

(2020) 10 GAU CK 0007
In the Gauhati High Court
Case No : Criminal Petition No. 292 Of 2015

Naresh Kumar Sinha And 2 Ors

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 197, 197(1)(a), 205, 313(1), 319, 468(2)(b), 482
Industrial Disputes Act, 1947 — Section 29, 32, 34, 39
Indian Penal Code, 1860 — Section 21, 21(b)
Companies Act, 1956 — Section 617
Constitution Of India, 1950 — Article 12, 21, 226

Citation : (2020) 10 GAU CK 0007

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : G.N. Sahewalla, S C Keyal, A. Dasgupta

Final Decision : Disposed Off

Judgement

1. The core dispute between the parties relates to non-implementation of the terms of an Award for last more than 26 years.

2. Heard Mr. G.N. Sahewalla, learned Senior counsel appearing for the petitioners. Also heard Mr. S.C. Keyal, learned A.S.G.I. representing the respondent No. 1/the Union of India as well as Mr. A. Dasgupta, learned Senior counsel for the respondent No. 2.

3. By this petition under Section 482 Cr.P.C., the petitioners have prayed for setting aside and quashing the proceeding in C.R. Case No. 46/2015 pending before the Court of learned Chief Judicial Magistrate ('C.J.M.' for short), Cachar at Silchar and the order, dated 27.01.2015 passed therein taking cognizance of the offence under Section 29 read with Section 32 of the Industrial Disputes Act, 1947 ('I.D. Act' for short) against them.

PETITIONERS' CASE:

4. The petitioners' case, in a nutshell, is that they are Senior Executives of the Oil and Natural Gas Corporation Ltd. ('O.N.G.C. Ltd.' for short), which was originally known as the Oil and Natural Gas Commission ('O.N.G.C.' for short). It is a Government of India company. The petitioners have contended that in pursuance of the demands raised by the O.N.G.C. Contractual Workers' Union, Silchar, Assam for regularization of the contractual workers and on failure of the conciliation proceeding in this regard, initiated by the Asstt. Labour Commissioner (Central), Silchar, the Ministry of Labour, Government of India, New Delhi by a notification, dated 20.08.1990, referred the aforesaid dispute to the Central Industrial Tribunal, ('C.I.T.' for short) Guwahati, Assam for adjudication and accordingly, the said reference was registered as Reference No. 6 (C)/1990. The O.N.G.C. Ltd. contested the proceeding by filing a written objection on the ground that the reference was not maintainable as there existed no relationship of 'employer' and 'workmen' for they worked under the contractors only. The Tribunal, however, passed an Award, dated 11.07.1994, to the following effect-

".... it is held that the concerned workmen are all employees of the ONGC in Cachar Project. As the workmen are in continuous service since 1987, having requisite qualification and experiences they are entitled to regularization in their respective post as per Clause (2) of the Certified Standing Order of the Contingent Employees of ONGC."

Further, the Tribunal directed that:-

"It is, therefore, directed that the services of all the concerned workers are to be regularized by the O.N.G.C., phasewise, if not possible at a time with pay and other allowance paid to regular employees."

5. Being aggrieved by the Award, the O.N.G.C. Ltd. filed an application under Article 226 of the Constitution of India being C.R. No. 3785/1994, where holding the view to the effect that the learned Tribunal acted illegally and exercised its jurisdiction by deciding the issues beyond the terms of reference, the learned Single Bench of this Court by Judgment and Order, dated 08.09.1998, allowed the aforesaid writ petition. Being aggrieved, the O.N.G.C. Contractual Workers' Union preferred a Writ Appeal being W.A. No. 269/1998, before a Division Bench of this Court, whereby Judgment and Order, dated 24.12.1999, allowed the appeal and thereby restored the Award, dated 11.07.1994, passed by the learned Tribunal. Being aggrieved, the O.N.G.C. Ltd. preferred an appeal being Civil Appeal No. 4755/2001 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, upon hearing the parties, by Judgment and Order, dated 16.05.2008, dismissed the aforesaid Civil Appeal No. 4755/2001 upholding the view taken by the learned Tribunal and the learned Division Bench of this Court.

