

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12117-2019**Date of Decision: 06.01.2023**

Jayanat Davar

... Petitioner

VS.

The State (through the Assistant Director,
Industrial Safety & Health, Gurgaon-II)

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gautam Dutt, Advocate,
Mr. Vikrant Rana, Advocate,
Mr. Sumit Sangwan, Advocate,
Mr. Vikas Tomar, Advocate,
for the petitioner

Mr. Surender Singh, AAG Haryana

Sandeep Moudgil, J.

This order shall dispose of CRM-M-12117-2019, CRM-M-18641-2019, CRM-M-18653-2019, CRM-M-18654-2019, CRM-M-18655-2019, CRM-M-18656-2019, CRM-M-18658-2019, CRM-M-18662-2019, CRM-M-18798-2019, CRM-M-18802-2019, CRM-M-18806-2019, CRM-M-18834-2019, CRM-M-18837-2019, CRM-M-18851-2019, CRM-M-18861-2019, CRM-M-18862-2019, CRM-M-18881-2019, CRM-M-18902-2019, CRM-M-18907-2019, CRM-M-18909-2019, CRM-M-18927-2019, CRM-M-18934-2019, CRM-M-18939-2019, CRM-M-18940-2019, CRM-M-18945-2019, CRM-M-18661-2019 seeking quashing of complaint filed under Section 50 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, (in short, the 1996 Act).

For the purpose of order, CRM-M-12117-2019 is treated as the lead case.

The petitioner seeks quashing of criminal complaint No.COMA/87 dated 22.05.2018 titled as “Assistant Director vs. Jayant Dawar” under Section 50 of Building and Other Construction Workers (Regulation of Employment and Condition of Service Act), 1996 pending in the Court of CJM, Gurugram (Annexure P1) as well as for quashing of the order dated 22.05.2018 (Annexure P2) summoning the petitioner.

M/s Sandhar Automach Manesar (a unit of Sandhar Technologies Ltd.) - a company duly registered under the Companies Act, 1956 and also covered under the Factory Act, 1948, carrying on the business of manufacturing automobile parts. The said company was closed in the year 2017 vide letter dated 23.09.2017 submitting in the office of Chief Inspector of Factories, Chandigarh informing that proper arrangements of affected employees have been made. Earlier, as per Form 21 attached with the annual return for the year 2016 and as per board’s resolution, Mr. Arvind Joshi was declared as Occupier/Principal Employer of the factory and he remained as such till the closure of the factory on 31.10.2017. It is averred that as per Section 7A of the 1948 Act, an Occupier is responsible for the health, safety and welfare of all the workers.

An inspection was conducted on 23.02.2018 by Dr. Deepak Malik, Assistant Director (IS&H), Gurugram – the competent authority. Thereafter the company received a show cause notice dated 26.02.2018 wherein the name of the employer was wrongly mentioned as Jayant Davar (as told) and the name of contractor was mentioned as Mukhram Sharma apart from names of other persons. It was also found that that the construction site/establishment of M/s Sandhar Automach, Plot No.44, Sector

3, IMT, Manesar, Gurugam was not registered under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short, the 1966 Act).

In reply thereto, it was stated that the name of the employer was wrongly mentioned as 'Jayant Davar' and the persons mentioned to be present at the time of inspection were not its employees. It was also stated that due to renovation work of building, no manufacturing activity was taken place.

On the basis of the inspection, the competent authority issued notice dated 26.02.2018 (Annexure P4) under Section 50(3) of the 1996 Act, to the company to rectify the violations and to appear on 29.03.2018. The company gave reply on 26.04.2018 (Annexure P4-A) authorizing Kuldeep Singh to appear before the Chief Inspector of Factories on the matter related to inspection reply submission against letter dated 26.02.2018 for the company.

In pursuance to the said show cause notice, Kuldeep Singh i.e. the authorized representative of the company appeared before the Committee consisting of Additional Chief Inspector of Factories, Joint Director, Industrial Safety and Health, and Deputy Director, Industrial Safety and Health. During the course of hearing, some of the observations/violations were not found to have been complied with by the company. On 03.05.2018, the Committee again found that the company has still not complied with all the observations/violations as pointed in the inspection report (Annexure P1) and as such vide order dated 21.05.2018, the competent authority granted the prosecution sanction for violations of observations as mentioned at Sr.No.5,

19, 24 & 27 and also authorized the competent authority to lodge criminal complaint against the petitioner.

