

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-23372-2020 (O&M)
CRM-M-19371-2020 O&M)
Date of decision: 28.08.2023

Anil Puri

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. ADS Sukhija, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

AMAN CHAUDHARY, J.

1. **CRM-M-23372-2020** has been filed for quashing of complaint No.COMA/339 of 2014 dated 16.09.2014, summoning order dated 16.09.2014, order dated 27.09.2019 passed by Judicial Magistrate, 1st Class, Gurugram, whereas, in **CRM-M-19371-2020** prayer is for quashing of FIR No.0071 dated 20.01.2020, registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram and all other subsequent proceedings arising therefrom.

2. Succinctly, on 02.07.2012 services of a workman-Mukesh Kumar were terminated by M/s Securitrans India Pvt. Ltd., in which the petitioner was a Director but had resigned on 18.06.2011. Challenge to the same was made by way of a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act') which culminated in an award dated 30.07.2013, Annexure P-2, whereby he was ordered to be reinstated in service with continuity of service and backwages to the extent of 40%, by holding his

termination to be illegal. Due to the non-implementation of the award, a complaint under Sections 29/31 read with 32 of the Act came to be filed on 16.09.2014 by the Labour Inspector, against the petitioner wherein he was summoned on the same date, Annexure P-4.

3. The first plank of arguments of learned counsel was that the petitioner had resigned much prior to the date on which, the services of the workman in question were terminated. Substantiating the submission, a reference was made to Annexure P-1, it being Form 32 pursuant to Sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956 and its receipt by Registrar of Companies. Another Director was appointed in his place on the same date. *Secondly*, the award was ex-parte and the petitioner was not made a respondent in it but still due to malafide intention, the complaint was filed against him, wherein he though had also filed an application for discharge, but the same was not decided. The said award has been already implemented, as was settled, therefore continuation of proceedings are uncalled for. *Thirdly*, he would submit that the complaint was also time barred in view of which, reliance was placed on **State of Haryana vs. AK Jain**, CRR No.124 of 1993, dated 11.10.1993, wherein it has been held that the offence is continuing however for a period of 1 year from the date of its publication in the official gazette.

4. With regard to the proclamation proceedings are concerned, it was submitted that the petitioner had failed to appear on 10.10.2018, due to some personal difficulty, and subsequently was declared a proclaimed person and an FIR under Section 174A IPC was registered. However, when the petitioner came to know of it, he applied and was granted anticipatory bail by the trial Court and joined the proceedings in the complaint case. Thus, FIR registered

under Section 174A, deserves to be quashed in view of the aforesaid facts and the award itself having been satisfied.

5. Learned State counsel submitted that the complaint was rightly filed against the petitioner and the trial Court passed a summoning order, which is legal and valid. Since, the registration of the company was valid upto 31.03.2017 under Punjab Shops and Commercial Establishments Act, 1958, and the petitioner was the employer on behalf of the company, thus, he was responsible for the implementation of the Award. He submitted that the change in name and parentage had not been informed by the petitioner or the company to the Department. He is however, unable to controvert the fact that the petitioner had been granted anticipatory bail and that award in question stood implemented.

6. In rebuttal, learned counsel for the petitioner stated that it is the establishment, which was registered till the year 2017, but the petitioner had resigned therefrom even prior to the termination of the service of the workman, therefore, the implementation of the award as also the intimation regarding the above, was the responsibility of the company and not his.

7. Heard the learned counsel for the parties and perused the paperbooks.

8. Unfolding the facts, the petitioner, who was a Director of the company, resigned on 18.06.2011, which is substantiated from documents relied upon, appended as Annexure P-1, wherefrom it is further revealed that as per the signatory details available on the portal of Ministry of Corporate Affairs, two Directors were inducted, one of whom, Mr Rajiv Kaul from the date of resignation of the petitioner i.e. 18.06.2011 and Mr Pankaj Khandelwal from 06.06.2012.

9. The services of the workman were dispensed with on 02.07.2012, whereafter, a dispute was raised by him before the Industrial Tribunal-cum-Labour Court, which culminated in an ex-parte award passed in his favour on 30.07.2013. Thereafter, the complaint in question was instituted by the Labour Inspector against the petitioner on 16.09.2014 in the Court of Chief Judicial Magistrate, that he had committed offence punishable under Sections 29/ 31 read with Section 32 of the Act, wherein he was summoned vide an order of even date. The petitioner had filed an application for discharge on the ground that he had no concern or relation with the Company ever since 18.06.2011, having resigned from its Directorship. The same is stated to have remained undecided.

