

(2024) 01 CHH CK 0016

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1158, 1215, 1222 of 2017

Aditya Jajodia

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 03-01-2024

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(a), 25N, 25Q, 34

Citation : (2024) 01 CHH CK 0016

Hon'ble Judges : Ramesh Sinha, CJ

Bench : Single Bench

Advocate : Ankit Pandey, Avinash K. Mishra

Final Decision : Allowed

Judgement

1. Heard Mr. Ankit Pandey, learned counsel for the petitioners. Also heard Mr. Avinash K. Mishra, learned Government Advocate, for the State/respondent.

2. Since the aforesaid three petitions have been filed for setting/aside of a common order dated 26.10.2016 passed in 253/ID/Act/2016 (Cri) by the Judicial Magistrate First Class, Labour Court, District Durg, they are being heard together and decided by this common order.

3. The present petitions have been filed by the petitioners with the following prayer:-

"It is, therefore, most respectfully and humbly prayed that this Hon'ble Court may kindly be pleased to set aside the order dated 26.10.2016 (Annexure A-1) passed in complaint case No. 253/ID/Act/2016 (Cri) by the Court of Judicial Magistrate First Class, Labour Court, District Durg and to quash the entire proceedings pending before the Judicial Magistrate First Class, Labour Court as Complaint Case No. 253/ID/Act/2016 (Cri), in the interest of justice."

4. Brief facts of the present case are that Jai Balaji Industries Limited (JBIL) is a Public Limited Company incorporated under the Companies Act 1956. The

present respondent has filed a complaint under Section 25-N of the Industrial Disputes Act 1947 wherein it has been asserted that workers have been retrenched on 26.08.2016 violating the provisions of Section 25-N of the Industrial Disputes Act, 1947 (for short, the Act of 1947) which is punishable under Section 25-Q of the Act of 1947.

5. Mr. Ankit Pandey, learned counsel for petitioners submits that in the present case, a complaint was filed under the Act of 1947 by the Labour Inspector without any authority from the State Government. The impugned order dated 26.10.2016 specifically states that the complaint has been filed by the Labour Inspector, but no authorization has been filed along with the complaint. Vide order Annexure P/1, the learned Magistrate has taken cognizance of the matter without taking into consideration the provisions of Section 34 of the Act of 1947 wherein cognizance can be taken only after sanction by the Appropriate Government. The object of Section 34 of the Act of 1947 is to avoid false and frivolous complaints and thus save a party from harassment and for this reason, the Government is required to apply its mind and determine the propriety of filing the complaint while granting sanction to prosecute.

6. For ready reference Section 34 of the Industrial Disputes Act 1947 is being reproduced hereinunder:-

"34. Cognizance of offences-(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made, by or under the authority of the appropriate government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."

7. In support of his contentions, he relies on decisions of the Supreme Court in *Raj Kumar Gupta v. Governor, Delhi & Others*, {MANU/SC/0714/1997}, *Sunil Bharti Mittal v. Central Bureau of Investigation* {(2015) 4 SCC 609}, *Ravindranaatha Bajpe v. Mangalore Special Economic Zone Ltd. & Others*, {MANU/SC/0715/2021}, a decision of the Karnataka High Court in *Tractors & Farm Equipment Ltd. v. State of Karnataka & Others* {1998 (1) LLN 928} and a decision of this Court *Dinesh Kumar Mehta v. Union of India and Ors.* {MANU/CG/1534/2023}.

8. Mr. Pandey, in Cr.M.P. No. 1158/2017 submits that the complaint filed by respondent is not maintainable in the eyes of law against the petitioners as the petitioners are not "Employer" as per the terms of Industrial Disputes Act 1947 and as per the criminal jurisprudence vicarious liability cannot be readily inferred. Catena of decisions of the Hon'ble Supreme Court of India and High Courts have held that a vivid case should be spelled out in the complaint against the person sought to be made liable. Vicarious criminal liability arises only if there is specific pleading/assertions in the complaint regarding the involvement of the Director, Manager, or other officer of the company and not on the basis of merely holding a designation or office in a company. In Cr.M.P. No. 1158/2017,