On 27.10.2018, the company Sandhar Technologies Ltd. received a notice dated 25.10.2018 from the Court of CJM, Gurugram mentioning therein the name of the petitioner as employer and Mukhram Sharma as contractor. In pursuance thereto, the company wrote a letter dated 01.03.2019 to the Chief Inspector of Factories to straighten the record as Jayant Davar is not the occupier of the factory nor is he responsible for any activity relating to the factory. An application (Annexure P6) was also moved for correction/change in the name of accused and that the notice be issued to Arvind Joshi and not Jayant Davar. Thereafter, the CJM, Gurugram, summoned the petitioner vide impugned order dated 22.05.2018.

Learned counsel for the petitioner contended that the petitioner cannot be subjected to harassment due to lapse on the part of the respondent in wrongly mentioning the name of the petitioner as employer/occupier since the petitioner is not the real employer despite the fact that the respondent was duly cognizant of the fact that the present petition is not the employer/occupier of the premises. It is urged that the court below did not apply its judicial mind as there is no sufficient ground to proceed against the petitioner in the present case. In some violations, only penalty can be imposed under Section 50 of the 1996 Act and as such the complaint is not maintainable. Reliance is placed on Hon'ble Supreme Court judgment in **CP Jain & Ors. vs. Inspector, Building & Anr. Criminal Appeal No.1284 of 2007** decided on 21.09.2007;

It is argued that as per Certificate of Registration (Form-II) under the 1996 Act, the name of the employer is clearly mentioned as Yatendra Singh Chauhan. Further, learned counsel for the petitioner pointed out that the company is not arraigned as an accused under Section 53 of the 1996 Act even though the show cause notice has been addressed to the company itself.

Learned counsel for the petitioner further averred that M/s Sandhar Automach Manesar was closed w.e.f. 31.10.2017 and letter of closure dated 23.09.2017 was also submitted to the Chief Inspector of Factories. It is urged that the vide board resolution dated 31.05.2013, Mr. Arvind Joshi was declared as occupier of the factory of the year 2016 and he remained in the same capacity till the year 2017. As such, the name of the petitioner is wrongly entered as he not the person responsible as employer or contractor of the company. As such, at the time of inspection, Mr. Arvind Joshi, was the occupier of the factory as is evident from the Board resolution.

Reliance has been placed on **Aneeta Hada vs. M/s Godfather Travels and Tours P.Ltd. (2012) 5 SCC 661**, to say that since the company had not been impleaded as an accused, the liability of the respondent as its Managing could not be attached under Section 141 of the Negotiable Instruments Act.

On the other hand, learned State counsel submitted that the then Assistant Labour Commissioner and Labour Inspector, Gurugram had inspected the premises of M/s Sandhar Automotive on 03.06.2015 and found violations under various labour legislations including Equal Remuneration Act, 1976. The inspection note, recorded in prescribed form, was duly signed

by Kamlesh Kumar, HR Manager of the company along with its seal who also informed that Jayant Dawar and Chander Sen Gupta, are the Occupier and Manager, respectively of the management as is evident from inspection form (Annexure R1). It is further stated that the list (Annexure P2) downloaded from the website of the company also includes the name of the petitioner as one of the Directors of the Company. Learned State counsel further urged that only for a short span of time, Arvind Joshi was got amended for the year 2016-20 which was again amended and the name of petitioner was mentioned as Director during the same period i.e. 2016-2020.

It is highlighted that in the written statement (Annexure P4-A), to the show cause notice dated 26.02.2018 filed by the management of the company also, neither any objection was taken that the petitioner is not the Director of the company nor the said error/issue was raised before the competent authority. As such, it is nothing but an afterthought that the petitioner is not the Director of the company at the time of inspection.

Further, it is pointed out that Sandhar Technology Ltd. and M/s Sandhar Daewha Automotive System Pvt. Ltd. are group of companies of Sandhar Technologies Ltd. whose MD or Co-Chairman is petitioner Jayant Dawar. The petitioner never applied for registration of the Sandhar Automach, Manesar under the 1996 Act.

Learned counsel for the State further averred that as per Form No.2 (Annexure P4-A), M /s Sandhar Daewha Automotive System got registered on 27.03.2018 whereas inspection of M/s Sandhar Automach was done on 23.02.2018 i.e. more than one month prior to the said registration. Meaning thereby that the registration form was not part of the record of the

office of Assistant Director on the date of inspection and as such it can safely be said that both Sandhar Technology Ltd. and Sandhar Daewha Automotive System P.Ltd are same company.

I have heard learned counsel for the parties and gone through the record.

The foremost contention raised by learned counsel for the petitioner is that the complaint is not maintainable as it was obligatory on the part of the complainant to comply with the statutory requirement by impleading the company as party and as such the CJM, Gurugram could not have issued notice to the petitioner for commission of alleged violations since the petitioner is not the employer/occupier of the company M/s Sandhar Automach.

