

CrI.O.P(MD)No.10052 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2025
PRONOUNCED ON : 01.04.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P(MD)No.10052 of 2024 and
CrI.M.P(MD)Nos.6814 & 6815 of 2024

Baselios Mar Cleemis Catholica Bava (65/2024),
Employer/Bethany Estate,
Mukkampala – Post,
Manalikai,
Kanyakumari District.

Employer (Residential Address),
Baselios Mar Cleemis Catholica Bava (65/2024),
Employer, Bethany Estate,
Major Arch Bishop, Bishop's House,
Pattam – Post, Thiruvananthapuram – 695004,
Kerala State.

... Petitioner

Vs.

State of Tamil Nadu,
rep. by Assistant Commissioner of Labour (Plantations),
Combined Labour Office, Konam,
Nagercoil, Kanyakumari District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the private complaint in S.T.C.No.758 of 2023 pending on the file of learned Judicial Magistrate No.II, Padmanabhapuram, Kanyakumari District and to quash the same.



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For Petitioner : Mr.R.John Sathyan, Senior Counsel for
Mr.F.Deepak
For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

The petitioner, who is facing trial in S.T.C.No.758 of 2023 for offence under Section 36 of The Plantations Labour Act, 1951 before the learned Judicial Magistrate No.II, Padmanabhapuram for violation of Rule 47 of Tamil Nadu Plantations Labour Rules, 1955, has filed this Criminal Original Petition.

2.The learned Senior Counsel appearing for the petitioner submitted that the respondent, Assistant Commissioner of Labour (Plantations) filed a private complaint under Section 36 of The Plantations Labour Act, 1951 for the breaches said to have committed under Rule 47 of Tamil Nadu Plantations Labour Rules, 1955. The petitioner is a Major Arch Bishop of Siro Malankara Catholic Churches having office at Kerala. Bethony estate is one of the properties of Siro Malankara Saba. Now the Diocese of Thiruvananthapuram divided into five diocese as Marthandam, Pathanamthitta, Mavelikara, Parasala and Thiruvananthapuram. The property of Bethany Estate divided into five



and devolved upon concerned bishops. The Bethany Estate at Mukkampala in Manalikai of Kanyakumari District in Tamil Nadu was handed over to bishop of Marthandam and it is managed by a Manager Father Daniel who was appointed on 11.06.2020 who shall manage the estate in consultation with the petitioner and in collaboration of the Finance Officer of Major Archieparchy and to present periodical report about the finance management of the Estate. Except for the finance, all other activities to be carried out by the Reverend Father Daniel. Since there was no tappers for the rubber collection, it was decided to let the plantation idle. Hence, all workers retrenched by a settlement between the management and workers union and the terminal benefits settled to the workers. After division of diocese into five, each bishop leased out the plantations to separate individuals by lease. As far as the Bethany Estate at Mukampala Post at Manalikai in Kanyakumari District is concerned, it is in the stage of replanting. In such circumstances, on 18.04.2023, the respondent caused a show cause notice to the petitioner seeking information about the management and lease details along with a lease agreement. On 05.09.2023, another show cause notice issued. Since the petitioner is no way connected with the affairs of Bethony Estate in Tamil Nadu, a reply was given by the Manager of the respective



division of Bethany Estate on 03.10.2023 along with Form-4. Not satisfied with the reply, the respondent sent another letter on 25.10.2023 stating that the petitioner submitted Form-4 belatedly and hence, the reply not acceptable and filed the present private complaint against the petitioner before the Trial Court.

3.The learned Senior Counsel further submitted that the Bethony Estate in Kanyakumari District is leased out to one Mr.V.Sathishkumar, son of K.V.Thampi who is taking care of the plantation by virtue of the lease agreement executed between the Owner and the Contractor. The copy of the lease agreement was served to the respondent. Some contingent tapping is being carried through the sub-contractors from Kerala in piece rate mode and there is no workers in the plantation for more than six months, hence question of housing envisaged by Section 15 of The Plantations Labour Act, 1951 would not arise. He further submitted that non-acceptance of Form-4 is not supported by any legal reason and Form-4 clearly stated that no worker has been put in service continuously for six months in the plantation and no one expressed desire to reside in the plantation though there was quarters. There is no wilful default or omission on the part of the petitioner.



