

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2010

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.O.P.Nos.34894 and 34895 of 2007
and
M.P.Nos.1 and 1 of 2007

1.O.P.Saghu
2.M.S.Vijayakumar
3.M/s.First Flight Couriers Ltd.,
represented by its authorised signatory
Mr.Richard ...Petitioners in both Crl.O.Ps. /
Accused

-Vs-

State represented by
Deputy Inspector of Labour
V Circle, 33, Venkata Narayana Road,
Nandanam, Chennai - 600 035. ...Respondent in Crl.O.Ps/
Complainant

Criminal Original Petitions filed under Section 482 of Criminal Procedure Code to call for the records in C.C.Nos.4111 and 4110 of 2007 respectively pending trial on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the prosecution against them.

For Petitioners : Mr.P.Gunaraj

For Respondent : Mr.J.C.Duraiaraj
Government Advocate (Crl.Side)

सहायमेव अयते
COMMON ORDER

Both petitions arise out of and in challenge to proceedings pending trial in C.C.Nos.4110 and 4111 of 2007 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai wherein offences under Sections 3(1) and 3 (2), Rule 5, Rule 27(1), Rule 28 r/w Rule 38, Rule 35 r/w Rule 38 of the Motor Transport Workers Act, 1961 (hereinafter referred as Act) and punishable under Sections 31, 32 and 24 of the Act and Sections 2(1) (c), 2(1) (g), 2(9), 7, 9 rule 74, 81(3), Section 23 and 25 of the Contract Labour (Regulation & Abolition) Act are alleged.

2.The 3rd accused is the concern, while the accused 1 and 2 are arrayed in their capacity as Chairman-cum-Managing Director and

Senior General Manager and Regional Head of the 3rd accused concern.

3.Both petitions can be disposed of by a common order since the contentions made on behalf of the petitioners are one and the same.

4.The first contention is that the 3rd petitioner concern is a concern to which The Tamil Nadu Shops and Establishments Act, 1947 applies. While so, by application of the Section 2(h)(ii) of the Act, the persons engaged by these concerns even if otherwise would fulfill the definition of the motor transport workers would stand excluded by virtue thereof.

5.In support of the above contention, the learned counsel took this Court through the materials available and impressed that the 3rd petitioner concern is a commercial establishment within the meaning of Section 2(3) of The Tamil Nadu Shops and Establishments Act, 1947. It is engaged in providing courier services and hiring vehicles from various parties for the purpose of transportation. Even if it be taken for the purpose of argument that the persons engaged by the concern are motor transport workers as defined in Section 2(h) of the Act, still, by virtue of operation of Section 2(h)(ii) of the Act, the concern would fall outside the ambit of the Act. When the concerns so fall outside such ambit, the other petitioners who are arrayed as accused also cannot be prosecuted.

6.Strong reliance is placed on the judgment of the Division Bench of the Andhra Pradesh High Court in A.P.State Trade Federation v. Commissioner of Labour and another (1992) LAB.I.C.158.

7.The second contention is that as per Section 35 of the Act, the complaint ought to be made by either by an officer in the category of Inspector or under his specific written instruction and only then, a Court could take cognizance. In the instant cases, the complainant is a Deputy Inspector and a reading of the complaints does not inform that any permission of an inspector has been obtained in the filing thereof. Thus, the complaints would be bad also on this ground.

8.The third contention is that Section 34 of the Act provides for vicarious liability for offences committed by a company. The persons incharge of and responsible to a company could be held liable for offences committed thereby. But for such provision to apply, a specific averment ought to be made in the complaint to such effect and in the instant cases, the same was lacking. In the absence of such necessary averment, the complaint again would fail.

9.The learned Government Advocate (Crl.Side) appearing for the respondent would contest the contention regarding the applicability of the Act in the facts of the case. The contention is that the concern was engaged in courier business and as a particular and

distinct limb of operations, it was engaged in using and hiring vehicles for courier service and for such purpose it has engaged paid workmen. Thus, they would fulfill the definition of motor transport industry as informed in the Act and the persons engaged by it also would be motor transport workers. When the twin circumstances exist, the prosecution of the concern would be in order. Consequentially, the prosecution of persons incharge thereof also would be sustainable.

