



*Crl.R.C.Nos.1996, 2011, 2012,
2130 & 2238 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2024
PRONOUNCED ON : 3.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1996, 2011, 2012,
2130 & 2238 of 2023
and
Crl.M.P.Nos.18481, 18596, 18599,
19341 & 20036 of 2023

Crl.R.C.No.1996 of 2023

1.Nusli N.Wadia,
Chairman,
The Bombay Burmah Trading
Corporation Limited,
Represented by his Power Agent,
Mr.Sukant Sadashiv Kelkar,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.
Having address at
No.9, Wallace Street, For,
Mumbai, Maharashtra State,
Pincode – 400 001.

2.Daniur Erach Udawadia,
Member,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.

Having address at



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2130 & 2238 of 2023*

No.9, Wallace Street, For,
Mumbai, Maharashtra State,
Pincode – 400 001.

... Petitioners

Vs.

The Assistant Commissioner of Labour
(Plantations),
O/o. The Inspector of Plantations,
Udhagamandalam.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in S.T.C.No.638 of 2023 on the file of the Judicial Magistrate, Udhagamandalam and set aside the impugned order dated 24.08.2023.

For Petitioners : Mr.Gopal Subramaniam
Senior Counsel
for Mr.K.P.Anantha Krishna

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

Crl.R.C.No.2011 of 2023

Ness N.Wadia,
Managing Director,
The Bombay Burmah Trading
Corporation Limited,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.

Having address at
No.9, Wallace Street, For,



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For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Ms.Aiswarya S.Nathan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

Crl.R.C.No.2012 of 2023

K.S.Aiyappa,
Manager,
Dunsandle Tea Plantation,
The Bombay Burmah Trading
Corporation Limited,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.

... Petitioner

Vs.

The Assistant Commissioner of Labour



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(Plantations),
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PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in S.T.C.No.638 of 2023 on the file of the Judicial Magistrate, Udhagamandalam and set aside the impugned order dated 24.08.2023.

For Petitioners : Mr.Abudukumar Rajarathinam
Senior Counsel
for Mr.S.Ashok Kumar

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

Crl.R.C.No.2130 of 2023

Dr.Sheela Bhide,
Member,
The Bombay Burmah Trading
Corporation Limited,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.

Having address at
No.9, Wallace Street, For,
Mumbai, Maharashtra State,
Pincode – 400 001.

... Petitioner

Vs.

The Assistant Commissioner of Labour
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O/o. The Inspector of Plantations,
Udhagamandalam.

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PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records in S.T.C.No.638 of 2023 on the file of the Judicial Magistrate, Udhagamandalam and set aside the impugned order dated 24.08.2023.

For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Ms.Aiswarya S.Nathan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

Crl.R.C.No.2238 of 2023

Jehangir N.Wadia,
Member,
The Bombay Burmah Trading
Corporation Limited,
Dunsandle P.O., Udhagamandalam,
The Nilgiris District - 643 005.

Having address at
No.9, Wallace Street, For,
Mumbai, Maharashtra State,
Pincode – 400 001.

... Petitioner

Vs.

The Assistant Commissioner of Labour
(Plantations),
O/o. The Inspector of Plantations,



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Udhagamandalam.

... Respondent

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For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Ms.Aiswarya S.Nathan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

COMMON ORDER

Crl.R.C.No.1996 of 2023 filed by A2 and A5, Crl.R.C.No.2011 of 2023 filed by A6, Crl.R.C.No.2012 of 2023 filed by A1, Crl.R.C.No.2130 of 2023 filed by A8 and Crl.R.C.No.2238 of 2023 filed by A7 challenging the impugned order dated 24.08.2023 in S.T.C.No.638 of 2023 on the file of the Judicial Magistrate, Udhagamandalam.



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2.The gist of the case is that the Assistant Commissioner of Labour (Plantations), Udhagamandalam filed a complaint against A1/K.S.Aiyappa, Manager, Dunsandle Tea Estate, The Bombay Burmah Trading Corporation Limited, A2/Nusli N.Wadia, Chairman/Employer, A3/Anil Kumar Hirjee, Vice Chairman/Employer, A4/Madhav Laxman Apte, Member/Employer, A5/Danius Erach Udwardia, Member/Employer, A6/Ness N.WAdia, Managing Director/Employer, A7/Jehangir N.Wadia, Member/Employer and A8/Dr.Sheela Bhide, Member/Employer. Dunsandle Tea Estate and the Bombay Burmah Trading Corporation Limited, a plantation Company as per Section 2(f) of Plantations Labour Act, 1951 [hereinafter referred to as “the Act”] and the above persons are the employers as per Section 2(e) of the Act. On 22.06.2022 at about 11.00 a.m., inspection was done by the Assistant Commissioner of Labour (Plantation), at that time, labour quarters inspected. The Inspecting Officer found quarters of Chithraj, Door No.206/9, Jaya, Door No.208/9 and Gayathiri, Door No.90/9 in Somerdale Division found leaking and it was not properly maintained, hence violation of Section 15 of the Act and Rule 48(1)(2) of the Tamil Nadu Plantation



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Labour Rules, 1955 [hereinafter referred to as “the Rules”]. Further, it was found potable water to the plantation labours supplied without proper hygiene, water tank not properly cleaned and kept in a hygienic condition, thus violation of Section 15 of the Act and Rule 45(1). It was also found that the gutter was not properly cleaned and maintained in a sanitized condition, hence violation of Section 15 of the Act and Rule 45(5). Despite issuance of inspection notice and show cause notice, defects not rectified. Hence, complaint filed.