6. It may be mentioned that during the pendency of the aforesaid Civil Appeal No. 4755/2001, out of the 290 members of the O.N.G.C. Contractual Workers' Union, Silchar, 163 workers and 13 workers, who died (Total 176 workers)

voluntarily accepted the "Goodwill Package Scheme" and thereby agreed to withdraw their all claims, suits, actions or proceedings. In terms of the aforesaid Memorandum, dated 24.01.2007, the monetary reliefs, ranging from Rs. 2 lacs to 5 lacs plus were paid. In the order, dated 15.03.2011, passed in I.A. No. 08/2008 in Civil Appeal No. 4755/2001, filed by some of the Contractual Workers under the name and style of "Deprived ONGC Contractual Workers' Union", the Hon'ble Supreme Court observed that the applicants, who have opted out of service and accepted the "Golden Package Scheme", filed affidavits to that effect as well, no further clarification was required and as such, the petitioners stated that the applicants were not entitled to receive any benefit under the Award, dated 11.07.1994, which was upheld by the Hon'ble Supreme Court.

7. The petitioners have contended that the 109 casual workers, who did not accept the "Goodwill Package Scheme" preferred an Interlocutory Application being I.A. No. 10/2010 in Civil Appeal No. 4755/2001 alleging failure on the part of the O.N.G.C. Ltd. to implement the Award, dated 11.07.1994, prayed for direction for its implementation, but the O.N.G.C. Ltd. contested the proceeding stating to have implemented the Award in the context of the Judgment, dated 16.05.2008 in Civil Appeal No. 4755/2001. The O.N.G.C. Ltd. appointed the aforementioned 109 contractual workers as contingent employees of which 101 contingent employees are presently working with the O.N.G.C. Ltd., Silchar and 8 such workers are separated on the ground of attaining the age of sixty years and further, 5 workers are not traceable. It has been further stated that another Interlocutory Application being I.A. No. 11/2010 was filed praying for issuance of directions for restraining the O.N.G.C. Ltd. from making any appointment/recruitment till disposal of I.A. No. 10/2010 and/or for initiating appropriate contempt proceeding against the O.N.G.C. Ltd. The Hon'ble Supreme Court in a common order, dated 15.03.2011, passed in I.A. Nos. 10 and 11 of 2010 observed that the relief by way of I.A. was not available to the applicants as the proper remedy would be if at all to file a contempt petition and accordingly, three contempt petitions being Contempt Petition Nos. 312/2011, 379/2011 and 380/2011 were filed, which were withdrawn, later on, with liberty to avail appropriate remedies under the I.D. Act, 1947 vide Order, dated 16.09.2011.

8. Thereafter, pursuant to an application of one Smti. Mitali Gupta and 42 other workers, who opted and accepted the "Goodwill Package Scheme" approached the Central Industrial Relations Machinery (CIRM) representing through the Assistant Labour Commissioner (Central), Silchar for getting implemented the Award and accordingly, the Assistant Labour Commissioner (Central), Silchar and the Conciliation Officer under the I.D. Act, 1947 issued notices, dated 19.08.2011 and 13.01.2012 to the O.N.G.C. Ltd. to clarify the position regarding their claim of implementation of the Award. In response thereto, the O.N.G.C. Ltd. submitted its reply regarding the steps taken for implementation of the terms of the Award. Thereafter, the Assistant Labour Commissioner (Central), Silchar issued a notice on 22.05.2012 to the O.N.G.C. Ltd. to show cause as to why necessary legal action under the provision of Section 29 of the I.D. Act,

1947 would not be initiated observing further the differences of opinion in regard to the same, a written reply was called for. However, as the O.N.G.C. Ltd. allegedly failed to make any show cause reply, although submitted reply on 06.06.2012, it was presumed that the Award was not implemented and as such, liable to face the legal consequences.

9. The petitioners have also contended that after receiving the conditional prosecution sanction order, dated 28.09.2012, from the Regional Labour Commissioner (Central), Guwahati, the Assistant Labour Enforcement Officer (Central), Agartala, Tripura filed a complaint under Section 29 of the I.D. Act, 1947 in the Court of learned Chief Judicial Magistrate, Cachar at Silchar alleging deliberate breach/non-implementation of the Award, passed by the CGIT, Guwahati, dated 11.07.1994, in Reference No. 6(C) of 1990 in respect of the Contractual Workers of the O.N.G.C. Ltd., which was registered as C.R. Case No. 234/2012 and thereupon, the Court of learned Addl. Chief Judicial Magistrate, Cachar at Silchar, by order, dated 26.11.2012, issued summons to the petitioner No. 1 and 3 (three) others.