10.I have considered the rival submissions and perused the materials available on record.

11.Section 3(g) and (h) reads as follows:

"(g)"motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

(h)"motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in Section 8 does not include -

- (i)any such person who is employed in a factory as defined the Factories Act, 1948 (63 of 1948);
- (ii)any such person to whom the provisions of any law for the time being in force regulating the conditions of service or persons employed in shops or commercial establishments apply;"

12.In both cases, it is apparent that the concern is engaged in business activities as would attract the provisions of The Tamil Nadu Shops and Establishments Act, 1947. By way of typed set, documents which would show compliance by the concern with the provisions of The Tamil Nadu Shops and Establishments Act, 1947 and rules thereunder are produced. It really is not necessary that the 3rd petitioner concern should show compliance with the requirements of such enactment. All that is required is that The Tamil Nadu Shops and Establishments Act,1947 should apply in the particular case. Given the nature of business and the facts of the case, it is apparent that The Tamil Nadu Shops and Establishments Act,1947 does apply to the concern. It might well be true that the workers engaged by it would fall within the definition of motor transport workers under the Act. Again, it might well be true that the concerns being engaged by it

for the purpose of courier service, do fall within the definition of motor transport undertaking as defined in the Act. But despite such position, the third petitioner company would fall outside the ambit of the Act as The Tamil Nadu Shops and Establishments Act, 1947 applied to it.

13.I am in agreement with the observation of the Honourable Division Bench of the Andhra Pradesh High Court in A.P.State Trade Federation v. Commissioner of Labour and another (1992) LAB.I.C.158 when it informs

"11.A plain reading of the definition in S.2(h) shows that though a person may be a 'motor transport worker' falling under the main part of the definition, he will be taken out of the purview of the said expression if he is a person to whom the provisions of any law relating to Shops and Establishment which regulates the conditions of service of persons employed therein apply. Therefore, if the driver of the private carrier employed by the owner thereof is governed by the provisions of the Shops Act, the said worker cannot obviously be treated as a 'motor transport worker'. In such an event, even if the undertaking was a 'private carrier' operated by a transport worker and therefore becomes a 'motor transport undertaking' as defined in S.2(g), the Act will not, as stated in S.1(4) apply, because the second condition stated above is not satisfied.

13.We respectfully dissent from a contrary view expressed by the Patna High Court in Bihar State Road Transport Corporation v. Orang Bahadur, AIR 1968 Patna 200: (1968 Lab IC 801) and from the later Full Bench decision of the same High Court in Amarnath Singh v. Presiding Officer, Industrial Tribunal, AIR 1970 Pat 269:20 Fac LR 64, wherein it was held that the Bihar Shops and Establishments Act, 1954 was a general Act repugnant to the Workers Act, 1961 which was a special Act, to the extent of the former's applicability to 'motor transport workers'. We are unable to accept the Patna view inasmuch as, in our opinion, under S.1 (4) of the Workers Act, 1961 not only the undertaking must be a 'motor transport undertaking' but it must also employ 'motor transport workers'. If the Workers governed by Shops and Establishments Act are expressly excluded from the definition of 'motor transport workers' S.2(h) of the Workers Act, 1961, it cannot still be said that the Worker's Act, 1961 will apply to a motor transport undertaking employing workers who are covered by the Shops and Establishments Act. It will amount to implying an inconsistency between the State law and the Central law in spite of a deliberate provision in the Central law for avoiding such an inconsistency. The reasoning of the Patna High Court that if a repugnancy was

not implied, the Workers Act, 1961 cannot possibly apply to any undertaking what-so-ever does not, with great respect, appeal to us. In our view, the Workers Act would apply to all other undertakings employing workers covered by the main part of S.2(h). The specific exclusion by Parliament of two types of workers from S.2(h) shows that Parliament was of the view that such exclusion will not leave the main part of S.2 (h) otiose.