3.The contention of the learned senior counsels appearing for the petitioners is that inspection order was issued on 05.07.2022 pointing out the defects and the Deputy Manager, Dunsandle Plantation on 19.07.2022 replied, received by the respondent on 21.07.2022. Without considering the reply and without application of mind, again another show cause notice dated 01.08.2022 for same cause of action issued by the respondent and it was also suitably replied on 18.08.2022 by the Manager/A1 informing due compliance of the defects pointed out. The respondent received the reply on 23.08.2022 but suppressing the entire facts, sanction for prosecution



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obtained on 06.09.2022 and the complaint was filed before the Magistrate on 22.08.2023, the same numbered as S.T.C.No.638 of 2023. In this case, the respondent mechanically filed a complaint without considering the reply sent by the petitioners rectifying the defects. It is submitted that A3 and A4 died on 27.09.2020 and 23.09.2019 respectively. Further, A5, A7 and A8 ceased to be Directors of M/s.Bombay Burmah Trading Corporation Limited much prior to the date of occurrence. A5 resigned on 12.08.2019, A7 resigned on 13.09.2021 and A8 resigned on 31.12.2016, their resignation accepted, recorded by Registrar of Companies and proof of the same produced. It is further submitted that by the impugned order dated 24.08.2023, the Magistrate took cognizance, recording satisfaction of prima facie material for the offence under Section 36 of the Act and issued summons including against dead persons and persons who resigned much earlier, nothing to do with the Company and Estate. The learned Magistrate passed cognizance order is without proper and complete facts and materials. Further referring to the reply dated 19.07.2022, it is submitted that the said reply received by the respondent on 20.07.2022, wherein it is informed roof leakage in three of the labourer quarters, repair works would not be taken



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immediately at that point of time due to inclement weather condition, the estimates for repair works have already prepared, approved and work entrusted.

4.As regards the supply of potable water, it is stated that the water supplied in the estate is a natural spring water, stored in the tank, chlorination done on a daily basis, checked by the Estate Pharmacist on regular basis, cleaning of the tank done once in three months and the next due is on 30.06.2022 and there is no complaint of any non-supply of water, water contamination or any communicable disease affecting labourers. With regard to improper maintenance of draining of used water, explanation given about the tribal settlement of Thodas, adjoining the Estate and they rear herds of 100 buffaloes, which they let loose, since the Estate having organic grass and fodder for the buffaloes, they tread into the estate area, cause damage to the drains which are regularly repaired and could not be completed due to inclement weather and soon to be completed. Thereafter, the respondent not conducted any inspection as to whether the rectification has been carried out or not but mechanically issued a show cause notice on



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01.08.2022 which was received on 11.08.2022 and a reply was sent on 18.08.2022 and received by the respondent on 23.08.2022. In the reply, the rectifications subsequently carried out for the three defects mentioned in the show cause notice reported. The respondent after receipt of reply neither raised any objection nor verified the ground status, on the other hand, in a subjective manner proceeded to prosecute the petitioners obtained a sanction order from the Chief Inspector of Plantation on 06.09.2022. In the sanction order, there is no reference to the reply to the inspection report dated 19.07.2022, show cause notice dated 01.08.2022, reply to the show cause notice dated 18.08.2022 and the sanction order mechanically issued, without application of mind. The purpose of show cause notice is to avoid unnecessary litigation to give an opportunity to rectify the defects and sanction for prosecution is to independently apply mind, find whether prosecution required or not. In this case, sanction for prosecution is without application of mind. Further, in this case, though sanction granted on 06.09.2022, complaint filed before the Magistrate on 22.08.2023 and the same taken on file on 25.08.2023. Hence, there is violation of Section 40 of the Act wherein it is mandated that within three months from the date of



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inspection, complaint to be filed for identified violations. In this case, admittedly inspection conducted on 22.06.2022 but complaint filed only on 22.08.2023. Further, in the complaint there is no reference to the reply to the inspection report, show cause notice and its reply. The complaint is nothing but reproduction of sanction order and nothing more. Added to it, the respondent filed a complaint against two dead persons and three others who resigned from Directorship much before the date of inspection. Further, the Company/Plantation Estate not arrayed as accused and hence, the proceedings initiated against the Directors or Authorized Signatories or Employers not permissible. Hence, the complaint filed by the respondent and the consequent cognizance order passed by the Trial Court not sustainable. Hence, prayed to set aside the impugned order and discharge the petitioners from the above case.

