

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

242

CRM-M-57775-2022

Date of decision: 20.01.2023

Instakart Services Private Limited and anotherPetitioners

Versus

State of HaryanaRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vinod Ghai, Sr. Advocate with
Mr. Rajbir Singh, Advocate,
Mr. Sanjeev Goyal, Advocate and
Ms. Kashish Sahni, Advocate
for the petitioners.

Mr. Surender Singh, AAG, Haryana with
Mr. Robin Khokha, Assistant Director,
Industrial Safety and Health-II, Gurugram.

MANJARI NEHRU KAUL, J.

The petitioners are seeking quashing of the Criminal Complaint bearing CIS No.SUMM-05-2022 dated 16.04.2022 under Sections 47/48/50 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 (for short, 'the Act') titled as 'State of Haryana Vs. M/s Instakart Private Limited through its Director Kolla Prabhakar etc.' (Annexure P-1) along with summoning order dated 16.04.2022 (Annexure P-2) passed by learned Chief Judicial Magistrate, Gurugram.

Learned Senior Counsel for the petitioners *inter alia* submits that the impugned order on the face of it is contrary to the statutory provisions of the Act and thus deserves to be set aside. While drawing the attention of this Court to the copy of inspection notice (Annexure P-4) and copy of the second notice (Annexure P-6), Learned

Senior Counsel has submitted that the inspection of the premises in question was carried out by the officials concerned on 06.01.2022, whereas, the cognizance of the offences alleged, was taken by the Trial Court on 16.04.2022 which clearly was beyond the period of 03 months prescribed under Section 55 of the Act. Learned Senior Counsel has still further argued that the provisions of Section 55 of the Act are mandatory in nature and, thus, the Trial Court could not have taken cognizance after the expiry of the period of limitation. It has also been urged by the Learned Senior Counsel that the complaint is based on totally misconceived facts since on the date of the inspection of the premises in question, neither any construction activity was underway nor was any factory in existence qua which the proceedings in dispute could have been initiated. In support, Learned Senior Counsel has placed reliance upon ***CRM-M-41011-2021 titled as 'Piyush Kumar Vs. State of Haryana' decided on 28.07.2022; M.S. Srinivasan Vs. Deputy Director : 2019 SCC OnLine Mad 9001; Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others : (1998) 5 Supreme Court Cases 749; Sunil Todi and others Vs. State Gujarat and another : 2021 SCC OnLine SC 1174; Babu Verghese and others Vs. Bar Council of Kerala and others; Nazir Ahmad Vs. The King-Emperor : AIR 1936 PC 253(2) and State of Uttar Pradesh Vs. Singhara Singh and others : AIR 1964 SC 358.***

Learned State counsel, on the other hand, was not able to dispute the fact that the complaint in question was filed beyond the period of 03 months from the date of inspection.

I have heard learned counsel and perused the relevant

material on record.

The short question which arises for consideration of this Court is as to whether or not the Trial Court could have taken cognizance of offences under the Act, beyond the period of 03 months from the date when the alleged commission of offences came to the knowledge of the officials concerned?

It would thus be apposite to reproduce Section 55 of the Act, which reads as under:-

“55. Limitation of prosecutions:-No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.”

On a bare reading of the above provision it is abundantly clear that they are mandatory in nature and not merely directory as the legislature in its wisdom has used the expression “shall”. Further, since it deals with penal provisions it goes without saying that it has to be strictly construed and adhered to.

In the present case, admittedly the inspection of the premises in question was carried out on 16.01.2022, therefore, the officials concerned came to know about the commission of the alleged offences on the said date. Hence, it was incumbent upon the concerned officials to present the complaint soon thereafter before the learned Chief Judicial Magistrate. However, they chose to sit over the matter and it was only on 13.04.2022 that the impugned complaint (Annexure P-1) was filed.

In the aforesaid circumstances, since the complaint was

filed beyond the period of limitation of 03 months from the date of knowledge, the learned Court below was precluded from taking cognizance of the alleged offences and thus, erred in summoning the petitioners to face trial.

As a sequel to the above, the instant petition is allowed and the impugned complaint dated 16.04.2022 (Annexure P-1) as well as the summoning order dated 16.04.2022 (Annexure P-2) are quashed.

20.01.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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