10. Being aggrieved by the aforesaid order, dated 26.11.2012, the O.N.G.C. Ltd. preferred a petition under Section 482 Cr.P.C., being CrI. Petition No. 196/2013 praying for setting aside and quashing the proceeding in C.R. Case No. 234/2012 and this Court by an order, dated 20.05.2013, quashed the complaint with direction to the Regional Labour Commissioner (Central) to give personal hearing of the officers of the O.N.G.C. Ltd. and if he was not satisfied, then to issue a fresh sanction order, whereupon, the department shall be at liberty to file a fresh complaint. In this context, the Labour Enforcement Officer (Central) on the application of one Shri I.C. Chanda filed a complaint against Shri R.S. Sharma, former Chairman and Managing Director of O.N.G.C. Ltd. and Dr. Anil Bhandari, whereupon a criminal case being C.R. Case No. 37/2011 under Section 29 of the I.D. Act, 1947 was registered in the Court of learned Chief Judicial Magistrate, Silchar alleging non-implementation of the aforesaid Award and accordingly, the learned Court issued summons to the cited accused persons vide order, dated 01.03.2011. Aggrieved by the aforesaid order, Shri R.S. Sharma filed a criminal Revision being CrI. Rev. No. 397/2012 before this Court. In the meantime, the learned Chief Judicial Magistrate, Cachar, Silchar passed the impugned order, dated 27.01.2015, in C.R. Case No. 46/2015 filed by the Labour Enforcement Officer (Central), Agartala taking cognizance of the offence under Section 29 of the I.D. Act, 1947 issued summons to the petitioners.

ARGUMENTS:

11. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the petitioners, submitted that the complaint under Section 29 read with Section 32 of the I.D. Act, 1947 against the petitioners is not maintainable in law and facts as the learned Chief Judicial Magistrate, Cachar at Silchar failed in duty to verify the documents annexed thereto from proper perspective before taking cognizance of the offence. Mr. Sahewalla submitted that the O.N.G.C. Ltd. is a Government

Company and the petitioners are public servant within the meaning of Section 21(b) of the IPC and as such, protected under Section 197(1)(a) Cr.P.C., but the learned trial Court failed to take note of this vital aspect of the case and relied on the complainant's contention that they are not public servant as averred in paragraph 12 of the petition. It has been submitted that the conditional prosecution sanction order, dated 17.12.2014, issued by the Deputy Chief Labour Commissioner (Central), Guwahati is invalid and bad in law being issued without authority and without application of mind. Mr. Sahewalla, the learned Senior Counsel submitted that the report of the Regional Labour Commissioner observed that there was a need to further consider as to whether the Management failed to implement the Award so as to arrive at a final conclusion on this issue. Mr. Sahewalla vehemently submitted that the O.N.G.C. Ltd. duly implemented the Award, dated 11.07.1994, as asserted repeatedly before the various authorities, but the authority filed the complaint without paying any heed to the aforesaid assertion and the learned Court passed the impugned order, dated 27.01.2015, in C.R. Case No. 46/2015 without taking into consideration of the fact that the complaint was filed beyond the period envisaged under Section 468(2)(b) Cr.P.C.

12. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the petitioners, submitted that the impugned order clearly shows non-application of mind by the learned Court below while taking cognizance of the offence and issuing summons to the petitioners inasmuch as there is no indication that he was prima facie satisfied that the allegations in the complaint constituted the offence on scrutiny of the documents presented along with the complaint and that the petitioners are responsible for the affairs of the O.N.G.C. Ltd. Therefore, Mr. Sahewalla submitted that as the learned trial Court failed in duty to look into the merits of the allegation by examining the documents placed by the complainant, it is an abuse of the process of the Court and gross injustice is thereby done by summoning them to stand trial in a false and frivolous criminal case.

13. Mr. S.C. Keyal, learned A.S.G.I. appearing on behalf of the respondent No. 1/ the Union of India, submitted that the O.N.G.C. Ltd. has wilfully not implemented the terms of the Award passed against it and as such, the petitioners, who are concerned with the management of the said Government Company are jointly and severally accountable for non-compliance.

14. Mr. A. Dasgupta, learned Sr. Counsel appearing for the respondent No. 2, submitted that the O.N.G.C. Ltd. has not implemented the Award and not a single worker has been regularized till date not to speak of extending pay and allowance at par with the regular employees. Mr. Dasgupta, however, further submitted in this context that the complaint of non-implementation of the Award being a disputed question of fact to be tested during trial of the case, the same cannot be decided in a petition under Section 482 Cr.P.C. According to Mr. Dasgupta, learned Sr. Counsel, in a case under Section 29 read with Section 32 of the I.D. Act, the complainant is required to prove only that there was a valid award, which has not been implemented and that the accused persons/

