P.Palani Vs. the District Manager

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Court : Chennai

Decided On : Feb-28-2011

Judge : K.Chandru, J.

Acts : Indian Penal Code (IPC) - Sections 457 read with 511; Tamil Nadu Shops and Establishments Act - Section 37; Tamil Nadu Shops and Establishments Rules, 1948 - Rule 11(2)(a); Payment of Wages Act - Sections 2(ii)(h), 1(6)

Appeal No. : W.P.NO.23433 of 2010 and M.P.NO.1 OF 2010

Appellant : P.Palani

Respondent : The District Manager

Advocate for Def. : Mr.J.Ravindran, Adv.

Advocate for Pet/Ap. : Mr.S.Mani, Adv.

Judgement :
ORDER

1. The petitioner who was employed as a Supervisor of Tamil Nadu State Marketing Corporation (For short TASMAC) shop No.9271 in Tiruvannamalai Town, has filed the writ petition, seeking to challenge an order, dated 18.8.2010 passed by the respondent District Manager, TASMAC, Tiruvannamalai District. By the impugned communication, the petitioner was informed that on the basis of the allegation that a theft had taken place in the TASMAC shop on 24.2.2006 and an

amount of Rs.34,500/- was stolen. A claim was sent to the United India Insurance Company. The said Insurance Company by their communication, dated 2.8.2010 informed that the criminal case was closed on the basis of mistake of fact. They had repudiated the insurance claim made on the basis of theft which is covered by the policy. The said letter was given to the petition on 6.8.2010. In view of the fact that the amount stolen will not be got back to the TASMAC, the petitioner will have to make good the loss. Therefore, the petitioner was directed to remit a sum of Rs.34,500/-, failing which his security deposit will be forfeited and disciplinary action will be taken.

2.When the matter came up on 19.10.2010, this court had issued notice to the respondent TASMAC and granted an interim stay. Subsequently, the matter was admitted on 4.1.2011. On notice from this court, the respondent has filed a counter affidavit, dated 18.2.2010. In the counter affidavit, it is admitted that there was a complaint that the shop was robbed by some unknown persons. After the petitioner informed the same, a complaint was given to the police and a FIR was filed with the Tiruvannamalai Town Crime Branch in FIR No.162 of 2006 under Sections 457 read with 511 IPC. In the FIR, it was recorded that after finishing the business on 24.2.2008, the shop was locked around 11.50 p.m.. The next day morning when they came and opened the shop by removing the shutter, the liquor bottles were strewn all over and on the rear side of the shop, a hole was found in the wall enabling one person to enter the shop. Immediately, the shop was closed and the matter was informed to the police. The Inspector of Police had informed the Magistrate that on investigation, they found that some persons have entered the shop by making a hole in the shop in the rear side and that with the use of iron rods, they had removed the cash from the cash chest. The learned Magistrate took up the case as C.C.No.823 of 2008 and released the accused one Thirupathi, S/o.Chinnathambi. On the basis of these findings, the Insurance Company had also refused to honour the claim made by the TASMAC.

3.The learned counsel for the petitioner submitted that the petitioner is no way responsible for the robbery that took place in the shop. The robbers had entered by breaking the rear side wall. Fixing the responsibility on the petitioner was illegal and not supported by law. The counsel for the petitioner also submitted that the

Shop Supervisor has been given an Handbook of Sale relating to Retail vending of liquor and beer in the liquor shop. Condition No.17 shows that the sale proceeds will have to be kept in the cash chest safely. Condition No.18 shows that even after locking the shop and the seal was affixed, the next day when the shop was opened if the seal was broken or the stock were not kept in the same place, appropriate steps should be taken to inform the police as well as the District Manager. Since the petitioner had fulfilled these two conditions, there is no further liability on the petitioner to pay the amount even after finding that the petitioner was no way responsible. In any event, the impugned notice is illegal as no reasonable opportunity was given to the petitioner before fixing the liability on the petitioner.

4.In the light of these contentions, it must be seen whether the petitioner can be fixed with the liability to make good the loss sustained by the TASMAC?

5.The Handbook relating to the Vending of Retail liquor and beer does not contain any term by which the petitioner can be held responsible for the loss of cash even for the circumstances beyond his control. The law that provides for the deduction for any damages or loss is found under Section 37 of the Tamil Nadu Shops and Establishments Act. Section 37(1) reads as follows:

"37.Deductions for damage or loss.--(1)A deduction under clause (c) of sub-section (2) of section 34 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the person employed and shall not be made until the person employed has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions."

