



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

WRIT PETITION NO. 14973 OF 2023 (GM-RES)

BETWEEN:

1. PADPARA PATTI SYED BASHA AYSB
@ P. S. AYUB
AGED ABOUT 51 YEARS
S/O SYED BASHA
R/AT 1-3, MARIAMMA
APARTMETNS, FRAZER TOWN
BANGALORE - 560 005.
2. SAMEER SULATHANA @
SHAMMEM SULTANA
AGED ABOUT 51 YEARS
W/O. P. SAYUB
R/AT 1-3, MARIAMMA
APARTMENTS, FRAZER TOWN
BANGALORE - 560 005.

...PETITIONERS

(BY SRI MOHAMMED TAHIR, ADV.)

AND:

1. THE LABOUR DEPARTMENT
GOVERNMENT OF KARNATAKA
OFFICE AT LABOUR OFFICER
SHIMOGA SUB DIVISION, SHIMOGA
2ND FLOOR COMMERCIAL COMPLEX
SUDA COMPLEX, POLICE CHOWK
VINOBHANAGAR
SHIMOGA - 577 204.
2. THE LABOUR INSPECTOR
1ST CIRCLE, 100 FEET RD
ADARSH LAYOUT





VINOBHA NAGARA
SHIMOGA - 577201

...RESPONDENTS

(BY SRI R. RANGASWAMY, HCGP)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE COGNIZANCE ORDER DTD 25.01.2022 PRESENT AT ANNEX-C IN CCNO. 104/2022 ARISING OUT PCR NO. 16/2022 FILED BY THE R-2 FOR THE OFFENSES PUNISHABLE U/S 25 AND RULE 7, 9 AND 21 OF PAYMENT OF WAGES ACT 1936 AND SAME IS PENDING BEFORE THE COURT OF THE HON'BLE JMFC -II SHIMOGA WHEREIN THE PETITIONERS WERE ARRAIGNED AS ACCUSED NO.1 AND 2.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioners, who are accused nos.1 & 2 in C.C.No.104/2022 pending before the Court of JMFC-II, Shivamogga arising out of PCR No.16/2022 registered for the offence punishable under Section 25, Rules 7, 9 & 21 of the Minimum Wages Act, 1948, are before this Court in this writ petition filed under Articles 226 & 227 of the Constitution of India, 1950 read with Section 482 of Cr.P.C, with a prayer to quash the entire proceedings in C.C.No.104/2022.
2. Heard the learned counsel appearing for the parties.
3. Respondent No.2 - Labour Inspector has filed a private complaint before the Trial Court against the petitioners herein alleging that he had received complaint from the labourers of



the Company known as Attica Gold Pvt. Ltd., regarding non-payment of minimum wages. Though the show-cause notice was allegedly issued by the complainant to the accused persons, they had not responded to the same nor had they rectified their violations and produced the records. It is under these circumstances, he had filed a private complaint before the Trial Court. The Trial Court after taking cognizance of the offences alleged in the complaint had issued summons to accused nos.1 & 2 and case was registered in C.C.No.104/2022 against the petitioners for the aforesaid offences. Being aggrieved by the same, the petitioners are before this Court.

4. Learned Counsel appearing for the petitioners submits that the petitioners are no more Directors of the company. He submits that the Company is not arrayed as accused in the complaint. Therefore, complaint is not maintainable. Accordingly, he prays to allow the petition.

5. *Per contra*, learned High Court Government Pleader for respondent-State has opposed the prayer made in the petition.



6. Section 22(C) of the Minimum Wages Act, 1948 reads as under:

"Section 22C:Offences by companies.

(1) If the person committing any offence under this Act is 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 exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any 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 of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-



*(a) "company" means any body corporate and includes a firm or other association of individuals, and
(b) "director" in relation to a firm means a partner in the firm".*

7. From a bare reading of the aforesaid provision of the law, it is evident that, if the person committing any offence under the Minimum Wages Act, 1948 is a Company, the persons in-charge of the company as well as the Company shall be deemed to be guilty of the offence and they shall be liable to be proceeded against and punished. The petitioners herein are being proceeded in their capacity as Directors of the Company known as Attica Gold Pvt. Ltd., the allegations against them is they are vicariously liable on behalf of the Company. Therefore, in the absence of the Company being made as accused in the complaint, the complaint is not maintainable.

8. The Hon'ble Supreme Court in the case of **R.KALYANI v. JANAK C MEHTA & OTHERS - (2009) 1 SCC 516**, has observed that vicarious liability can be fastened only by reason of a provision of a statute and not otherwise and for the said purpose, a legal fiction has to be created. In the present case, the petitioners herein are sought to be prosecuted on the



premise that they are vicariously liable for the affairs of the Company. If that is so, the Company must be made as a party and legal fiction must be created against the Company and the accused, if they are responsible for the acts of Company. Similar view has been taken by the Hon'ble Supreme Court in the case of **ANEETA HADA V. GODFATHER TRAVELS AND TOURS PVT. LTD., - (2012) 5 SCC 661**. Under these circumstances, I am of the opinion that in the absence of the Company being made as a party, the petitioners cannot be prosecuted for the alleged offences. Accordingly, the following order:

9. Writ petition is ***allowed***. The entire proceedings in in C.C.No.104/2022 pending before the Court of JMFC-II, Shivamogga arising out of PCR No.16/2022 registered for the offences punishable under Section 25, Rules 7, 9 & 21 of the Minimum Wages Act, 1948, is hereby quashed.

**SD/-
JUDGE**

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