petitioners herein are concerned with the management of the O.N.G.C. Ltd. and once the complainant discharges the onus, it is for the accused persons/ petitioners herein to discharge the statutory obligation on them that the offence was committed without their knowledge or consent as required under Section 32 and until the obligation is discharged, they are to be deemed to be guilty of such offence. Mr. Dasgupta also submitted that appreciation of evidence to ascertain the truth of a disputed fact is a matter of trial, which is not within the inherent powers vested in the High Court under Section 482 Cr.P.C. and as such, the impugned criminal proceeding against the accused petitioners cannot be set aside and quashed. Referring to the complaint, Mr. Dasgupta, learned Sr. Counsel, submitted that the Labour Enforcement Officer (Central), Agartala is being authorised by the Central Government under Section 39 to exercise the powers under Section 34 to file complaint in respect of offences punishable under Section 29 of the I.D. Act, the question of maintainability of the complaint does not arise. Regarding the issue of sanction, Mr. Dasgupta submitted that Section 34 of the I.D. Act does not indicate that for initiating prosecution for an offence under the Act previous consent or sanction of the Government is a condition precedent and therefore, this plea of the petitioners is not sustainable in law.

A CURSORY ANALYSIS OF THE CASE:

15. I have given due consideration to the above submissions made by the learned counsel of both sides. Also examined the entire case records.

a) COGNISANCE OF OFFENCE:

16. As stated above, the instant petition is filed under Section 482 Cr.P.C. praying for setting aside and quashing the proceedings in C.R. Case No. 46/2015, registered on the basis of a complaint filed by the Labour Enforcement Officer (Central), Agartala against the petitioner No. 1 and the predecessors in office of the petitioners No. 2 and 3 under Section 29 read with Section 32 of the I.D. Act, 1947 for wilful non-implementation of the Award, dated 11.07.1994, passed by the CGIT, Guwahati in the Management of O.N.G.C., Cachar Project, Silchar Vs. the Contractual Workers' Union, Silchar, where the learned Chief Judicial Magistrate, Cachar at Silchar, by the impugned order, dated 27.01.2015, took cognizance of the aforesaid offence.

b) SCOPE OF SECTION 482 CR.P.C.

17. It may be pointed out that Section 482 Cr.P.C. vests in the High Court with wide inherent powers and ramification in the matter of quashing F.I.R., investigation, complaint or any criminal proceeding pending in any Court subordinate to it in exceptional cases, when no other remedy is available to secure the ends of justice by preventing abuse of the process of Court and to make such orders as may be necessary to give effect to any order under the Cr.P.C., when there is apparently miscarriage of justice. The Hon'ble Supreme Court laid down the principles governing the exercise of inherent jurisdiction of the High Court under Section 482 Cr.P.C. in a catena of judgments and

deprecated the exercise of the power to cut short the normal process of a criminal trial and staying of criminal trials and investigations except in exceptional cases.

18. The Hon'ble Supreme Court in *Umesh Kumar v. State of A.P.*, reported in (2013) 10 SCC 591 succinctly explained the rights of a person to protect from injury to his reputation and the scope and ambit of application of the inherent jurisdiction of the High Court under Section 482 Cr.P.C. as under-

"18. Allegations against any person if found to be false or made forging someone else's signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "to have a good name; the credit, honour, or character which is derived from a favourable public opinion or esteem and character by report". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is "not only a salt of life but the purest treasure and the most precious perfume of life". (Vide *Kiran Bedi v. Committee of Inquiry* [(1989) 1 SCC 494 : AIR 1989 SC 714] , *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61 : AIR 1983 SC 109] , *Nilgiris Bar Assn. v. T.K. Mahalingam* [(1998) 1 SCC 550 : 1998 SCC (Cri) 450] , *Mehmood Nayyar Azam v. State of Chhattisgarh* [(2012) 8 SCC 1 : (2012) 4 SCC (Civ) 34 : (2012) 3 SCC (Cri) 733 : (2012) 2 SCC (L&S) 449 : AIR 2012 SC 2573] , *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* [(2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347 : AIR 2012 SC 2586] and *Kishore Samrite v. State of U.P.* [(2013) 2 SCC 398 : (2013) 2 SCC (Cri) 655])

20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application

before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows: (SCC p. 348, para 30)

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one: Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?"

c) PRESUMPTION OF GUILTY OF ACCUSED:

19. Section 29 of the I.D. Act, on the other hand, provides for penalty for breach of any terms of any settlement or award, which is binding on any person under the Act. Further, Section 32 of the said Act provides a presumption of law to the effect that where a person committing an offence is a company or association of persons, every Director/Manager/Secretary, agent or any other person concerned with the management thereof shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or consent. Thus, the element of mens rea must be present on the part of the accused and when the prosecution proves that the company, which is a juristic person, has committed the offence, the burden shifts to its Director, Manager or any other person concerned with its management to prove that the said offence was committed without their knowledge.

d) PRIMA FACIE CASE:

20. A perusal of the impugned complaint, it is revealed that the petitioners, who are stated to be concerned with the management of the O.N.G.C. Ltd. and responsible for implementation of the Award, dated 11.07.1994, passed in Reference No. 6 (c)/1990 by the CGIT, Guwahati in favour of the O.N.G.C. Contractual Workers' Union, Cachar at Silchar/the respondent No. 2 herein have allegedly wilfully not implemented its terms. Thus, the complaint prima facie on the face of it does disclose commission of the aforesaid offence without any critical examination of the contesting materials, which are subject to testing during trial only, being disputed by the petitioners. To find out a prima facie case, the Court is required to read the complaint as a whole. Neither a detailed enquiry nor a meticulous analysis of the materials nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted for quashing it.

e) NOT A TIME BOUND AWARD:

21. The issue that came up for adjudication before the CGIT was as herein below-

"Whether the demand of the O.N.G.C. Contractual Workers' Union, Cachar Project, Silchar for regularization of the services of the Contractual workers is justified. If so, what relief are the workmen concerned entitled to?"

22. While deciding the above issue in the affirmative, the CGIT passed an Award, dated 11.07.1994, on contest, in the following terms-

".....It is, therefore, directed that the services of all the concerned workers are to be regularised by the O.N.G.C. phasewise if not possible at a time, with pay and other allowances paid to regular employees."

23. The above terms of the Award show that the same was not a time bound Award in strict terms for implementation meaning thereby their implementation within a reasonable time.

f) AWARD ENFORCEABLE:

24. The respondent/O.N.G.C. Ltd. preferred a Civil Rule being C.R. No. 3785/1994 against the said Award before this Court, which was allowed vide the judgment and order, dated 08.09.1998. Against the aforesaid judgment and order of the learned Single Judge, the Workers' Union preferred a Writ Appeal being W.A. No. 269/1998, which was allowed by a Division Bench of this Court setting aside the same and thereby the Award passed by the C.G.I.T. at Guwahati was restored vide the judgment and order, dated 24.12.1999. The O.N.G.C. Ltd. preferred an appeal before the Hon'ble Supreme Court of India against the aforesaid judgment and order of the Division Bench, which stood dismissed vide the judgment and order, dated 16.05.2008, passed in Civil Appeal No. 4755/2001. It may be mentioned here that during the pendency of the said Civil Appeal No. 4755/2001, a 'Golden Package Scheme' was introduced by the respondent/O.N.G.C. Ltd. by way of relief to the Contractual Workers, some of whom accepted it. Thus, the Award of the learned C.G.I.T. has remained in force for implementation in respect of those contractual workers, who have not

accepted the aforementioned scheme. This disputed core issue on fact is, of course, beyond the scope and ambit for consideration in a petition under Section 482 Cr.P.C.

g) BENEFITS OF SECTIONS 205 & PROVISIO TO SECTION 313(1) Cr.P.C.:

25. As per the proviso to Section 205 Cr.P.C., whenever the trial Magistrate issues summons, he may, if he sees reason to do so, dispense with the personal attendance of the accused and permit him to appear by his counsel. In such cases, the counsel of the accused can, in his stead, plead guilty to the charge or make an answer to the statement of allegations. Even the proviso to Sub- Sec. (1) of Sec. 313 Cr.P.C. enables the trial Magistrate to examine in summons case any counsel, who is allowed to be represented for the accused in court under Sec. 205 Cr.P.C.

h) VALID COMPLAINT:

26. Section 34 of the I.D. Act provides the procedures for taking cognizance of offences, which reads as under-

"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."

27. The above provision of the I.D. Act requires filing of a complaint by an authorised person of the appropriate Government for taking cognizance of the offence(s) by a competent Court, which must not be inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class. In the instant case, it is noticed that the complainant is the Labour Enforcement Officer (Central), Agartala, Tripura, who has stated to have been authorised by the Government of India vide Notification No. SO.3810, dated 10.09.1969 to file complaint in the Court in case of violations of the provisions of the I.D. Act, 1947. Therefore, prima facie, on the face of the contents of the complaint, it is a valid complaint filed by the competent authority of the Government of India.

i) VALID COGNIZANCE:

28. Coming to the impugned order, dated 27.01.2015, passed in C.R. Case No. 46/2015, it is noticed, the learned Chief Judicial Magistrate, Cachar took cognizance of the offence complained of. The aforesaid order reads as under-

"27/1/15 - Case record received on transferred for disposal. Issue summon to accd.

Fix- 3-3-15 for app."

