

RESERVED JUDGMENT

Reserved on- 16.05.2024

Delivered on- 14.06.2024

Court No. - 13

Case :- APPLICATION U/S 482 No. - 2759 of 2013

Applicant :- Union Bank Of India Through Chief Manager Mahendra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Chandra Shekhar Sinha, Ajay Kumar Singh

Counsel for Opposite Party :- Govt. Advocate, Sandeep Sharma

Hon'ble Shamim Ahmed, J.

1. Heard Sri S.B. Pandey, learned Senior Advocate, assisted by Sri Varun Pandey, Advocate and Sri Chandra Shekhar Sinha, Advocate, for the applicant/Union of India as well as Sri Sandeep Sharma, Advocate for the opp. party No. 2 and the learned A.G.A. Sri Ashok Kumar Singh, for the State, and also perused the record.

2. The applicant herein, Union Bank of India, has filed this application under Section 482, Cr.P.C. with the prayer to quash the impugned Criminal Complaint Case No. 18 of 2012 under Section 24 of the Contract Labour (Regulation and Abolition) Act 1970, P.S. Gomti Nagar, District Lucknow, pending in the court of Chief Judicial Magistrate, Lucknow, filed by the Labour Enforcement Officer (Central), Lucknow, and all consequential orders arising thereon.

3. In short, the facts of the case are that the complainant/Labour Enforcement Officer (Central), Lucknow, has filed the impugned complaint with the allegations that the complainant is the Public Servant within the definition of section 21 of 1.P.C. and the complaint is being filed by the complainant in discharge of his official duties and such recording of pre-summoning evidence be dispensed in terms of section 200 of the Cr.P.C. The complainant is Labour Enforcement Officer (Central), Lucknow, who has been appointed as an Inspector under section 28(1) of the Contract Labour (Regulation & Abolition) Act, 1970 by the Government of India, Ministry of Labour, New Delhi. The Union Bank of India (in short, referred to as 'the Bank') is Principal Employer, as defined under the Contract Labour (Regulation & Abolition) Act, 1970 and was executing the contract work "Maintenance & Security of Union Bank of India Premises at Lucknow and responsible for the compliance of the provisions of the Contract Labour (Regulation & Abolition) Central Rules, 1971. The establishment of the Bank

was inspected by Labour Enforcement Officer (Central), Lucknow/opp. Party No. 2 on 20.09.2011 under the Contract Labour (Regulation & Abolition) Act, 1970 and Contract Labour (Regulation & Abolition) Central Rules, 1971 when the work was in progress with 50 contract labours through one contractors. The establishment is, therefore, covered under the said Act. During the course of inspection of aforesaid establishment of the Bank on 20.09.2011, the Labour Enforcement Officer (Central), Lucknow observed following breaches:-

"a. Register of Contractors is not maintained in form XII vide Rule 74.

b. Return in Form VI-B not submitted to the Inspector in respect of all contractors - Breach of Rule 81(3).

c. Notices showing the rate of wages, hours of work, wage period, date of payment of unpaid wages has not been displayed in English and in Hindi & in the local language understood by the majority of the workers in conspicuous place at the establishment - Breach of Rule 81(1)(i)."

4. The above mentioned breaches of the said Act/Rules as observed by the opp. Party No. 2 were incorporated in the Inspection report cum show cause notice No. LKO.35(25)/2011 dated 20.09.11 which was prepared on workspot within the jurisdiction of Hon'ble Court under section 24 of the said Act and hence the complaint was filed seeking the following prayer:

"The complainant therefore, prays that the Hon'ble Court may be pleased to take the case on file and dispose off the complaint according to law. The complainant further prays to add subtract, amend or altar the complaint, if necessary with the prior permission of the Hon'ble Court.

The complainant also prays the Hon'ble Court to award a part of the fine imposed on the accused towards the expenses incurred by the department in conducting the prosecution in terms of section 357(1)(a) of Cr.P.C. 1973 and the amount awarded may be ordered to be credited to the Central Head of Account No. 087 Labour and Employment-Pay and Account Officer (CLC), New Delhi."