5.In support of their contentions, the learned senior counsels for the petitioners relied upon the decision of this Court in the case of ***Bahadur, Senior Manager, M/s.Capegemini Technology Services India Ltd., vs. State rep. By Labour Enforcement Officer (Central), Shastri Bhavan,***



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Chennai for the point, in not arraying the Company as accused, decision of this Court in the case of *Ness Wadai vs. State of Tamil Nadu Through its Deputy Director, Industrial Safety and Health* reported in **2022 SCC Online Mad 7210** for the point for non-reference of show cause notice and reply in the complaint, a decision of the Apex Court in the case of *J.J.Irani and another vs. State of Jharkhand* reported in **(2014) 15 SCC 813** and a decision of this Court in the case of *K.B.George vs. State rep. By the Labour Enforcement Officer (Central)* reported in **2023 SCC Online Mad 4113** for the point of limitation.

6.The learned Additional Public Prosecutor filed his counter and typed set of papers with Inspection report dated 22.06.2022, inspection order dated 05.07.2022, reply from the Deputy Manager, Dunsandle Estate dated 19.07.2022, show cause notice dated 01.08.2022, reply to the show cause notice dated 18.08.2022, sanction for prosecution dated 06.09.2022 and submitted that in this case, inspection was done on 22.06.2022 by the respondent at about 11.00 a.m. During inspection, three violations found, namely, roof leakage in labour quarters, non-provision of potable water in



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hygienic condition and open drain not properly cleaned and maintained. The reply of the Deputy Manager and Manager of Dunsandle Estate dated 19.07.2022 and 18.08.2022 are identical. In the reply, it is confirmed that repair work yet to be completed in full, on the other hand it only searches for excuse blaming weather condition and herds of buffaloes entering the Estate, the defects not rectified. In such circumstances, the petitioners claim that the defects rectified is not proper. Further, the petitioners claim that the inspection report dated 05.07.2022 to be a show cause notice is not proper, it is only a inspection report and show cause notice was issued on 01.08.2022. Hence, it cannot be contended by the petitioners that two show cause notices for the same cause of action issued. In this case, the death of A3 and A4 and resignation of A5, A7 and A8 not disclosed in the reply by the Deputy Manager and the Manager of the Estate, now for the first time such contention is made. Had it been informed to the respondent earlier, their names would have been deleted after verification. He would submit that in this case, the persons who are not required for prosecution, namely, A3, A4, A5, A7 and A8, their names can be deleted and dropped during trial. He further submitted that including their names cannot be construed



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automatically as non-application of mind. He further submitted that prior to prosecution as contemplated sanction for prosecution obtained and thereafter only, complaint filed. The petitioners' contention are all factual in nature which can be decided during trial. As regards the limitation, the respondent had made ready the complaint on 15.09.2022 but filed with a delay. The Trial Court raised no objections received the complaint. In such circumstances, the petitioners' contention is not acceptable. Further, the specific case of the respondent is that the defects are still continuing. In view of the same, the petitioners cannot absolve their responsibility by raising technical grounds, which can be decided only during trial. Hence, prayed for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that it is not in dispute that A3 and A4 are dead, A5, A7 and A8 resigned from the Directorship of the Company much before the date of inspection which is confirmed by the documents of Registrar of Companies. It is not in dispute that inspection by the respondent was carried on 22.06.2022 but the inspection report was on 05.07.2022 and on receipt of the



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inspection report reply sent on 19.07.2022, received by the respondent on 22.07.2022. Thereafter, there seems no further communication. Later, a show cause notice dated 01.08.2022 was issued. On perusal of the inspection report and show cause notice, it is seen that both are identical, one and the same. Admittedly, in the show cause notice dated 01.08.2022, there is no reference to the earlier inspection report dated 05.07.2022 and the reply dated 19.07.2022. For the show cause notice dated 01.08.2022, reply sent on 18.08.2022. In the sanction order, there is no reference to the inspection report, show cause notice, reply to the report and show cause notice, which is a mandatory requirement. Hence, it is explicit that sanction for prosecution is by non-application of mind and deserves to be rejected. Added to it, the complaint is nothing but reproduction of sanction order and the complaint filed three months after the inspection dated 22.06.2022 and no reference or reason has been given for this delay. The complaint has been filed only on 22.08.2023 as could be seen from the Court seal and cognizance taken on 24.08.2023 without condoning the delay. Admittedly, no petition or prayer giving reason and seeking condonation of delay filed. Further, without arraying the Company as accused, the Manager, Director



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and Employers cannot be prosecuted. The petitioner can be said to be accountable and liable for violation of rules and procedures in view of they holding office in the Company. In this case, the Company not arrayed as accused. Hence, they cannot be prosecuted in their individual capacity, further there is no specific averments against them for any individual act. Hence, there is no justification or reason in proceeding with the complaint against the petitioners. In view of the same, the order passed by the learned Judicial Magistrate, Udhagamandalam taking cognizance of the complaint dated 24.08.2023 in S.T.C.No.638 of 2023 is hereby set aside and the petitioners are discharged from the above case.

9.In the result, the criminal revision petitions stand allowed.
Consequently, connected miscellaneous petitions are closed.

3.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Assistant Commissioner of Labour
(Plantations),
O/o. The Inspector of Plantations,
Udhagamandalam.
- 2.The Judicial Magistrate,
Udhagamandalam.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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3.09.2024