29. It is a fairly settled position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173 Cr.P.C., as the case may be. It was held in *State of Bihar V. Sri Rajendra Agrawalla*, reported in (1996) 8SCC 164, that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the materials and come to the conclusion that no prima facie case is made out for proceeding further in the matter. Therefore, an order taking cognizance of the offence needs not be a detailed order on materials produced for consideration by the prosecution and at this stage, the defence case does not come for consideration at all. Here, it is noticed, the learned Chief Judicial Magistrate, impliedly, after considering the materials placed before it and having found a prima facie case, has decided to proceed against the persons cited as accused in the complaint. Because, when the Magistrate takes cognizance of the offence, the factum of finding out a prima facie case is an implied one as held in *Mehmood Ul Rehman V. Khazir Mohammad Tunda*, reported in (2015) 12 SCC 420.

j) IMPLEMENTATION OF AWARD DISPUTED:

30. With regard to the petitioners' contention that there remains nothing to implement the terms of the Award as stated above and as such, the impugned criminal proceeding against them is an abuse of the process of Court without any possibility of ultimate positive output in the proceeding, in the considered opinion of this Court, is that when the complainant has placed prima facie materials in the complaint suggesting commission of an offence under Section 29 of the I.D. Act, in such a petition under Section 482 Cr.P.C., the same cannot be decided being disputed question of facts. The acceptability of the aforesaid claim and counter-claim in this regard is certainly a matter of trial only. In *Medchl Chemicals & Pharma (P) Ltd. V. Biological E. Ltd.*, reported in (2000) 3 SCC 269, the Hon'ble Supreme Court observed that it is a settled principle of law that to exercise powers under Section 482 Cr.P.C., the complaint in its entirety, shall have to be examined on the basis of the allegations made therein and the High Court at that stage has no authority or jurisdiction to examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same.

31. Thus, following the principles enunciated in a catena of judgments rendered by the apex Court, this Court is of the view that it would not be proper to appreciate the case of the complainant in the light of the probabilities of the defence case and on such premises to quash the proceedings. It may be pointed out that the petitioners have not yet placed any compiled detailed statement showing compliance of the terms of the Award against each of the original contractual workers numbering 290, which is, of course, the subject matter of trial. Accordingly, this Court finds that this disputed fact cannot be adjudicated in the instant petition under Section 482 Cr.P.C. for quashing of the aforesaid proceedings and the order of taking cognizance of the offence against the

petitioners impugned herein.

k) PRINCIPLE OF CORPORATE CRIMINAL LIABILITY:

32. The next pertinent question is whether the complainant has launched the prosecution against all the necessary parties? It is noticed that the complainant/ Labour Enforcement Officer (Central) has launched the prosecution against (1) The Company Secretary (2) Director (HR) and (3) General Manager, Cachar Forward Base, Srikona, Silchar of the O.N.G.C. Ltd. by their name and designations aforementioned, without impleading the O.N.G.C. Ltd, which is a legal or juristic person although the relevant Award was passed against it. It may be reiterated that Section 482 Cr.P.C. empowers the High Court to use its inherent powers for the purpose of giving effect to any order under the Cr.P.C. or to prevent abuse of process of any Court or otherwise to secure the ends of justice. On the other hand, Section 483 Cr.P.C. provides that every High Court shall exercise its superintendence over the Court of Judicial Magistrates subordinate to it so as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

33. In Para 28 of *Madhumilan Syntex Ltd. V. Union of India*, reported in (2007) 11 SCC 297, the apex court held as under-

"28. It is no doubt true that company is not a natural person but "legal" or "juristic" person. That, however, does not mean that company is not liable to prosecution under the Act. "Corporate criminal liability" is not unknown to law."

34. In Para 31 of *Standard Chartered Bank V. Directorate of Enforcement*, reported in (2005) 4 SCC 530, the apex court reiterated the principle of "corporate criminal liability" as under-

"31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable

economy."

35. From the above, it may be said that when law recognizes the principle of corporate criminal liability, it follows the implied logical conclusion that whenever persons responsible with the affairs of a company are exposed to criminal liability, the Company concerned, which is a juristic person needs to be impleaded as an accused. Because, the Court is urged upon to lift the corporate veil when such responsible members of the Company indulge in acts to evade obligations imposed by law or for protecting the public interest. In the instant case, it is noticed, the complainant has not impleaded the O.N.G.C. Ltd., which is a Government Company within the meaning of Section 617 of the Companies Act, 1956, where the petitioners are the responsible persons concerned with the affairs of the said Company.

I) AMENDMENT OF COMPLAINT:

36. It may be mentioned that there is no provision in the Cr.P.C. for amendment of a criminal complaint. However, in S.R. Sukumar Vs. S. Sunaad Raghuram, reported in (2015) 9 SCC 609, the Hon'ble Supreme Court held as under-

"18. Insofar as merits of the contention regarding allowing of amendment application is concerned, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In U.P. Pollution Control Board v. Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows: (SCC pp. 659-60, para 6)

"6. ...The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery. ... Furthermore, the legal infirmity is of such a nature which could be easily cured."