6.Since the said provision refers to Section 34(2)(c), it reads as follows:

34.Deductions which may be made from wages.-- (1)Wages of a person employed shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.--Every payment made by a person employed to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2)Deduction from the wages of a person employed shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely;-

(a) and (b) omitted

(c)deductions for damage to, or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;"

7.A cumulative reading of these provisions will show that no other deduction other than what has been authorised by the Act can be made. Under Section 34(2), deduction from wages can be made only under the contingencies set out under Section 34(2). Since the present case falls under Section 34(2)(c) as extracted above, deductions can be made for the loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account only if the loss is directly attributable to his neglect or default. Under Section 37(1), an opportunity has to be given to show cause against deduction.

8.The Tamil Nadu Government had framed rules under this Act known as Tamil Nadu Shops and Establishments Rules, 1948. Rule 11(2)(a) reads as follows:

"11(2)(a)Any person desiring to impose a fine on a person employed or to make a deduction from his wages for damage or loss shall explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or deduction, which it is proposed to impose, and shall hear his explanation. The charge in respect of which it is proposed to impose the fine or deduction and the explanation of the person concerned shall be reduced to writing, the signature of such person being obtained to the latter."

9.When there is safeguard provided to workman from any illegal deduction from being made from the wages of an employee, it is unthinkable that the respondent

TASMAC can flout the legal provisions. May be they are under an impression that since the provisions of the Act has been exempted, they need not comply with these provisions set out above. The exemption granted by the Government reads as follows: Exemption of Indian-made Foreign Liquor retail vending shops from certain provisions of Tamil Nadu Shops and Establishments Act.

(G.O.Ms.No.552, Labour and Employment, 9th April, 1990

Panguni 26, Sukla, Thiruvalluvar Aandu-2021.)

No.II(2)/LE/2254/90.-- In exercise of the powers conferred by section 6 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Ndu Act XXXVI of 1947), the Governor of Tamil Nadu hereby exempts the licensees of Indian-made Foreign Liquor retail vending shops from the provisions of sub-section (1) of section 11 of the Act subject to the following conditions:-

(i)the persons employed in the Indian-made Foreign Liquor retail vending shops shall be granted one day holiday with wages in a week;

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[(ii)]if genuine complaints are received from the persons employed, the exemption granted shall be cancelled."

10.It must be noted that the Payment of Wages Act, 1936 also contains similar provisions regarding deductions under Section 7(2)(c) of the of the said Act. That Act is also applicable to the respondent TASMAC in terms of Section 7(2)(h) read with the notification issued by the State Government in G.O.Ms.No.78, Labour and Employment Department, dated 26.6.1996 wherein and by which the State Government by exercise of its power under Section 2(ii)(h) of the Payment of Wages Act had notified all shops and establishments employing 20 or more persons to be covered by the provisions of the Payment of Wages Act. Under Section 1(6) of the Payment of Wages Act, the Act has been made applicable to persons who are drawing wages not exceeding Rs.10000/- per month which limit can be increased periodically at the interval of every five years. The said notification has been issued on 8.8.2007 by the Central Government's notification in S.O.1380(E).

11.In the present case, there is no allegation that the petitioner was directly responsible for the loss since he had also implemented conditions 17 and 18 of the Handbook and no other allegation is made against him. Hence it cannot be said to be the loss which is directly attributable to him. Merely because the Insurance Company had repudiated the claim, the liability cannot be directly passed on to the petitioner. May be the police might not have done proper investigation and the criminal court would have acquitted an innocent person who was before them. But that does not nonetheless make the story of robbery as unbelievable or the petitioner had any particular role in the said incident.

12.Therefore, the demand for making good the loss on the petitioner is clearly impermissible and not supported by law. Assuming that a shop supervisor drew wages above Rs.10000/- and not covered by the provisions of the Payment of Wages Act, insofar as the deduction was made without notice, the same is also not valid. The Supreme Court has held that recovery from the salary is punitive in nature and no deduction can be made without notice to the affected person. Since in the counter, the respondents have not attributed any direct role of the petitioner, there is no scope for proceeding to recover the said amount. Hence the impugned order stands set aside. The writ petition will stand allowed. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed.