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Court : Karnataka

Decided On : Mar-22-2016

Judge : P.D. Waingankar

Appeal No. : Criminal Petition No. 7371 of 2015

Appellant : Ben Salmon and Others

Respondent : State of Karnataka

Judgement :

P.D. Waingankar, J.

1. Petitioners who are accused in C.C. No. 2435/2014 on the file of the Metropolitan Magistrate Traffic Court-1, Mayo-Hall, M.G. Road, Bangalore, have filed this petition to quash the proceedings initiated against them in the aforesaid criminal case.

2. On 10.11.2014, Senior Labour Inspector filed a complaint before the Metropolitan Magistrate Traffic Court-1, Mayo-Hall, Bangalore, which came to be registered in C.C. No.2435/2014 for the offences punishable under sections 25 and 26 of the Interstate Migration of Labour (Employment Regulation and Service Conditions) Act, 1979.

3. The allegations made out in the complaint are that on 20.5.2014 around 12.15 p.m. when the complainant visited the establishment of the petitioners i.e., the building called East Point which was under construction in Sy. Nos. 87,88/1, 2 of Bagana Halli, Panathuru Road, Varthur Hobli, Bangalore, the complainant found the violation of the provision of the Act and Rules 23 and 50 of the Interstate Migration of Labour (Employment Regulation and Service Conditions) Rules, 1980 that is to say the register of Inter-State migrant workers and a report of annual returns which are required to be maintained by the petitioners under the Act and Rules are not produced on demand by the complainant during the course of inspection of the establishment. As such, the petitioners were served with the copy of the notice dated 20.5.2014 calling upon the petitioners to produce the aforesaid document and registers for having rectified the defects mentioned in the inspection notice within 7 days from the date of receipt of the notice for the purpose of examination. There was no response from the petitioners. As such, they were issued with a show-cause notice dated 26.8.2014 requesting to comply the earlier notice. Since there was no reply even to the said notice, a complaint came to be filed for the offences punishable under sections 25 and 26 of the Inter-State Migration of Labour (Employment Regulation and Service Conditions) Act, 1979 in C.C. No. 2435/2014, To quash the proceeding, this petition is filed.

4. The submission of the learned Senior Counsel Sri, K.G. Raghavan, appearing for the petitioners is that the complaint filed is barred by limitation and therefore it is liable to be dismissed on that count alone. Learned Counsel has taken me through section 27 of the Contract Labour (Regulation and Abolition) Act, 1970.

5. Section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 speaks about the limitation prosecution. It reads as under: -

"27. Imitation of prosecutions. - No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged, commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which

the offence is alleged to have been committed."

6. In the case on hand, the Inspector inspected the premises of the petitioners on 20.5.7014 around 12.15 p.m. The complaint came to be presented before the Magistrate or. 10.11.2014 after the expiry of a period of three months from the date on which the commission of the offence came to the knowledge of the Inspector.

7. Learned Government Pleader would Submit that after inspection of the premises, the petitioners were issued with a inspection notice dated 26.8.2014 calling upon the petitioners to comply the defects mentioned in the earlier notice dated 20.5.2014 issued to him. Therefore, it is the submission of the learned Government Pleader that the complaint presented on 10.11.2014 is well within the period of six months from 20.5.2014 the date on which the offence alleged to have committed.

8. It is true that as per the proviso to section 27 where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed. However, what has been issued to the petitioners is not an order, is a show-cause notice which cannot be called as order and therefore the complaint filed by the complainant is barred by limitation and as such the Magistrate ought not to have taken cognizance.

9. The decision relied upon by the learned Senior Counsel for the petitioners reported in ILR 1985 KAR 3633 in case of J.U. Prabhu v. State of Karnataka is rightly applicable. In the aforesaid decision, it is held as under: -

"CONTRACT LABOUR (Regulation and Abolition) Act, 1970 (Central Act No. 37 of 1970) - section 27 - Mere sending of show cause notice by post cannot be considered as an order having been passed and having been disobeyed to bring complaint within limitation prescribed.

Establishment inspected on 27.2.1985. In respect of irregularities found, Inspection Report-cum show cause notice dated 27.2.1985 sent by Registered

Post. Complaint filed on 1.6.1985. Contended that complaint was filed beyond period of limitation laid down and proceedings hence bad in law."

10. In view of the aforesaid decision of this Court the complaint filed after the expiry of period of three months is liable to be quashed.

Accordingly, the petition is allowed. The proceedings initiated against the petitioners in C.C. No. 2435/2015 on the file of the Metropolitan Magistrate Traffic Court-1, Mayo-Hall, M.G, Road, Bangalore, are hereby quashed.

In view of disposal of the petition, I.A. No.1/2015 for stay does not survive for consideration and the same stands disposed of.

Petition Allowed.

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