19. What is discernible from U.P. Pollution Control Board case [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal

amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint."

37. It may be noted that if the amendment of complaint gives rise to a new cause of action which can be prosecuted by filing a separate complaint, then to avoid multiplicity of proceedings, the trial Court may allow the amendment application.

38. In view of the above, the complaint still suffers from a formal curable infirmity for omission to implead the O.N.G.C. Ltd., a Government of India Company as the accused. However, it may be noted here that the learned trial Court below has taken cognizance of the offence issuing summons to the accused petitioners by the impugned order, dated 27.01.2015, passed in C.R. Case No. 46/2015, which is the indication of first judicial notice of the offence complained for the purpose of proceeding against them. As the O.N.G.C. Ltd. is yet to be impleaded formally as accused in the complaint as such, no cognizance of the offence complained of is taken against it. The question of prejudice to the said company or the accused petitioners is unlikely to be caused if amendment inserting it as an accused is made, on an appropriate application of the complainant's side, if so advised and to the satisfaction of the learned trial Court at the initial stage of trial or in course of recording evidence of witnesses, if sufficient ground arises to do so under Section 319 Cr.P.C.

m) SANCTION:

39. With regard to the contested plea of requirement of sanction to prosecute the petitioners, who are stated to be public servant as per Section 197 Cr.P.C., the complainant/respondent herein, in para 12 of the complaint contended "That the accused persons mentioned above in the Complaint Petition are not Public Servants and therefore they don't have protection under Section 197 Cr.P.C." The petitioners have contested this statement stating that by virtue of their positions in the O.N.G.C. Ltd., which is a State within the meaning of Article 12 of the Constitution of India are 'Public Servant' as defined in Section 21 of the Indian Penal Code and as such, they can't be prosecuted without a valid sanction order under Section 197 Cr.P.C.

40. In Para No. 13 of the Judgment rendered by a three Judge Bench of the Karnataka High Court in S.N. Hada and Ors. Vs. The Binny Ltd. Staff Association, reported in ILR 1987 KAR 3762, observed as under-

"13. As we look at the matter, interpretation of Section 34 would be easier if the scheme of the Act, especially penalty provisions, are kept in mind as cognizance of a complaint under Section 34 is taken by a Magistrate only with regard to the

offences specified therein. Under the Act, two parties between whom lis exists are the Employer and the Employee. An offence of which complaint can be made would be committed either by the Employer or the Employee. By enacting penal provisions the aim of the legislature is to ensure compliance of the order of the Tribunal and also to ensure obedience and compliance of the provisions of the statute. By non-compliance or disobedience of any provision of the Act, it is an individual right - either of the Employer or of the Employee - which is affected. The intent of the Legislature in enacting a provision like Section 34 is to save the party against whom the complaint is to be filed, from harassment, and it is for that reason that the Government is required to apply its mind and determine the propriety of filing a complaint. The phrase 'under the authority of the appropriate Government' implies a sanction by the Government after it has considered the desirability of prosecution. If such a provision had not been enacted there could be every likelihood of filing of frivolous complaints indiscriminately. Moreover, there are certain offences which have importance either to the Employer or the Employee only. In such matters why should the Government at all involve its officers in filing the complaint and not allow the real aggrieved party to prosecute the complaint properly and diligently. What interest can the Government or its agency have in filing and prosecuting a complaint in which the rights of some private individuals are involved and which does not require determination of some question which may be of some importance and may warrant intervention of the State Government or its agency. As is clear, authorisation is a pre-requisite essential for taking cognizance of an offence under this Section. The appropriate Government, therefore, is required to apply its mind and satisfy itself before it grants the authority. It is this satisfaction which is material and sufficient for the purpose. Once on consideration of the relevant material the State Government finds it to be a fit case for prosecution, then who should file the complaint is not of much importance. The interpretation sought to be put on the words 'under the authority of the appropriate Government' does not in any way advance the purpose of the Act. Strict grammatical or etymological propriety of language would not be of much use in understanding the intent of the Legislature and in construing the provision in question. It is well settled that the words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature has in view. As has been brought out earlier, the intent of the Legislature is only to ensure the non-filing of frivolous complaints and nothing more."