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4.He further submitted that the original show cause notice caused to the petitioner on 18.04.2023 which is the date of knowledge to the respondent. On the contrary, the second show cause notice states the date of knowledge as 31.07.2023 and a complaint has been filed on 27.11.2023 to bring the complaint within the period of three months otherwise it would be barred by Section 40 of The Plantations Labour Act, 1951. The show cause notice, dated 18.04.2023 is to be taken as the date of reckoning. In such circumstances, the prosecution launched beyond the period of three months is barred. On this score alone, the complaint is liable to be quashed.

5.In support of his submissions, the learned counsel for the petitioner produced the receipts of full and final settlement made to the workers of the plantation and further there was no plantation workers more than 15 or more employed at any point of time preceding 12 months. Hence, the application of The Plantations Labour Act, 1951 will apply. In any event in a abundant caution, the petitioner submitted the agreement with the contractor, dated 01.04.2023. The inspection notice of the respondent confirms that on 27.01.2023, no tapping work and no plantation workers employed. The sanction order obtained by the



respondent does not refer to the show cause notice issued on 18.04.2023.

Suppressing the same, the second show cause notice issued and prosecution launched. Further, the reason for not considering the reply is that the petitioner said to have sent the reply from the second show cause notice with a delay of 11 days and nothing more. In reply to the notice, dated 05.09.2023, it was informed that all employees retrenched and settled on 30.12.2017 and appointment of the Contractor Mr.V.Sathishkumar. These facts not considered but on technicality for eleven days delay, the prosecution launched.

6.The learned Senior Counsel further submitted that the petitioner is a cardinal and he normally travels and stays in Rome for more than six months and to other places as per direction of vatican. In Bethany Estate, Manalikai, no plantation activities of tapping of rubber done and further all the plantation labours have been retrenched. In view of the same, no construction of houses and submission of Form No.4 would not arise. Hence, the prosecution against the petitioner is nothing but to abuse of process of law and error apparent on the face of the records, hence he prays for quashing the proceedings.



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7.The learned Additional Public Prosecutor appearing for the respondent/Assistant Commissioner of Labour (Plantations) filed counter and submitted that the Rule 47 of The Tamil Nadu Plantations Rules, mandates that the employer to submit Form No.4 on or before 31st January and 31st July of each year to the Assistant Commissioner of Labour (Plantation). If that is violated, it would amount to prosecution for offence under Section 36 of The Plantations Labour Act, 1951. The petitioner's Form-IB, dated 26.07.2016 shows the petitioner is the employer of the said plantation. Now, the petitioner claims that he leased out to one Mr.V.Sathishkumar and it has been duly intimated to the respondent is incorrect. The respondent got a photocopy of unregistered lease agreement and to verify the same, a notice on 18.04.2023 issued to ascertain who is having actual control over the affairs of the plantation workers and about the person who is incharge to comply the statutory labour welfare legislations and further advised to intimate if any changes happened in the management/ownership of the plantation as per Section 3B(5) of The Plantations Labour Act, 1951 and Rule 2-D(4) of The Tamil Nadu Plantations Labour Rules, 1955. The petitioner deliberately chose not to respond to the said notice for the reasons best known to him. The notice, dated 18.04.2023 is only to know about the ownership of the



said plantation and the lease agreement if any. The lease agreement dated 01.04.2022 already expired and thereafter, the ownership clearly stood with the petitioner. The lease agreement, dated 01.04.2023 produced herein never submitted to the respondent. It is for the employer of the plantation to intimate to the concerned authority regarding change of management in Form-1DD (under Rule 2-D (4) of Tamil Nadu Plantation Labour Rules, 1955). Till date the petitioner not submitted any such form. Even if the petitioner claims that he is not connected with the affairs of the plantation, he must act under Section 38 of The Plantations Labour Act, 1951. This Section provides a mechanism for employers to be exempted from liability in certain circumstances, but the petitioner failed to avail this remedy before the Trial Court. The respondent on scrutinizing the records found that the petitioner plantation not filed Form-4 under Rule 47 of The Tamil Nadu Plantation Rules, 1955 which is punishable under Section 36 of The Plantations Labour Act, 1951. Hence, a show cause notice was issued on 05.09.2023 seeking explanation regarding non submission of Form-4 within 15 days from the date of receipt of notice. Though the petitioner received notice on 08.09.2023, he deliberately not responded to the show cause notice, hence the Chief Inspector of Plantation on 26.09.2023 gave sanction to



the then Inspector of the Plantation to prosecute the petitioner on 17.10.2023. After getting due sanction, the respondent filed a complaint before the concerned Judicial Magistrate on 30.10.2023 within the prescribed period of three months. The petitioner's plea that Rule 47 is not applicable for his plantation since no workers residing in the plantation, is totally unacceptable in the eyes of the law. No employer can be self-exempted, from complying with the labour legislation unless it is specifically declared or directed by the statute. The exemption to be obtained from the State Government, competent authority as per Section 42. In this case, filing of Form-4 is necessary. Admittedly, the petitioner not filed Form-4 on or before 31st January and the 31st July. Hence, the petitioner is liable to be prosecuted.