15."..... In our view, what is contemplated by Cl. (ii) of S.2(h) of the Workers Act is that if a transport worker is governed by a law regulating the conditions of service of persons employed in shops or commercial establishments, that person shall not be deemed to be a motor transport worker within the meaning of S.2(h) of the Workers Act and a person employing him need not get his undertaking registered under the Workers Act. Whether the employee works within shop premises or elsewhere is really irrelevant. The real object of this exclusionary clause seems to be to ensure that the additional benefits conferred by the Shops Act are not denied to the class of workers who fall within the scope of the Shops Act, even though they might also come within the fold of the Workers' Act. Point No.3 is held accordingly."

14.On this ground alone, these Criminal Original Petitions deserve to be allowed.

15.It may in passing be stated that the other challenges made on the grounds of non-compliance of Sections 34 and 35 of the Act and of there being not the necessary averments as would make the petitioners liable for prosecution also are raised well.

16.Accordingly, these Criminal Original Petitions shall stand allowed. The proceedings in C.C.Nos.4110 and 4111 of 2007 pending trial on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai shall stand quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/True Copy/

Sub.Asst.Registrar

gm

To

1.The XI Metropolitan Magistrate, Saidapet, Chennai.

2. -do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

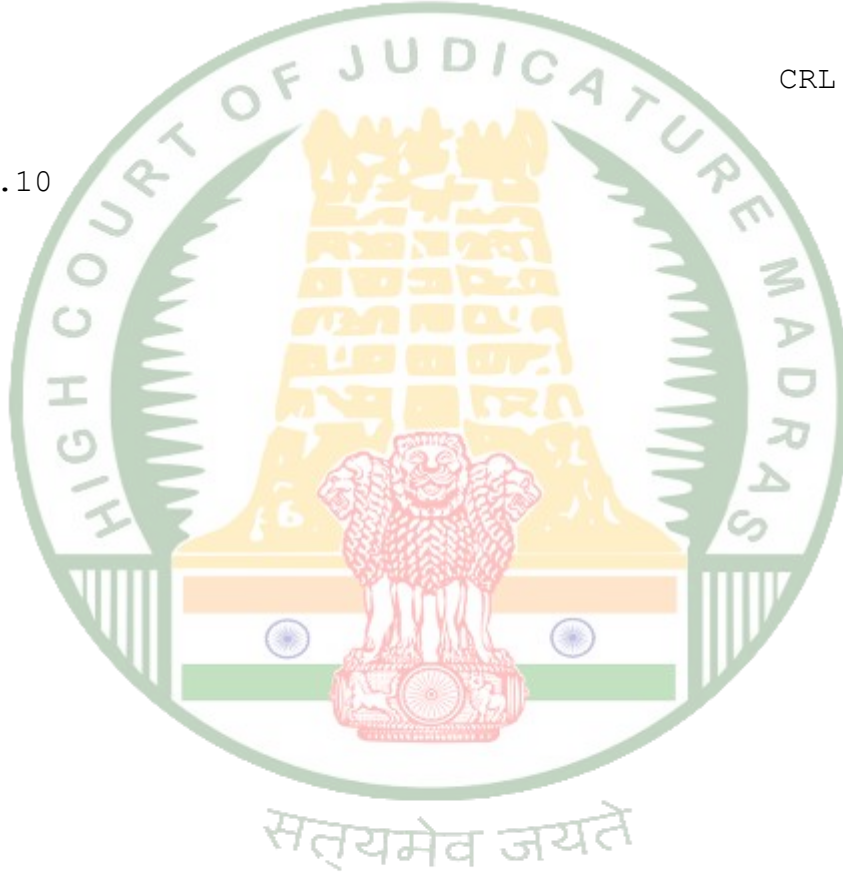
3.The Deputy Inspector of Labour
V Circle, 33, Venkata Narayana Road,
Nandanam, Chennai - 600 035.

4.The Public Prosecutor, High Court, Madras.

+ 2 CCs to Mr.P.Gunaraj, Advocate, SR.29430,29431

KLT(CO)
EM/10.6.10

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