour Act, which is not applicable to the case. The summon was issued under Section 16(b), 3(11)(5) r/w. 16(b) of the Labour Act, which is also not maintainable and prayed the proceedings to be quashed.

6.On the side of the prosecution, it is stated that the concerned place of occurrence is a complex, wherein the residents of the petitioners is not available. At the time of inspection, five workers were found working in the place of occurrence and the petitioner did not co operate for the inspection. He threatened the respondent and the respondent filed a complaint and that the son of the petitioner threatened the respondent and the complaint in receipt No.484 of 2017 was registered against the said Rajendran and the FIR is still pending. The petitioner is claiming that his establishment was closed in the year 2012. But the petitioner received summon in the name of the company and the summon issued by the Court was received by the petitioner on 10.08.2020 and the rubber stamp was used by the petitioner, which reveals that the petitioner is running the company. Even if the company was declared as defunct, illegally the petitioner is running the establishment.

7.On the side of the petitioner, it is stated that another son of the



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petitioner by name Karthikeyan has filed a petition in Crl.O.P.(MD)No.10325 of 2017 to quash the proceedings in S.T.C.No.16 of 2017 pending on the file of the learned Additional Chief Judicial Magistrate, Madurai and the petition was dismissed by this Court on 21.05.2021. The respondent has registered a case against one of the sons of the petitioners by name Jegatheesan. This Court in Crl.R.C.(MD)No.602 of 2021 has quashed the case in Crl.M.P.No. 524 of 2021 in S.T.C.No.16 of 2017, by an order dated 12.11.2021.

8.On the side of the petitioner, it is stated that the petitioner registered a case against one Karthikeyan, son of the petitioner regarding a retail outlet in the Airport, the said Karthikeyan has filed a document to show that the retail outlet was in the name of his brother Jagatheesan and that the prosecution has filed a petition to implead Jagatheesan in S.T.C.No.16 of 2017.

9.A perusal of the records reveals that an offence under Section 16(4) (a) of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and Establishment Rules, 1948 and Section 11(4) r/w. 16(b) of the of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and Establishment Rules, 1948 and Section 11(5) r/w. 16(b) of the Tamil Nadu Shops and Establishment Act, 1947 and Tamil Nadu Shops and



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R. THARANI,J.

Mrn

Establishment Rules, 1948, was registered against the petitioner. But the case was taken on file under Sections 16(b), 3(11)(5) r/w. 16(b) of the Labour Act. The summon was issued only under Sections 16(b), 3(11)(5) r/w. 16(b) of Labour Act. Cognizance was not taken under the proper Section and the summons were not sent depicting the proper Section and the premises inspected by the respondent was a residential house, there is no sufficient ground to proceed with the case.

10.In the above circumstances, the case in S.T.C.No.163 of 2018 is hereby quashed. Hence, this Criminal Original Petition is **allowed**. Consequently, connected miscellaneous petitions are closed.

08.06.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate, Vadipatti.

2.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

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