5. It has been argued on behalf of the Bank that from perusal of the inspection-report it is evident that the inspection was carried out at Kapoorthala, whereas no work was being carried out at Kapoorthala and the entire allegations in the criminal complaint are absolutely wrong and fabricated. In fact, the building of Union Bank of India has been constructed at Vibhuti Khand, Gomti Nagar, Lucknow, completing all the legal requirements, few months before the show-cause notice reached the bank. When the show cause notice dated 20.9.2011 was received by the Bank, then the officers of the applicant overlooking the place of inspection in the show-cause notice, gave a reply dated

12.10.2011 and annexed the relevant papers which are in compliance with the provisions of the 'Act', i.e., Register of Contractors in Form XII as per Rule 74, Form VI-B as per Rule 81(3) of the Contract Labour (R&A) Central Rules 1971. It has been further submitted that in fact on 20.9.2011 no work was in progress even at Vibhuti Khand, Gomti Nagar, Lucknow, where all the construction work had completed and the furnishing and interior work was also at the verge of completion.

6. Clarifying the position, it has also been submitted that in fact the Union Bank of India Field G.M. Office was situated at 2nd Floor, Sharda Tower, Kapoorthala Complex, Lucknow, for the last more than 20 years. The office was situated at the 2nd Floor of Sharda Tower and the 1st floor and other floors above 2nd floor were occupied and in possession of Sahara India. No construction work could be carried out nor it was being carried out in the premises of the applicant at 2nd Floor at Sharda Tower, Kapoorthala, Lucknow, as alleged in the inspection report. After completion of the interiors the Field G.M. Office of the Union Bank of India has shifted from Kapoorthala Complex to Vibhuti Khand, Gomti Nagar, Lucknow in October 2011. The applicant Union Bank of India informed the General Manager, Reserve Bank of India vide letter dated 7.10.2011 that the Field General Manager's office has been shifted to Vibhuti Khand, Gomti Nagar, Lucknow on 29.9.2011.

7. The applicant-Bank has also invited the court's attention towards the letter dated 7.10.2011 sent by the Dy. General Manager Union Bank of India to the General Manager Reserve Bank of India informing the shifting of office, which has been annexed to the application. The learned counsel has also drawn attention of the court towards the letter dated 22.1.2012 (Annexure No. 5 to the application) vide which the Deputy General Manager, Banking Supervision Department, Reserve Bank of India, has been intimated about shifting of the Regional Office of the Union Bank of India which was also situated at Kapoorthala, Lucknow, also to the new building at Vibhuti Khand on 16.1.2012.

8. The learned counsel for the applicant has emphasized that both the Field General Manager's office and the Regional Office, which were in operation at Kapoorthala situated on the 2nd floor and the Field General Manager's office had been shifted to the well furnished office at Vibhuti Khand on 7.10.2011, i.e., within 17 days from the date of inspection, in which period it is not possible to complete the construction and the furnishing of the building. Further it is not possible to start any construction work only at the floor in possession of the applicant which was functional with about 1000 workers of the

Bank.

9. Learned counsel for the applicant submits that Section 24 of "The Contract Labour (Regulation and Abolition) Act, 1970 is reproduced hereinbelow:-

"If any person contravenes any of the provisions of this Act or of any Rules laid thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees or with both."

10. It has next been argued on behalf of the applicant-Bank that the allegation of offences alleged to be committed by the applicant has no legal basis since the wooden interior/electrical interior work being run by service providers is not a "Contract of Service", but "Contract for Service: and as such the Act is inapplicable. Since the wooden/electrical interior being done by a service provider is under 'contract for service' over which the Union Bank has no supervisory powers or controls. The Bank does not come within the ambit of the Act.

11. Moreover, the Contract Labour (Regulation & Abolition) Act 1970 is an Act to regulate the employment of contract labour in certain establishments and to provide for the abolition of contract labour. The Act was passed to prevent the exploitation of the contract labour and to introduce better conditions of work. It provides for regulation of the service conditions of contract labour. The Act intends to abolish the contract labour wherever practicable and where it cannot be abolished altogether. The policy of the Act is that the working condition of the labour should be regulated so as to ensure payment of wages and provision of essential amenities. To attract the provisions of the Act the establishment must be employing contract labours and the principal employer means the person responsible for the supervision and control of the establishment. The establishment which is required to register and maintain the register is the person, who actually employs the contract labourers. Therefore, the applicant cannot be termed as "principal employer" as he was not directly responsible for the supervision and control and the banking company is not the establishment which is required to register under Section 7 of the Act as it has issued a work order for interior decoration and electrical work with two independent contractors who have engaged skilled workmen and the same cannot be construed as engagement of contract labour by the bank for any routine banking activity. Proceedings of the aforementioned impugned criminal complaint, the summoning order and all consequential orders are liable to be quashed/set

aside. Proceeding of the criminal complaint, which is wrong and fabricated, is an abuse of process of law, due to which the applicant as the officer of the Bank will suffer irreparable loss, as he will have to appear in the Court of Magistrate, where he will be taken into custody and subjected to bail for no offence committed by the Bank.

