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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2175/2022 & CRL.M.A. 9214/2022**

DLF UNIVERSAL LTD.Petitioner
Through: Mr. RK Handoo,
Mr. Vivek Suri & Ms.
Kajal, Advs.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Utkarsh, APP for the
State
Ms. Hetu Arora Sethi,
ASC, GNCTD
Mr. Kausik Sadhukhan,
Asstt. Director, GNCTD

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
27.11.2024

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1. The petitioner is essentially aggrieved by the pendency of the complaint bearing Complaint Case No. 6823/2016 dated 27.03.2014 under Rule 5, 41, 42, 56, 74(b), 178, 179, 208 and 209 of the Delhi Building and other Construction Workers (Regulation of Employment and conditions of service) Rules, 2002 made under Section 40 read with Section 53 of The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 ('**BOCW Act**'), pending adjudication before the learned Metropolitan Magistrate.
2. The complaint was filed alleging that the petitioner owns a project, namely, DLF Capital Green Project and has appointed M/s Larsen & Toubro Limited (hereafter '**M/s L&T**') for the purpose of construction.



3. It is alleged that on 17.01.2014, certain breach of provisions of BOCW Act were found at the construction site.

4. It was observed that the workers, working at height, were not provided with safety belts. It was also seen that safety nets were not provided for the workers working at height. Proper overhead protection was also found to have not been erected along the periphery of the building and tower cranes were being used at the construction site. More than 500 workers were ordinarily employed at the construction site but Safety Committee had not been constituted and service officer had not been appointed in accordance with the Act.

5. The inspection report further states that on 16.01.2014, an accident had taken place in which two workers sustained grievous injuries. One of the workers thereafter succumbed to his injuries.

6. The allegation, thus, essentially relates to the construction work being carried out at the construction site of DLF Capital Green Project.

7. Mr. Handoo, learned counsel for the petitioner submits that no liability can be fastened on the petitioner. He submits that it is an admitted case of the complainant department that the construction site was handed over to the construction company, namely, M/s L&T.

8. He submits that the issue is squarely covered by the common judgment passed by the Coordinate Bench of this Court in the case of **S.N. Subrahmanyam v. State : 2018 SCC OnLine Del 12447** and other connected matters.

9. He submits that this Court had held in the aforesaid judgment that when the land owner company outsources the work of construction, it passes on the responsibility of all the



compliances on the construction company and it is the contractor company which would be liable for any alleged contravention of the provisions of the BOCW Act.

10. The learned counsel for the respondent department does not dispute that the judgment passed by this Court has not been challenged and has attained finality.

11. This Court, in **S.N. Subrahmanyam v. State** (*supra*), had held as under:

“21. The above-quoted provision only re-inforces the conclusion that the responsibility towards due compliances with health and safety measures prescribed by the law and rules framed thereunder is primarily of the “employer”, a person engaged as “a contractor” for carrying out the construction work, also vested with the authority to employ building workers being the “employer”. The person deputed as “one in overall charge” is the representative of “the employer”, the employer being answerable and accountable for all acts of commission or omission done by such representative “incharge of the project” or those working under his control. Pertinent to add, the duty to intimate, in advance, commencement of the construction work (by prescribed notice) is not of the land owner but of the “employer”, such statutory notice requiring it to be specified, amongst others, the particulars of the person who would be accountable in the capacity of he being “in overall charge”.

44. It is vivid from bare perusal of the provisions of the Building and Construction Workers Act, as indeed the rules framed thereunder, that the land owner company having chosen to outsource the work of the constructions, had passed on the responsibility for all compliances to be made by the construction contractor company in terms of the law, and the contractual arrangement, to which detailed references have been made above. It is the construction contractor company which was given the responsibility of carrying out the construction work and, for such purpose, engage the workers. Under the law, it is the construction contractor company which, in the present case, is “the employer” - the establishment which was to make compliances for safety measures to be put in position. There is no responsibility shown of the land owner company, or anyone connected thereto, this having been clearly understood and explicitly so stated even in the contract entered upon by it with the construction contractor company on 29.03.2012. Thus, neither the land owner company nor



those in-charge of or responsible to the conduct of its business can be prosecuted for the offence under Section 47 of the Building and Construction Workers Act on the facts set out in the complaint from which the present petitions arise.

45. The case against the construction contractor company and those stated to be in-charge of or responsible for conduct of its business, however, would stand on a different footing and, thus, need scrutiny separately.