Before moving further, the genesis of the complaint needs to be examined. The Assistant Director, Industrial Safety and Health, Gurugram-II, inspected the premises of M/s Sandhar Automach under the 1996 Act and Rules framed thereunder and found 37 violations under Section 34, 40 of the 1996 and Rules 103, 115 & 117 of the HBOCW, Rules, 2005.

Section 44 of the 1996 Act provides that an employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment relating to safety. As per Section 38 of the 1996 Act, an employer is required to constitute a Safety Committee and also appoint a safety officer in an establishment where accident occurs.

It is pertinent to mention that as per Section 2(i), an employer, in relation to an establishment, means the owner thereof. Section 2(i) of the 1996 Act reads as under:-

*(i) "**employer**", in relation to an establishment, means the owner thereof, and includes,--*

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor”

In **Aneeta Hada's** case (supra), the Hon'ble Supreme Court held that placed heavy reliance on **State of Madras vs. C.V. Parekh (1970) 3 SCC 491**, wherein the three-Judge Bench authoritatively held that where the Company was not charged with the offence at all, the liability of the persons in charge of the Company only arises only when the contravention is by the Company itself. The relevant extracts read as under:-

“Learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention was committed, was in charge

of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible...

(Emphasis applied)

The Hon'ble Supreme Court then held that the first condition is that the company should be held to be liable; a charge has to be framed; a finding has to be recorded, and the liability of the persons in charge of the company only arises when the contravention is by the company itself. It was concluded that:-

“...Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing

in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.”

In **C.P. Jain & Ors.’s** case (supra), the appellants were the Chief Managing Director, Executive Director, General Manager and Assistant General Manager of National Thermal Power Corporation. A complaint was filed against them for commission of offence under Section 54 of the 1996 Act. The said officers were sought to be prosecuted without company being impleaded as party. The Hon’ble Supreme Court held that:-

”The statute provides for vicarious liability on the part of the officers concerned although in law they may not be otherwise liable only in the event the statutory requirements are fulfilled. In such a situation, it was obligatory on the part of the complainant-respondents to comply with the statutory requirement by impleading the company as a party as an accused.”

Coming back to the facts of the present case, it is the case of learned counsel for the petitioner that the petitioner has nothing to do with M/s Sandhar Automach as his name has been wrongly mentioned as “employer” of M/s Sandhar Automach, Manesar which had been closed in September, 2017 and the said fact was duly intimated to the Chief Inspector of Factories on 23.09.2017. Further, in its annual return for the year 2016 in Form No.21, it was clearly mentioned that Mr. Arvind Joshi is the

occupier/principal employer of the factory. The stand of the petitioner is also fortified in view of the fact that the company Sandhar Technologies Ltd. itself wrote a letter on 01.03.2019 to the Chief Inspector of Factories to straighten its record to the extent that the petitioner is neither the occupier/employer of the factory nor is responsible for any activity towards running of the factory and that it was Mr. Arvind Joshi, who was holding the chair of occupier/employer on the date of inspection and was, as such, responsible for health, safety and welfare of the workers in the factory. The petitioner has not been proved to be “employer” within the meaning of Section 2(i) of the 1996 Act.

On perusal of the complaint, it is evident that in the memo of parties, only the petitioner and one other Mukh Ram Sharma have been impleaded as the employer and the contractor, respectively. The actual employer/occupier, as on the date of inspection, as per Form-II, is not the petitioner. Learned counsel for the petitioner has contended and rightly so that the respondent being the custodian of the records was duly cognizant of the fact that the petitioner was not the employer/occupier of the premises, as per the records maintained by the Chief Inspector of Factories and other offices. Moreso, when the wrong mentioning of the name of the petitioner as employer was brought to the notice of the Chief Inspector of Factories, what prevented the said agency to scrutinize the record with the concerned office(s) and ascertain as to who was the actual employer/occupier at the relevant time of inspection.

Even the company has not been impleaded as party as mandated in **C.V. Parekh's** case (supra). It is well settled that the person contravening

the provisions of 1996 Act must be a company itself. In the present case, there is no finding by the Magistrate that the contraventions under Sections 34, 40 of the 1996 and Rules 103, 115 & 117 of the HBOCW, Rules, 2005 were made by the Company. The liability of the persons in charge of the Company only arises when the violations are by the Company itself. Since, in this case, there is no evidence or finding that the Company violated the above-said provisions of the 1996 Act, the petitioner could not be held responsible. That being so, the complaint itself is vitiated as the necessary ingredient i.e. the impleadment of the company, is missing which renders the complaint as illegal and unlawful.

In view of the above discussion, this Court is firm in its view that the complaint (Annexure P1) is not maintainable since the respondent has failed to make out the basic ingredients.

Accordingly, this petition is allowed; the complaint dated 22.05.2018 (Annexure P1) as well as the order dated 22.05.2018 (Annexure) are set aside.

06.01.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No