

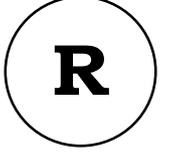
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4639 OF 2022



BETWEEN:

M/S. MASTURLAL (PVT.) LTD.,
NO.20/1, ARAKERE VILLAGE
BANNERGHATTA ROAD
BENGALURU 560 076
REPRESENTED BY ITS
MANAGING DIRECTOR
MR.SHRAMIK MASTURLAL.

... PETITIONER

(BY SRI GANGADHARAI AH A.N., ADVOCATE)

AND:

GOVERNMENT OF INDIA
NATIONAL SAMPLE SURVEY OFFICE
REGIONAL OFFICE
5TH FLOOR, E AND F WING
KENDRIYA SADAN
KORAMANGALA
BENGALURU - 560 034
REPRESENTED BY ITS
SENIOR STATISTICAL OFFICER.

... RESPONDENT

(BY SRI H.SHANTHI BHUSHAN, DSGI.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER OF COGNIZANCE TAKEN BY THE LEARNED V A.C.M.M, BENGALURU IN C.C.NO.4142/2016 DATED 17.03.2015 (NOW TRANSFERRED TO 44TH ACMM COURT, BENGALURU CITY) AND CONSEQUENTLY QUASH THE PROCEEDINGS IN C.C.NO.4142/2016 PENDING OF THE FILE OF 44TH ACMM BENGALURU CITY.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this court calling in question proceedings in C.C.No.4142 of 2016 pending before the 5th Additional Chief Metropolitan Magistrate, Bengaluru, registered for the offences punishable under Sections 15(2), 19, 22 and 23 of the Collection of Statistics Act, 2008 (hereinafter referred to as 'the Act' for short).

2. Facts, in brief, adumbrated are as follows:

The petitioner claims to be a registered company under the provisions of the Companies Act with effect from 17-11-1971. It is, in these proceedings, represented by its Managing Director. The

Company is into manufacturing of Technical units of Textiles, which are used in industries. The petitioner is governed under the Factories Act, 1948, and for statistics and programme implementation, it is governed under the Act. It is the claim of the petitioner that it has been diligent in furnishing statistical data to the respondent / Government of India, Department of National Sample Survey annually. In the year 2011, it is averred that the Accounts Officer of the petitioner was seriously ill and subsequently, succumbed to her illness and in the same year, the Chairman also passed away. On these grounds, the annual statistical data that had to be submitted for the year 2010-11, to the respondent, was not submitted. Therefore, the respondent initiates criminal proceedings by registering a complaint under Section 200 of the Cr.P.C., in C.C.No.22683 of 2012. On the learned Magistrate issuing notice, the petitioner appears and pleads guilty of the offence and pays a fine amount of ₹5,000/- and ₹1,000/- in all ₹6,000/-, on 28-05-2013.

3. After closure of the proceedings on pleading guilty, the petitioner was required to furnish data to the respondent within the

stipulated period under Section 15 of the Act. The respondent on 28-02-2015 again filed a complaint invoking Section 200 of the Cr.P.C., before the learned Magistrate for offences punishable under Sections 15(2), 19, 22 and 23 of the Act. The learned Magistrate takes cognizance of the offences and registers a case in C.C.No.4142 of 2016. It is the pendency of these proceedings that drives the petitioner to this Court in the subject petition.

4. Heard Sri A.N. Gangadharaiah, learned counsel appearing for the petitioner and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondent.

5. The learned counsel appearing for the petitioner, Sri A.N. Gangadharaiah, would contend with vehemence that the petitioner was proceeded against in C.C.No.22683 of 2012 and pleaded guilty of the offence. Once having charged for an offence, it would not be open to the respondent to initiate proceedings on the same allegation. It would amount to double jeopardy and the penalty now sought to be imposed in the present proceedings is ₹1.64 crores and if imposed, the petitioner would in doldrums. He

would seek the relief sought both on the aforesaid point of law and grave prejudice that would ensue in the impugned proceedings.

6. On the other hand, the learned Deputy Solicitor General of India, Sri H. Shanthi Bhushan, would vehemently refute the submissions to contend that it is the Act that imposes the penalty upon the petitioner. Once the petitioner having pleaded guilty of the offence that would not close the proceedings. It is the obligation after pleading guilty that would commence under sub-Section (2) of Section 15 of the Act and, therefore, no fault can be found with the proceedings initiated by the respondent as it is a continuing cause of action. The plea of double jeopardy and inability to pay cannot render rigor of the statute redundant. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the available material on record. In furtherance whereof, the only issue that falls for my consideration is, whether the impugned proceedings are tenable in law.

