



Crl.O.P.No.1275 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.1275 of 2019

and

Crl.M.P.Nos.842 of 2019

1.Rohit D Savla
2.Saroj A. Savla
3.ArunGada
4.Sanjay Kumar Mundhra
5.DipenKapurchandHaria

... Petitioners

Vs.

1.State Rep. by
The Inspector of Police,
Kandili Police Station,
Vellore District.
(Crime No.166 of 2015)

2.Thirugnanam

... Respondents

(R2 is impleaded as per the order of this Hon'ble Court dated
27.03.2019 made in Crl.M.P.No.4434/2019 in Crl.O.P.No.1275 of 2019).

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C.,
praying to call for the records in P.R.C.No.5 of 2018 on the file of the
Judicial Magistrate-II, Tirupattur and quash the same.



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For Petitioners : Mr.A.L.Somayaji, Senior Counsel
for Mr.V.Perumal
For R1 : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)
For R2 : No appearance

ORDER

This petition has been filed to quash the P.R.C.No.5 of 2018 on the file of the Judicial Magistrate-II, Tirupattur, in which cognizance was taken for the alleged offence punishable under Sections 374, 370(3), 344 and 370(5) IPC and Section 16,17,18,9 of Bonded Labour System (Abolition) Act, 1976, also under 3 and 14(1) of Child Labour (Prohibition and Regulation) Act, 1986, against the petitioners.

2. The petitioners are ranked as A1 to A5 in PRC.No.5 of 2018, pending before the learned Judicial Magistrate-II, Tirupattur. Based on the complaint given by the 2nd respondent, FIR has been lodged against the petitioners in Crime No.166 of 2015 for the offence under Sections 374, 370(3), 344 and 370(5) IPC and Section 16,17,18,9 of Bonded Labour System (Abolition) Act, 1976, also under 3 and 14(1) of Child Labour (Prohibition and Regulation) Act, 1986.



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3. According to the prosecution, information from one Samuvel of an

NGO indicated that the company premises, belonging to the accused, were investigated to ascertain whether any labour was engaged after the completion of the FIR lodged on 30.04.2018. The 1st petitioner is the Managing Director, and the 2nd, 3rd, and 4th are the working partners of the company, namely "M/s. Sunshine Agarbathi and Co.," which manufactures agarbathies. As per the final report, the prosecution alleged that the petitioners were managing the day-to-day affairs of the company and are jointly and severally liable for its affairs. One Avinash (A6) was the Supervisor of the Company, who actively aided and abetted the petitioners in recruiting adults and children for the purpose of bonded labor. All the accused persons have exploited and trafficked the workers into slavery, extracting compulsory labour from them, thereby committing an offense punishable under Section 370(3) of IPC. There were 48 bonded laborers, forced to stay in a 10 x 10 sq. ft. room within the company premises, thereby committing an offense punishable under Section 344 of IPC. They extracted work against their will and paid minimum wages for the offenses committed under Section 374 of IPC. Out of the 48 victims, 8 were forced to work for a period of 11 months to two years without wages, intending to



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exploit compulsory labour, making them punishable under Section 17 of the Bonded Labour System (Abolition) Act. Moreover, the petitioners did not provide basic amenities and employed 3 children, forcing them to work in the factory for 12 hours, thus committing an offense under Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986. The prosecution alleged that the petitioners trafficked minor children and employed them in the industry without paying daily wages, thereby committing an offense punishable under Section 370(5) of IPC. The final report filed by the 1st respondent against the petitioners is illegal, and as they believed the allegations were unfounded, they filed this petition praying to quash it under Section 482.

4. The learned counsel for the petitioners submitted that originally, under Section 370 of IPC, there is no basic ingredient to attract fiscal exploitation or slavery under Section 307 of IPC. Furthermore, as per the witness statements, the workers in the alleged company were placed by A6/Avinash, but there was no material evidence to support the prosecution's contention that those laborers were not paid salaries and were not allowed to



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leave the company premises. In fact, the company has maintained all the muster rolls, salary registers, and paid salaries to the accounts of the alleged victims. Moreover, no material has been collected to show that those victims were treated as bonded laborers. Even some of the legal residents examined as witnesses on the prosecution's side stated that there was no exploitation on the part of the company. Additionally, they submit that the company is not added as a party, hence the final report lacks particulars, and they prayed to quash the proceedings.