12. It has also been argued by the learned Sr. Advocate Sri S.B. Pandey and Sri Chandra Shekhar Singh, Advocate, that the learned Magistrate, while entertaining the criminal complaint, has not applied its judicial mind and has simply passed an order to register the case on 3.11.2012. To the best of knowledge of the applicant no other order has been passed by the Magistrate to summon the applicant, but even then summons have been issued and no order for taking cognizance has been passed by the learned Magistrate. The order dated 3.11.2012 on the complaint only says "Register" which is apparently without the application of judicial mind of the learned Magistrate, more so it does not even say "issue summons" and to the best of knowledge of the deponent/applicant there is no other order on the case file. Certified copy of the criminal complaint with the order "register" has been filed as Annexure No. 1 to the application. In fact the applicant has been falsely implicated in the instant case and has no criminal history and is not a previous convict.

13. It has been contended by the learned counsel for the Union of India that the opp. party no. 2 has filed the impugned complaint under Contract Labour (Regulation and Abolition) Act, 1970 and Contract Labour (Regulation and Abolition) Central Rules 1971 against the applicant-bank after making the inspection and after finding several discrepancies in maintaining the records as required under the Act in their capacity as principal employer of the workers. It is further submitted that the instant application is not maintainable in view of the fact that the Union of India has not been impleaded as opposite party in the case, which is also mandatory, since the Acts under which the complaint is based is Central Act, and, therefore, the case is liable to be dismissed on this very ground. It is also submitted that the applicant has filed the above case with the intention to avoid appearing before the learned Chief Judicial Magistrate, where he can put his entire grievance/case, and for this reason also the case is liable to be dismissed. It is further submitted that the complaint, under Contract Labour (Regulation and Abolition) Act, 1970 and Contract Labour (Regulation and Abolition) Central Rules 1971, after making inspection at the Kapoorthala office i.e. the Office of Principal Employer of the applicant-bank, prepared an inspection note based on the information provided by the representative of the

Principal Employer and signed the same and got the same received by the Representative of the Principal Employer i.e. Senior Manager of the Regional Office of the petitioner. It is further submitted that the records mentioned in the paragraph-7 of the application were not made available on demand. It is also submitted that in Annexure-3 to the application, the address of the petitioner is shown (on the stamp) 'Sahara Tower, Second Floor, Kapoorthala Complex, Lucknow', which falsify the stand of the applicant that office has shifted to Gomti Nagar. The applicant was duty bound to intimate the Labour Enforcement Officer within 15 days from the date of commencement or completion of each contract work in terms of the provision of Section 81 (3) of the Contract Labour (Regulation and Abolition) Central Act, 1970, which was not complied with by the applicant. The bank is having every supervisory control.

14. On behalf of the opp. party no. 2 it has been urged that since the provisions of the Act, referred to above, have been violated by the applicant, the complaint was preferred by the opp. party no. 2 before the learned Magistrate, in which no interference, at this stage, is necessary, as only the summon has been issued to the applicant and further proceedings are yet to be adjudicated on the basis of the evidence adduced by the parties. The applicant will have ample opportunity to put up his case before the learned Magistrate. Since the applicant has opportunity available to put up his case, the present application is liable to be dismissed. The learned Magistrate, after going through the records and applying his judicial mind, has passed the order in the matter and, as such, the application is liable to be dismissed with cost.