8. The afore-narrated facts are not in dispute. It is the averment of the petitioner/company itself that during the year 2010-11, the data that was necessary could not be furnished. It is germane to notice the reasons for enactment, its importance and certain provisions of the Act for furnishing such statistics annually as a mandatory affair. The Amendment Act was introduced in the year 2008 to facilitate the collection of statistics of certain kinds relating to industries, trade and commerce. The Act was initially enacted in the year 1953 and the subject Act replaces the earlier Act. The introduction, statement of objects and reasons of the Amendment Act would read as follows:

"INTRODUCTION

To facilitate the collection of statistics of certain kinds relating to industries, trade and commerce the Collection of Statistics Act was enacted in 1953. Its provisions have been used in conducting the Annual Survey of Industries. The State Governments have also used the said Act to collect data in areas not covered by the Central Government. So far the said Act has been used for the purpose of collecting information from a limited segment of the industrial sector. During the years, it has been felt that the provisions of the Collection of Statistics Act are not adequate to meet the new challenges arising out of liberalization and globalization regime manifested by the WTO Agreement. The Central Government appointed the National Statistical Commission to study the issues related to the market driven economy in various sectors. The Commission

recommended that necessary legal provisions may be made either by expanding the scope of the Collection of Statistics Act or by passing a new Act. In view of the recommendations of the Commission to enhance the scope of Collection of Statistics and to repeal the Collection of statistics Act, 1953, the Collection of Statistics Bill was introduced in the Parliament

Statement of Objects and Reasons.

The Collection of Statistics Act, 1953 (the Statistics Act) was enacted to facilitate the collection of statistics of certain kinds relating to industries, trade and commerce. Its provisions have been used in conducting the Annual Survey of Industries. The State Governments have also used the said Act to collect data in areas not covered by the Central Government. Briefly, the above said Act has as so far been used for the purpose of collecting information from a limited segment of the industrial sector.

2. During the years, it is felt that the provisions of the Statistics Act are not adequate to meet the new challenges arising out of liberalization and globalization regime manifested by the WTO Agreement. The need for statistical information for planning and policy formulation has been expanded over the years due to market driven economy in various sectors necessitating a re-look at the Statistics Act.

3. All those issues were studied by the National Statistical Commission appointed by the Central Government. The Commission recommended that the Statistics Act needs to be amended as it covers only a part of the whole industrial sector, leaving out many survey programmes in the Government set-up wherein information is being collected presently on purely voluntary basis from households, enterprises, companies, public and private institutions, etc. It recommended that necessary legal provisions should be made either by expanding the scope of the Statistics Act or by passing a new Act.

4. In view of above, it is proposed to introduce the Collection of Statistics Bill, 2007 which is basically intended to

enhance the scope of collection of statistics and to repeal the Collection of Statistics Act, 1953."

(Emphasis supplied)

Certain provisions of the Act are germane to be noticed. Section 2 deals with definitions. Sub-sections (f), (g) and (h) of Section 2 read as follows:

"2. **Definitions.** *In this Act, unless the context otherwise requires, -*

... ..

- (f) *"sampling" means a statistical procedure by which information relating to a particular field of inquiry is derived by applying statistical techniques to information obtained in respect of a proportion of the total number of persons or units concerned relevant to the field of inquiry;*
- (g) *"statistical survey" means a census or a survey, whereby information is collected from all the informants in the field of inquiry or from a sample thereof, by an appropriate Government under this Act or any other relevant Act, wholly or primarily for the purposes of processing and summarising by appropriate statistical procedures;*
- (h) **"statistics" means statistics derived by collecting, classifying and using statistics, specially in or for large quantities or numbers by appropriate Government from statistical surveys, administrative and registration records, and other forms and papers, the statistical analysis of which are, whether in a published or unpublished form;"**

(Emphasis supplied)

Section 2(f) defines what is sampling, which would mean statistical procedure by which information relating to a particular field of inquiry is derived by applying statistical techniques. Section 2(g) would define statistical survey which would mean census or a survey whereby information is collected from all the informants in the field of inquiry. Section 2(h) defines statistics to mean statistics derived by collecting, classifying and using statistics. Collection of statistics is dealt under Section 3 of the Act and it reads as follows:

"3. Collection of statistics.—The appropriate Government may, by notification in the Official Gazette, direct that the statistics on economic, demographic, social, scientific and environmental aspects shall be collected through a statistical survey or otherwise, and thereupon the provisions of this Act shall apply in relation to those statistics:

Provided that—

- (a) nothing contained in this section shall be deemed to authorise a State Government or Union territory Administration or any local government to issue any direction with respect to the collection of statistics relating to any matter falling under any of the entries specified in List I (Union List) in the Seventh Schedule to the Constitution; or*
- (b) where the Central Government has issued any direction under this section for the collection of statistics relating to any matter, no State Government or Union territory Administration or any local government shall, except with*

the previous approval of the Central Government, issue any similar direction for so long as the collection of such statistics by the Central Government remain to be completed; or