the petitioner no.1 to petitioner no. 05 and petitioner no.7 to petitioner no.11 are Independent Directors of M/s Jai Balaji Industries Ltd. and thus they are not responsible with regard to the employment or retrenchment of labour nor are responsible for the day to day conduct of the working of the factory. petitioner no.6 is the Occupier of the Factory M/s Jai Balaji Industries Ltd., petitioner no.12 is the General Manager of M/s Jai Balaji Industries Ltd. and petitioner no.13 is the Manager of the Factory. He further submits that the respondent ought to have made a clear, unambiguous and specific allegations against the petitioners who are impleaded as accuse as there cannot be deemed liability of an Independent Director or officer of the company. The respondent, without following the procedure laid down under section 34 of the Industrial Disputes Act 1947 has ventured to prosecute the petitioners and the same is an abuse of process of law. It is further submitted by Mr. Pandey that the appropriate Government concerned has not granted any sanction in terms of section 34 of the Industrial Disputes Act and has also not authorized respondent to file the complaint against the petitioners and thus the respondent ought not to have proceeded to file the present complaint. Before presenting the complaint against the petitioners the appropriate government has not authorised/sanctioned the filing of the present complaint and the appropriate government concerned has also never considered the granting and desirability of the prosecution and thus the present complaint is not maintainable in the present case. Before the filing of the present complaint the appropriate government concerned has also never considered granting of sanction and has also not considered whether the facts existed for making the complaint against the petitioners. The Learned Judicial Magistrate First Class/Labour Court without considering the above mentioned facts ought not to have passed the impugned order particularly order dated 26/10/2016 particularly when there was no prima facie case made out by the respondent against the petitioners. Therefore, the complaint case registered against the petitioners vide impugned order dated 26.10.2016 should be quashed.

9. In Cr.M.P. No. 1215 of 2017 and in Cr.M.P. No. 1222/2017, though none appears on behalf of the petitioners, however, from perusal of the pleadings it transpires that the petitioners were awarded a work order for one month for executing the work as an independent contractor by M/s Jai Balaji Industries Limited and to execute the same the workforce was to be engaged purely on day to day and on contractual basis. The complaint filed by respondent is not maintainable in the eyes of law against the petitioners as the petitioners engaged the workers purely on contractual and on day to day basis. The number of persons to be employed and the individual person to be employed dependent on the nature of work order awarded on monthly basis. It was further clarified to the workforce that their job shall depend upon their performance (medical fitness) and the same shall not be beyond the duration of the work order awarded to the petitioners. In the case of absence, leave etc. of the workforce, the petitioners use to engage substitutes for the satisfactory performance of the work order and

the petitioners themselves supervised and dictated manner of execution / completion of the job without any interference. Thus the engagement of the work force was on Job Contract basis and the petitioners are not liable for prosecution under the provisions of Industrial Disputes Act 1947.

10. On the other hand, learned State counsel submits that in light of the judgment rendered by the Supreme Court in *State of Haryana v. Bhajanlal* {AIR 1992 SC 604}, these cases do not fall under any of the categories where this High Court should exercise its discretion. However, he fairly submits that with regard to the issue of grant of sanction, the return filed by the State is silent.

11. The issue involved in the present case is squarely covered by the decision rendered by the Supreme Court in *Raj Kumar Gupta* (supra) wherein at paragraph 13, the Supreme Court has observed as under:-

"13. At the same time, the provisions of Section 34 are in the nature of a limitation on the entitlement of a workman or a trade union or an employer to complain of offences under the said Act. They should not, in the public interest, be permitted to make frivolous, vexatious or otherwise patently untenable complaints, and to this end Section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorization of the appropriate Government."

12. From perusal of the orders impugned herein, it transpires that the learned Magistrate has failed to consider Section 34 and Section 2(a) of the Act of 1947 and in absence of sanction, he could not have taken cognizance of the alleged offence concerned. In the present case, the complaint was filed by the Labour Inspector without any authority from the State Government. One of the object of Section 34 of the Act of 1947 is to avoid false and frivolous complaints and thus, the Government was required to apply its mind and determine the propriety of filing the complaint while granting sanction to prosecute. Admittedly, even as per the learned State counsel, no sanction was obtained from the Appropriate Government before proceeding with the matter. Another aspect of the matter is that only the Directors of the Company have been arrayed as accused whereas the Company has not been made the accused.

13. In view of the above, this Court finds it appropriate to set aside/quash the order dated 26.10.2016 (Annexure P/1) passed in Complaint Case No. 253/ID/Act/2016(Cri).

14. With the aforesaid observation, the present petitions stands allowed.

After passing of the order, Mr. Virendra Verma, learned counsel for petitioners in Cr.M.P. No. 1215 of 2017 and in Cr.M.P. No. 1222/2017 appeared and submits that his presence may be marked.