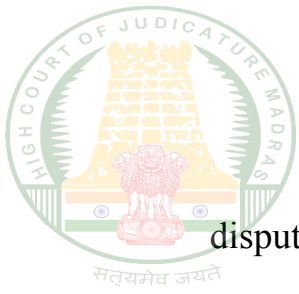
8.The learned Additional Public Prosecutor relied on the typed set and submitted that in Form-1B registration of Bethony Estate, the employer name registered as Dr.Bentinck Markrich Corris and it has been transferred in the name of the petitioner. He further submitted that the petitioner filed admission petition in S.T.C.No.758 of 2023 seeking permission to pay the fine amount through his counsel. Having filed such admission petition, now the quash petition cannot be sustained.



9.This Court considered the rival submissions and perused the materials available on record.

10.At the outset, this Court finds the guilty petition filed by the petitioner before the Trial Court on 10.05.2024, not acted upon and adjudicated. Hence, the above quash petition can be considered on merits.

11.It is not in dispute that the respondent sought for details of current management of Bethany Estate by notice, dated 18.04.2023. From this notice, it is seen that the respondent recorded rubber estate leased to one Mr.V.Sathishkumar by lease agreement, dated 01.04.2022. The respondent referring to the lease stated that the petitioner transferred the responsibility of the safety and welfare of the workers of the plantation to lessee but the lessee to give details of workers to be engaged, hence the petitioner has got actual control over the day to day activities. On perusal of the lease agreement, it is seen that there is no employees, employed by the petitioner directly and all previous employees terminated in pursuant to the settlement arrived and the settlement details furnished gains acceptability, which is not seriously



disputed by the respondent. Hence, it is clear that it only the lessee who employed casual workers. Further, by letter, dated 11.06.2020 one Rev.Joseph Pathenkalam appointed as Manager of Bethany Estate, due to division of the Major Arch Bishop of Thiruvananthapuram into five diocese as Marthandam, Pathanamthitta, Mavelikara, Parasala and Thiruvananthapuram and bishops appointed to each diocese. The Bethany Estate divided into five devolved upon the concerned bishops.

12.It is seen that the employees retrenched on 30.12.2017 and the same informed to the respondent on 14.02.2018. Thereafter, the Bethany Estate leased to one Mr.Sathishkumar. It is also seen that no permanent or casual workers employed in the plantation and there is no tapping work, was going on in the plantation and only contingent tapping is being held through the Sub Contractor Mr.V.Sathishkumar. The respondent issued a notice, dated 18.04.2003 followed with the present show cause notice dated 08.09.2023 which is nothing but continuation of the earlier notice. In this case, the notice, dated 05.09.2023 delivered to the petitioner on 09.09.2023 and the acknowledgement card received by the respondent on 11.09.2023. The Inspection Report submitted by the respondent to the sanctioning authority in the prescribed form confirms,



when was the Inspection conducted prior to the request for sanction dated 26.09.2023. On the other hand, in Clause 7 it records that during the previous inspection on 21.07.2023, there was no employees in the estate. It is also recorded that no tapping activity was going as on 21.07.2023. In Clause 10, it is recorded that notice received by the petitioner on 08.09.2023 and as per the postal stamp, it is only on 09.09.2023. Though for the second show cause notice, dated 05.09.2023 time limit of 14 days given, the reply sent on 03.10.2023. Though 14 days period gets over on 23.09.2023, but within three days thereafter, the request for sanction, dated 26.09.2023 sent to the Chief Inspector of Plantations, Chennai in Na.Ka.No.501 of 2023. In the request for sanction to the Chief Inspector of Plantations, there is no reference to the earlier notice, dated 18.04.2023, the sanction order, dated 17.10.2023 of the Chief Inspector of plantations is silent about the same. In the sanction order, there is no reference to earlier show cause notice dated 08.09.2023. The reply to the second show cause notice is with delay of three days, not considered. Admittedly reply to the show cause notice received by the respondent on 04.10.2023 much prior to the sanction order issued dated 17.10.2023. But the complaint proceeds on the ground there is a delay of 11 days is not proper.