5. To support his contention the learned counsel for the petitioners relied on the proportion laid down in the following cases.

(i) ***(2012)5 Supreme Court Cases 661, in the case of Aneeta Hada vs. Godfather Travels and Tours Private Limited***, in which it was stated as follows:

“ 39.The word “deemed” used in Section 141 of the Act applies to the company and the persons responsible for the acts of the company. It crystallises the corporate criminal liability and vicarious liability of a person who is in charge of the company. What averments should be required to make a person vicariously liable has been dealt with in

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58. *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 indicated.*

59. *In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drg-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V.Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us herein above.”*

(ii) Petition for Special Leave to Appeal (CrI.) Nos. 853 of 2007, in the case of C.P.Jain & others vs. Inspector, Building & Another, in which it was stated as follows:

“..... Appellants herein who are the Directors and



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Officers of the National Thermal Power Corporation, which is a company within the meaning of the provisions of Section 53 of the said Act, are sought to be prosecuted without the company being impleaded as a party. 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 complaint – respondents to comply with the statutory requirement by impleading the company as a party as an accused.”

The learned counsel for the petitioners submits that without impleading the company, the prosecution launched against the partners as such is erroneous.

6. By way of reply, the learned counsel for the Government Advocate (Crl. Side) submitted that even assuming that the company would not be arraigned as an accused, but during the trial, if it is found that other accused persons who committed the offense were not charge-sheeted, the Court may arraign those persons as accused, exercising powers under Section 313 of Cr.P.C.



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7. To that effect he relied the proportion laid down in, **(i) 2016 SCC**

online HP 2124, in which it was stated as follows:

“11..... Learned trial Court will issue show cause notice suo motu to M/s.Cine prime entertainment private Ltd., through authorised person under Section 319 of code of Criminal Procedure 1973 in accordance with law. Thereafter learned Trial Court will implead M/s.Cine prime entertainment private Ltd. As co-accused No.2 in accordance with law and thereafter learned Trial Court would commence trial against M/s.Cine Prime entertainment private Ltd. Afresh in accordance with law and strictly as per provisions of Section 319 (4)(a)(b) of Code of Criminal Procedure 1973....”

(ii). High Court of Delhi at New Delhi, in the case of **Crl.M.C.2856 of 2015 and Crl.M.A.No.10176 of 2015 Sarabjit Singh Vs.State of NCT of Delhi & Others**, in which it was stated as follows:

“7. The scrutiny of the case by the revisional Court for purposes of examining as to whether the Metropolitan Magistrate could have exercised the jurisdiction under Section 319 Cr.P.C was apparently mis-directed. It examined the case from the perspective of its maintainability against the third respondent which was not a correct approach. It ignored the settled principle that notice to director of the company was sufficient notice to the company. [see



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Bilakchand Gyanchand Co.vs. A.Chinnaswami, 91999) 5 SCC 693]. In the present case, as already noticed, this is how both the third respondent and the second respondent understood and construed the demand notice to which reply was sent on 19.11.2007 by the second respondent.”

8. Therefore, even if the company is not initially named as an accused, the prosecution still has the power to include the company as an accused by invoking Section 319 of the Cr.P.C. Such a mistake can be rectified at any point in time. Thus, the objection raised by the petitioners that the company was not added as an accused, and therefore the case against the directors cannot be sustained without the company being included, is untenable. Furthermore, as rightly pointed out by the respondents counsel, the petitioners are charged not only under bonded labour laws but also for IPC offenses. Therefore, the authorities cited by the petitioners are not applicable to the present case. Accordingly, the alleged offences against the petitioners, despite a sum of Rs.10 lakhs being deposited by them as directed by this Court while granting anticipatory bail, does not absolve them from facing trial, as the offenses against them are supported by material



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evidence as per the final report. Prima facie, it is evident that this Court is not inclined to quash the proceedings against the petitioners.

9. Accordingly, this Criminal Original Petition is dismissed as devoid of merits. As they were residing in other states such as Bangalore, Maharashtra, and Mumbai, personal appearance is ordered to be dispensed with before the trial court and also directed to appear as and when required, if their appearance is needed. Consequently, the connected miscellaneous petition is closed.

05.06.2024

Index: Yes/ No
Neutral Citation: Yes/No
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To
1.The Judicial Magistrate-II, Tirupattur.
2.The Public Prosecutor, High Court of Madras.



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T.V.THAMILSELVI, J.

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