15. Considering the arguments advanced by the learned counsel for the parties and perusing the records this court finds favour with the arguments advanced by the learned counsel for the applicant that on 20.9.2011 no construction work was going on at Sharda Towers, Kapoorthala, Aliganj, Lucknow and no inspection was carried out in the premises, as alleged; on 20.9.2011 the Field General Manager's office and the Regional Office was functional with about 1000 employees of the Bank working, as such no construction could have been carried out. Rather, the applicant Union Bank of India has only the second floor of the Sharda Towers with the 1st and other floors above the office of the petitioner are occupied by Sahara India Group, as such also, no construction could have been made; the applicant Union Bank of India had got constructed a building of its own at Vibhuti Khand, Gomti Nagar, Lucknow in which on 20.9.2011 the wooden interiors, the electrical interiors and furnishing work was on the verge of completion and was completed within 17 days of the alleged inspection and the

Field General Manager's office was shifted in a well- furnished and well-equipped premises; the learned Magistrate, while entertaining the criminal complaint, has not applied its judicial mind and has simply passed a one-word order 'Register' on 3.11.2012; no order for taking cognizance and issuance of summons has been passed by the learned Magistrate to the best of knowledge of the applicant; the allegation of offences, alleged to be committed by the petitioner, has no legal basis since the wooden/electrical interior work being run by service providers is not a contract of service, but contract for service, and as such the Act is inapplicable in the present case; in reply to the show cause notice the necessary registers and forms were sent to the Labour Enforcement Officer (Central), although the same related to premises at Vibhuti Khand, Gomti Nagar, Lucknow, but the Labour Enforcement Officer failed to consider them and filed the impugned complaint; the applicant cannot be termed as 'Principal Employer' as the bank was not directly responsible for the supervision and control and the banking company is not the establishment, which is required to be registered under Section 7 of the Act, and, the criminal complaint has been filed against the Chief Manager of the Union Bank of India not by his designation, but in his individual capacity, without making the Bank as an accused with a malafide intention to harass and humiliate him.

16. Further, the Hon'ble Supreme Court in the case ***Inder Mohan Goswami v. State of Uttaranchal, (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice."

17. Further, the Hon'ble the Supreme Court in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in ***2022 SCC Online SC 1383*** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind

as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of **Lalankumar Singh and Others (supra)** is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

18. Further, the Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. v. Judicial Magistrate** reported in (1998) 5 SCC 749 has been pleased to observe paragraph No.28, which is reproduced hereinunder:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It

is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

19. Further, the Hon'ble Supreme Court in the case of **Mehmood UL Rehman v. Khazir Mohammad Tunda and Others** reported in **(2015) 12 SCC 420** has been pleased to observe paragraph No.20, which is reproduced hereinunder:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

20. Further, the Hon'ble Supreme Court in the case of **Mahendra Singh Dhoni v. Yerraguntla Shyamsundar** reported in **(2017) 7 SCC 760** has been pleased to observe paragraph No.13, which is read as under:-

"13. Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process."

21. Further, Hon'ble the Supreme Court has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of

Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

22. Further the Hon'ble Supreme Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192**, (iii) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** and (iv) **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918**.

23. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

24. Thus, in view of the law laid down by the Hon'ble Supreme Court and in light of the observations and discussions made above and keeping view the facts and circumstances of the case, and from the perusal of the record, the impugned complaint

proceedings pending before the Chief Judicial Magistrate, Lucknow in Criminal Compliant Case No. 18 of 2012; State v. Shri M.P.S. Chauhan, under Section 24 of the Contract Labour (Regulation and Abolition) Act 1970, P.S. Gomti Nagar, District Lucknow, filed by the Labour Enforcement Officer (Central), Lucknow, and all consequential orders arising thereon, are liable to be quashed as in the present case learned Chief Judicial Magistrate, Lucknow has failed to apply his judicial mind to the facts of the case and the law applicable thereto while entertaining the same, the Chief Judicial Magistrate has not examined the nature of allegations made in the complaint and the evidences both oral and documentary in support thereof.

25. Accordingly, the impugned complaint proceedings pending before the Chief Judicial Magistrate, Lucknow in Criminal Compliant Case No. 18 of 2012; State v. Shri M.P.S. Chauhan, under Section 24 of the Contract Labour (Regulation and Abolition) Act 1970, P.S. Gomti Nagar, District Lucknow, filed by the Labour Enforcement Officer (Central), Lucknow, and all consequential orders arising thereon, are hereby **quashed**.

26. For the reasons discussed above, the instant application under Section 482 Cr.P.C. filed by the applicant is **allowed** in respect of the instant applicant, namely- Union Bank of India.

27. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

28. No order as to cost(s).

(Shamim Ahmed, J.)

Order Date :- 14.6.2024

A.Nigam