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13.It is to be seen that on 03.10.2023, reply sent and the respondent office seal confirms receipt of notice on 04.10.2023. There is no reference to this reply in the sanction order, dated 17.10.2023. The only reason given in the complaint is that the reply not within 14 days which may not be proper. In this case, admittedly on 18.04.2023, notice issued, in that notice appointment of the Sub Contractor and the details about the diocese divided into five and Bethany Estate, Mukampala Post, Manalikarai, Kanyakumari District now comes under Marthandam Bishop and the estate leased to the Sub Contractor Mr.V.Sathishkumar, all made known to the respondent who has also taken cognizance of these facts not proceeded further if not satisfied, on the other hand as a sequel second show cause notice dated 08.09.2023 issued is to get over the Section 40 of the Act.

14.The High Court of Calcutta in the case of “***Superintendent & Remembrancer of Legal Affairs reported in 1974 SCC OnLine Cal 242***” held that 'under Section 2(e) “Employer” when used in relation to a plantation, means a person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent,



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manager, superintendent or by any other name) such other person shall

be deemed to be the employer in relation to that plantation'. The

Division Bench of Delhi High Court in the case of “***Clix Capital Service Private Limited v. Joint Commissioner of Income Tax, Range-74***

(2023/DHC/001703)” had held that '*between the first show cause notice and the second show cause notice, there is unexplained delay and*

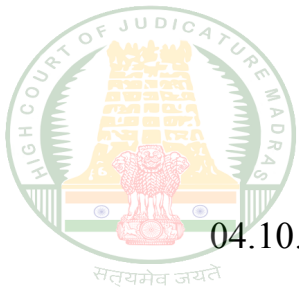
initiation of action of imposition of penalty is taken on a stand-alone basis'. Hence, finding there is period of unexplained substantial delay in

the second show cause, quashed the proceedings. In this case,

admittedly, the first show cause notice was issued on 18.04.2023 which forms the foundation for the second show cause notice, dated 05.09.2023

and there is no reason for the unexplained delay.

15.On perusal of the Inspection Report, it confirms there is no employment of workers by the petitioner to tap the rubber. Admittedly, in the show cause notice, dated 05.09.2023, there is no reference to the earlier notice, dated 18.04.2023. In the sanction order, there is no reference to the earlier notice and reference to the Sub Contractor Mr.V.Sathishkumar. The respondent not informed the sanctioning authority the receipt of reply to the second show cause notice on



04.10.2023, hence it is explicit that the sanction for prosecution is vitiated for non-application of mind and deserves to be rejected.

16.The reply to the show cause notice along with annexure with three days delay would confirm that the housing facilities were put in place before 01.04.1954 and thereafter there was no construction of houses. The employees retrenched on 30.12.2017 which informed to the respondent on 14.02.2018 is not disputed. In view of the same, there cannot be any construction or maintenance of the houses for the employees. Without considering the same, the respondent filed the complaint before the Trial Court. The first notice issued to the petitioner is dated 18.04.2023 but the complaint filed on 30.10.2023 reckoning date of show cause notice dated 05.09.2023 is not proper. As per Section 40 of The Plantations Labour Act, 1951, within three months from the date of the alleged commission of offence, came to the knowledge of an Inspector, the complaint to be filed. In this case, the date of knowledge is on 18.04.2023 and the complaint is dated 30.10.2023, hence the complaint is beyond the period of limitation. In a similar situation, this Court in the case of “*State by Inspector of Plantations, Nagercoil, Represented by Public Prosecutor v. N.Krishnan* reported in *1993 1 MLJ (Crl.) 74*” had quashed the complaint.



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17.In view of the above, the continuation of the proceedings against the petitioner is nothing but abuse of process of law, hence this Court is inclined to quash the proceedings against the petitioner.

18.Accordingly, the proceedings in S.T.C.No.758 of 2023 pending on the file of the Judicial Magistrate Court No.II, Padmanabhapuram is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

01.04.2025

Speaking order/Non-speaking order
Index: Yes/No
Neutral Citation: Yes/No
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To

- 1.The Judicial Magistrate No.II,
Padmanabhapuram, Kanyakumari District.
- 2.The Assistant Commissioner of Labour (Plantations),
Combined Labour Office, Konam,
Nagercoil, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN

CrI.O.P(MD)No.10052 of 2024

01.04.2025