- (c) *where a State Government or Union territory Administration or any local government has issued a direction under this section for the collection of statistics relating to any matter, the Central Government shall not issue any similar direction for so long as the collection of such statistics by the State Government remain to be completed, except in cases where such statistics have to be collected with reference to two or more States or Union territories."*

(Emphasis supplied)

The Government by notification in the official gazette would direct statistics on economic, demographic, social, scientific and environmental aspects through a statistical survey. The industry of the petitioner would come within the ambit of Section 3 of the Act. Section 15 of the Act deals with offences and penalties and reads as follows:

"15. Penalty for neglect or refusal to supply particulars.—(1) *Whoever, fails to produce any books of accounts, vouchers, documents or other business records or whoever neglects or refuses to fill in and supply the particulars **required in any information schedule or return given or sent to him or whoever** neglects or refuses to answer any question or inquiry addressed to him as may be required under or for the purposes of any provision of this Act and the rules made thereunder, shall be punishable with a fine which may extend to one thousand rupees or, in the case of a company, with a fine which may extend to five thousand rupees.*

(2) The conviction of a person or company for an offence shall not relieve him or it of the obligations under sub-section (1) and if after the expiry of fourteen days from the date of conviction, he or it still fails to give the required particulars or continues to neglect or refuses to fill in and supply the particulars or to answer the question or inquiry, then he or it shall be punishable with a further fine which may extend to one thousand rupees or, in the case of a company, with a fine which may extend to five thousand rupees, for each day after the first during which the failure continues.”

(Emphasis supplied)

The entire issue in the subject *lis* revolves around Section 15 of the Act. Section 15 of the Act which comes under Chapter-IV deals with offences and penalties. Penalty for neglect or refusal to supply particulars is dealt with under the aforesaid provision. Sub-section (1) of Section 15 mandates that whoever fails to produce any books of accounts, vouchers, documents or other business records or neglects or refuses to fill in and supply the particulars shall be punishable with fine up to ₹5,000/-. Sub-section (2) thereof mandates that conviction of a person or a company for an offence shall not relieve him or it of the obligations under sub-section (1) of Section 15 and if after expiry of fourteen days from the date of conviction, he or it still fails to give required particulars or continues to neglect or refuses to fill in and supply the particulars or to

answer the question, he or it will still be punishable with further fine which may extend to one thousand rupees or in the case of company, it may extend to ₹5,000/- for each day after the first during which the failure continues. On the bedrock of the aforesaid mandate of the statute, the issue in the *lis* requires to be noticed.

9. The petitioner was proceeded against initially for negligence of furnishing information/statistics under Sub-section (1) of Section 15 of the Act. Proceedings are instituted in C.C.No.22683 of 2012. The petitioner appears on 28-05-2013 and pleads guilty. On pleading guilty, a fine is imposed and it pays the fine of ₹6,000/- on the said date i.e., 28-05-2013. Therefore, the proceedings under sub-section (1) of Section 15 get over.

10. After closure of the proceedings under sub-section (1) of Section 15, sub-section (2) of Section 15 kicks in. The mandate of sub-section (2) is unequivocal. The conviction of a person or a company for an offence under sub-section (1) will not absolve him or it of furnishing data. It is admitted fact that the petitioner did not furnish the data even after 28-05-2013. Therefore, in terms of the rigor of sub-section (2) of Section 15 of the Act, a company or a

person who does not furnish the data as required under the Act, even after conviction, would become liable to pay a fine of ₹5,000/- for every day after closure of proceedings under sub-section (1) of Section 15 and if it is an individual, it is ₹1,000/-. The petitioner is a company. The petitioner did not furnish the data even after pleading guilty and imposition of fine. Therefore, a second proceeding is initiated by the respondent by filing a private complaint in 2015 i.e., on 28-02-2015 for offences punishable under Section 15(2), 19, 22 and 23 of the Act. Section 15 which is relevant is quoted hereinabove. The reminder of the provisions are, Sections 19, 22 and 23 and they read as follows:

"19. Penalty for other offences.—Whoever—

- (a) acts in contravention of or fails to comply with any provision of this Act or any requirement imposed under this Act; or**
- (b) wilfully deceives or attempts to deceive any statistics officer or any agency or any employee thereof,**

shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or, in the case of a company, with a fine which may extend to ten thousand rupees or with both.

...

...

...

22. General penalty.—Whoever, commits an offence under this Act for which no penalty is prescribed elsewhere than in this section, shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or, in the case of a company, with a fine which may extend to ten thousand rupees or with both.

23. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and
- (b) "Director", in relation to a firm, means a partner in the firm."

(Emphasis supplied)

Section 19 of the Act deals with penalty for other offences. Other offences would be as found in sub-section (2) of Section 15 of the Act. Section 22 of the Act deals with general penalty. Whoever commits an offence under the Act for which no penalty is prescribed elsewhere, the Act would become punishable under Section 22 of the Act. Section 23 deals with offences by a company. Section 24 deals with cognizance of offences. Therefore, the second proceeding is initiated for violation of sub-section (2) of Section 15 of the Act. A penalty that is sought to be imposed in terms of the registered private complaint is ₹1.84 crores. The penalty runs from 28-05-2013 till the date of filing of the complaint, close to three years at ₹5,000/- day on day.

11. This is the aforesaid rigor of the statute. The rigor of the statute cannot be whittled down or diluted to suit the convenience of any person. Any supposed difficulty would provide no justification to accept the rigour of the statute, any interpretative departure from the plain words of the statute on an argument of difficulty would be dangerous. It is the statute and implication of the statute that would run for all time to come, unless amended.

12. The submission of the learned counsel for the petitioner is that, vexing any person twice for the same offence would amount to double jeopardy. This submission is noted only to be rejected owing to its fundamental fallacy, as it is not a separate proceeding taken in general parlance for the second time for the same offence. The proceedings are initiated under the Act. Sub-section (1) of Section 15 operates in a different circumstance and on continued violation of sub-section (1) of Section 15, sub-section (2) of Section 15 kicks in. Therefore, the two on the first blush may seem identical. But, they are different penalties, for different actions. In the teeth of admitted fact that the petitioner has not furnished statistical data even till the date of registration of the complaint – the second one, it is undoubtedly guilty *albeit prima facie* for the action of non-furnishing of such statistical data.

13. Not for nothing the data is required to be furnished under the Act. The Act was promulgated in the year 1953 and Amended in the year 2008, to facilitate collection of statistics for the purpose of information from a limited segment of an industrial sector and

the data had to be used for framing policies, meeting challenges, arising out of liberalization, globalization and certain issues in a market driven economy in various sectors. It was, therefore, the collection of statistical data absolutely imperative for planning the economy and economic policies of the Country. Non-furnishing of data by a company, though may seem to be a trivial offence but in effect, snowballs into an indelible impact on the planning of the economic policies of a nation, as the development goals of a nation becomes stacks. Therefore, statistical data *inter alia*, becomes the life blood of economic policy making of a nation.

14. Further objections filed by the learned Deputy Solicitor General of India, Sri H. Shanthi Bhushan, assumes certain significance. It is the averment that the Ministry of Statistics and Programme Implementation attaches considerable importance on coverage and quality aspect of statistics released in the country.

15. India is a subscriber to the International Monetary Fund (IMF) and Special Data Dissemination Standards imposed by the IMF. The Government of India has been currently fulfilling the standards, for which the maintenance of an advance release

calendar for its data programme covered under the mandate of the IMF is absolutely imperative. The data gap like the one that is the issue in the case at hand will have a cascading effect on the nodal Ministry to facilitate its implementation even for SAARC Social Charter in India. It is in public domain that Indian statistical system is one of the best systems in the world. The country participates in all the international and regional organizations of the United National Economic and Social Commission for Asia and the Pacific on statistical compliances and international practices. It is, therefore, the necessity of statistical data to be given by every company, as a responsible business houses, who have their company on the soil of the nation. Any negligence or indolence on the part of any company will undoubtedly have a spiraling effect on the economic policies of the nation, which is the driving force of any nation *inter alia*. It, therefore, becomes imperative for every stake holder under the Act, to furnish its statistics annually, diligently as is required under the Act or to face the wrath of Section 15 of the Act.

16. In the teeth of admitted fact that the petitioner has not furnished statistical data as required under the mandate of the Act, the other mandate i.e., the penalty will follow as a consequence. It is for the petitioner to put up such defence before the concerned Court where the proceedings are in an advanced stage as the criminal case is of the year 2015, and the present petition is preferred on 23-05-2022, seven years after the commencement of proceedings. In the teeth of the mandate of the statute and its imperative need, I do not find any warrant to interfere with the impugned proceedings.

17. In the result, the petition lacking in merit, stands rejected. Since the issue is of the year 2015, I deem it appropriate to direct the concerned Court to conclude the proceedings as expeditiously as possible and at any rate within six months from the date of receipt of a copy of this order. It is needless to observe that parties to the *lis* shall co-operate for closure of proceedings.

**Sd/-
JUDGE**

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CT:MJ