52. Having regard to the statutory scheme and also the stipulations of the contract dated 29.03.2012, there is no escape from the prima facie conclusion that the construction contractor company is not only the principal employer of the workers engaged in the construction project where the fatal accident took place but was also responsible for arranging all the prescribed safety measures under the Rules. Section 47 read with Section 53 of the Building and Construction Workers Act thus creates a corporate criminal liability against the said company and by virtue of the principles of vicarious criminal liability, every person who, at the time when the said offence was committed, was in-charge of, and was responsible to, the said company for the conduct of its business, as well as the company, are deemed to be liable to be proceeded against. Just as in the case of Section 141 of Negotiable Instruments Act, by virtue of the office they hold, such persons as work in the capacity of a managing director or the joint managing director or, for that matter, persons employed as in-charge of the construction work at site, be it in a managerial position or in any supervisory position, are deemed to be in-charge of and responsible for the conduct of the business, to the company. They can, therefore, be proceeded against in terms of Section 53. At the same time, however, merely because a person is a “director” of the company is not sufficient to attract Section 53, there being no deeming that by holding such position he is rendered to be one who is “in-charge of” or “responsible to the company” for the conduct of its business. As is also well settled in the context of prosecutions under the Negotiable Instruments Act, though it is necessary to specifically aver in the complaint that the person sought to be prosecuted was in-charge of or responsible to the company for the conduct of its business “at the time the offence was committed”, there is no requirement in law for “further particulars to be given” in the complaint about his role, this being subject matter of proof to be adduced at the trial.

53. In the considered view of this Court, the words “for the conduct of the business of the company” appearing in Section 53 are most crucial, pregnant with meaning and provide the key to determine whether a person connected to the company may be held accountable for the acts of



commission or omission constituting the offence under Section 47 of the Building and Construction Workers Act. After all, it is the status of being “in-charge of” or being “responsible” for such business of the company that exposes the individual to vicarious criminal liability. If the act of commission or omission is attributable to the neglect of the person or on account of his “connivance” or for that matter, with his “consent”, sub-section (2) of Section 53 directly attracts the application of penal provision. For the deeming clause contained in sub-section (1) of Section 53 to kick in, there has to be a nexus between the area of responsibility of the person concerned, on one hand, and the act of commission or omission leading to the contravention of the rules under Section 40, on the other. To put it more precisely, and clearly, in the context of the offence under Section 47 of Building and Construction Workers Act, the responsibility vis-à-vis the specific rule framed under Section 40 (the breach of which is alleged) has to be shown to be in existence for a person connected with the business of the company presumed to be “in-charge” or “responsible”. There can be no thumb rule that every person “in-charge of” or “responsible to” for the conduct of the business of the company in the general sense of the term would be vicariously liable under the criminal law whether or not he was expected to play any specific role or discharge responsibility towards a specific rule, at the stage when its breach has led to the fatality or serious incident.

59. Unlike the above, it cannot be said that the offices held, or the responsibilities shouldered, by Mr. K. Venkataraman (petitioner in Crl.M.C. 2068/2015) or Mr. S.N. Subrahmanyam (petitioner in Crl.M.C.1873/2015) had no connection with the obligations of the establishment of the “employer” (construction contractor company) towards compliances of the Building and Construction Workers Act or the rules framed thereunder. These petitioners do not dispute that at the time of alleged commission of the offence under Section 47 of the Building and Construction Workers Act, they were working for the construction contractor company in the capacity of CEO & Managing Director and whole-time Director & Senior Executive Vice President (Infrastructure & Construction) respectively.”

12. The issue is therefore no longer *res integra*. The petitioner is, admittedly, a land owning agency and has outsourced the work of construction to M/s L&T. The responsibility for the alleged violation of the provisions of BOCW Act cannot be attributed to the petitioner.



13. It is also relevant to note that the petitioner, prior to approaching this Court, had filed an application before the learned Trial Court seeking discharge.

14. The learned Trial Court held that there is no provision for discharge of the accused under Section 251 of the Code of Criminal Procedure, 1973 ('CrPC'). It also noted that the accused petitioner has not taken any recourse to any remedy under Section 482 of the CrPC and proceeded to frame notice against the petitioner and other accused persons.

15. In view of the above, in the opinion of this Court, continuance of the proceedings against the petitioner would be an abuse of the process of Court.

16. The petition is, therefore, allowed. Consequently, the complaint bearing Complaint Case No. 6823/2016 is quashed *qua* the petitioner.

17. It is made clear that this Court has not impeded the learned Trial Court from proceeding further with the matter against other accused persons.

AMIT MAHAJAN, J

NOVEMBER 27, 2024

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