41. In Para No. 6 of the Judgment rendered in Director of Inspection & Audit and Ors. Vs. C.L. Subramaniam, reported in 1994 Supp (3) SCC 615, the Hon'ble Supreme Court held as under-

"6. If the provisions of Section 197 CrPC are examined, it is manifest that two conditions must be fulfilled before they become applicable; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or

a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produced the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of Section 197 CrPC are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while acting or purporting to act in discharge of his official duties. If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably connected with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words "purporting to act in discharge of official duties" assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties. In *Hori Ram Singh case [Hori Ram Singh (Dr) v. Emperor, AIR 1939 FC 43 : 40 Cri LJ 468 : 43 CWN 50 : 1939 FCR 159]* , it was observed that:

"There must be something in the nature of the act complained of that attaches it to the official character of the person doing it."

42. In Para Nos. 12 and 13 of *N.K. Sharma V. Abhimanyu*, reported in (2005) 13 SCC 213, the Hon'ble apex Court held as under-

"12. Indisputably the underlying object in enacting Section 197 CrPC is to protect a public servant from a frivolous prosecution. The said provision, however, although may not be construed too narrowly, as was held in *Shreekantiah Ramayya Munipalli v. State of Bombay [(1955) 1 SCR 1177 : AIR 1955 SC 287 : 1955 Cri LJ 857]* whereupon the learned counsel for the appellant placed reliance, cannot be interpreted liberally so as to bring within its purview other officers who are not so protected. Section 197 of the Code of Criminal Procedure, inter alia, protects the public servants. "Public servant" has been defined in Section 21 IPC, clause 12 whereof is as under:

"Twelfth.-Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or

under a Central, Provincial or State Act or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

13. Admittedly the salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction under Section 197 CrPC."

43. In *Mohd. Hadi Raja v. State of Bihar*, reported in (1998) 5 SCC 91, the Hon'ble Supreme Court held as under-

"18. After giving our careful consideration to the question of law raised in these appeals and submissions made by the respective counsel of the parties, it appears that the justification for the protection under Section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant and it is desirable that it should be left to the Government to determine the question of expediency in prosecuting a public servant. The 41st Report of the Law Commission observed that under Section 197 of the old Criminal Procedure Code, the protection given to the public servant applied only during his tenure in office and such protection did not apply after he had left the service. Such protection only during the tenure in service was considered insufficient because a person if he had any grievance against a public servant on account of discharging of public duties, could lodge a complaint against the said public servant after he would cease to hold public office. Therefore, Section 197 CrPC was redrafted so as to give protection to a public servant even when he had ceased to hold office in respect of an alleged offence which had been committed when such officer was holding the public office.

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government. The appeals are disposed of accordingly. It is, however, made clear that we have not taken into consideration various other grounds raised in these appeals challenging the maintainability of the criminal proceedings initiated against the officers concerned of the public undertakings or the government companies. It will be open to the accused concerned to challenge the validity of the criminal cases initiated against them on other grounds, if such challenge is available in law. Such questions, if raised, in these appeals are kept open to be considered in accordance with law by the appropriate authority."

44. In *N.K. Sharma V. Abhimanyu*, reported in (2005) 13 SCC 213, the Hon'ble apex Court held that the officers of Government Company or public undertaking even when such public undertakings are "State" within the meaning of Article 12 of the Constitution, they are not public servant.

45. Therefore, in view of the above interpretation of relevant provisions, no protection provided in Section 197 Cr.P.C. is prima facie available to the petitioners in the instant case. This settled position of law follows an inference that in the nature of non-compliance of the terms of the Award delivered way back in the year 1994 complained of, the complaint cannot be quashed on this count or any other plea of technical flaws at the initial stage of the proceeding, where the petitioners are yet to appear in response to the summons issued by the impugned order, dated 27.01.2015. The question of sanction can be raised at any time even after cognizance of offence is taken. Apart from it, the petitioners have not produced any document showing that the petitioners, more particularly the petitioner No. 1 were appointed by the President of India and that their salaries are paid by the government. There is also no document to show that they were not even remotely concerned with the affairs of the O.N.G.C. Ltd., a Government of India Company. Accordingly, this issue is kept open for consideration by the learned trial Court in accordance with law in due course of trial of the case, if the petitioners so desire.

n) CONCLUSION:

46. In the premises, this Court is of the opinion that the instant petition is devoid of merits and therefore, stands dismissed.

47. As the Award, dated 11.07.1994 is allegedly yet to be satisfied even after elapse of more than 26 years, the matter needs to be adjudicated as expeditiously as possible within a period of 6 (six) months in accordance with law and to achieve this target, the petitioners are directed to appear before the learned trial Court on or before 5. 11.2020 without fail.

Return the L.C.R.

The interim stay order, dated 10.04.2015 is hereby vacated.

The petition stands disposed off.