10. During the interregnum, a settlement, dated 02.01.2015, Annexure P-5, was arrived at between the workman and the management of the Company, duly recording therein that the award dated 30.07.2013 stood implemented by the company and the workman had been allowed to perform his duties by granting continuity of service, which reads thus:

“That the management has already allowed the workman to perform his duties and giving him the continuity of the services thereby part of the award was already implemented. Through the agreement between the parties and the statements recorded before the Hon’ble Industrial Tribunal on 19.12.2014 against the remaining claim of back wages/ intervening wages it has been decided and agreed to pay the workman a sum of Rs.20,000/- and he shall continue to remain in the employment of the management as reinstatement has been granted to him.”

11. Pursuant to the settlement, the workman made a statement on 02.01.2015, Annexure P-6, before the Industrial Tribunal, which reads thus:

“I, Mukesh Kumar son of Shri Ram Mehar, resident of Surakhpur, Tehsil Kosli, District Rewari, today on 2/1/15, in view of compromise dated 2/1/2015 with M/s Securitrans India P. Ltd. have received in cash a sum of Rs.20,000/-

(Rupees twenty thousands). Now as per compromise, I have nothing due towards the Management. Receipt has been written so that it may be used at any time.”

12. Now coming to the contention raised on behalf of the State, that the establishment/Management had not informed the Department about the change in name and parentage of the employer. The aforesaid, to the mind of this Court, is an irregularity, that too at the end of the Company, on account of which the petitioner cannot be made to suffer prosecution, especially in wake of the attending facts and circumstances that the dispensation of service of the workman as also the dispute had arisen subsequent to his resignation; a new Director had been inducted in his place on the same day, a fact, not denied or rebutted; award was ex-parte, to which, he was not privy, being not a party-respondent; there thus, appears to be no justification to have arraigned him as an accused in the complaint and not the Company and/or the then Director, wherein though he filed an application for discharge, but the same remained undecided. Apart from this, having a look at the matter from yet another angle, that the award, the non-implementation of which was the sole premise of filing the complaint, itself stood satisfied and a statement of the workman duly recorded, this Court drawing strength from the judgment in **State of Karnataka vs. L. Muniswamy and others**, (1977) 2 SCC 699, wherein it was observed and held by Hon’ble The Supreme Court that, the ends of justice are higher than the ends of mere law and inherent power under Section 482 CrPC is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution, ineluctably concludes that in the present case, the continuation of the proceedings against the petitioner would amount to an

abuse of process of Court. Consequently, the same deserve to be dropped here and now.

13. Moving to the next leg of the prayer for quashing of the FIR registered under Section 174A IPC, it is manifestly clear from the record that on acquiring knowledge of it, he preferred an application for anticipatory bail, which was granted to him by the trial Court.

14. The FIR under Section 174A IPC is the consequence of declaring the petitioner as a proclaimed person. The basis of the same is the absence of the concerned from the Court, be it for any reason. Subsequently, the Court extending him the concession of anticipatory bail and the complaint itself being satisfied or culminated on any account, can be factored to conclude that the very purpose of initiation of proclamation proceedings, that is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings pending between the parties, stands nonetheless achieved.

15. It would be beneficial to make a reference to the judgment in **Vineet Kumar vs. State of U.P.**, (2017) 13 SCC 369 wherein it was held by Hon'ble The Supreme Court that, "Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold." In **Parbatbhai Aahir vs. State of Gujarat**, (2017) 9 SCC 641, Hon'ble The Supreme Court, while expounding the wide and plenitude powers of High Court observed that Section 482 CrPC preserves the inherent powers to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers

which inher in the High Court.

16. In the backdrop aforesaid, the present petitions stand allowed. Complaint and summoning order dated 16.09.2014 and also the order dated 27.09.2019, passed by JMIC, Gurugram and the resultant FIR No.0071 dated 20.01.2020, registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram are hereby quashed.

17. Photocopy of this order be placed on the connected file.

28.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No