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Crl.O.P.No.20928 of 2023

In the High Court of Judicature at Madras

Reserved On : 31.1.2024	Delivered on : 02.2.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.20928 of 2023
& Crl.M.P.Nos.14356 & 14358 of 2023

1.Mr.Gopal Vttal, Bharti Airtel Ltd.,
rep.by its Authorized
Signatory, New Delhi-70.

2.Mr.Prajesh Kalathi, Regional
Business Head, Bharti
Airtel Ltd., Chennai-4.

3.Mr.Kanniyappan, Senior
Executive, Bharti Airtel Ltd.,
Chennai-4.

4.Mr.B.Madhavan, Regional
Human Resource Head,
Bharti Airtel Ltd., Chennai-4.

...Petitioners

Vs

Mr.Kamatci Shankar Arumugam

...Respondent

PETITION under Section 482 of the Criminal Procedure Code
praying to call for the records/complaint in C.C.No.4 of 2023 on the file



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of the Judicial Magistrate No.1, Udumalpet and quash the same.

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For Petitioners : Mr.Vijay Narayan, SC for
Mr.P.J.Rishikesh
Respondent : Appearing in person

ORDER

This is a petition filed by the petitioners seeking to quash the proceedings in C.C.No.4 of 2023 on the file of the Judicial Magistrate No.1, Udumalpet.

2. The facts leading to filing of this case are as follows :

(i) The respondent filed a private complaint against the petitioner company and its officers on the ground that they committed offences under Section 43A and 72A of the Information Technology Act, 2000 (for short, the IT Act) and Sections 52 and 199 of the Indian Penal Code (for short, the IPC).

(ii) The crux of the complaint is that the respondent was forced to vaccinate himself during the pandemic period. The respondent took a stand that he would not vaccinate, that the sensitive personal data with regard to his refusal to vaccinate himself was circulated and thereby it violated his right of privacy and that it was an unauthorized circulation of the personal data among the employees, which is an



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offence under Section 43A of the IT Act.

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(iii) The further grievance of the respondent is that there was a principal and agent relationship between the petitioner company and the respondent, that they were bound by a lawful contract, that the petitioner company and its officers violated the same by circulating the fact that the respondent did not vaccinate himself and that due to such insistence, wrongful loss was caused to the respondent wherein he lost his employment. Therefore, according to the respondent, an offence has been committed under Section 72A of the IT Act.

(iv) The respondent further submitted in the complaint that the petitioner company and its officers did not exhibit good faith as required under Section 52 of the IPC and that they made a false declaration/statement in their legal response as if the respondent was not compelled to undergo vaccination. The Court below took cognizance of the complaint by order dated 23.2.2023 and issued summons to the accused persons namely the petitioners. The proceedings in C.C.No.4 of 2023 on the file of the Court below is put to challenge in this quash petition.

3. Heard the learned Senior Counsel appearing on behalf of the



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petitioners and the respondent, who is appearing in person.

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4. During the Covid-19 pandemic, the petitioner company wanted its employees to vaccinate themselves informing that they had a tie up with some of the hospitals where free vaccination was done. While undertaking this exercise, the petitioner company was identifying the employees, who did not vaccinate themselves and had rather requested them to vaccinate to safeguard themselves from the virus attack. In the list that was prepared with regard to persons, who did not vaccinate themselves, the name of the respondent was also mentioned.

5. The respondent took a stand that he would not vaccinate and that he would not mark/inform his vaccination status also. The petitioner company was insisting that vaccination would be mandatory in order to comply with the Covid Safety Protocol. The respondent was protesting for the same.

6. The communication was going back and forth between the petitioner company and its employees. In the said process, the



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petitioner company was identifying those employees, who did not vaccinate themselves and in the list prepared with regard to that, the name of the respondent was also found.

7. The respondent became hyper sensitive about the fact that his name was found in the list of persons, who did not vaccinate. Therefore, he had sent a detailed e-mail communication dated 19.7.2021 to the effect that his name should not be circulated since it involved sensitive personal information and that his status as to vaccination must be kept secret. Ultimately, the respondent issued a notice dated 14.8.2021 to the Chief Human Resource Officer of the petitioner company complaining that he was being compelled and coerced to wear face mask, get tested for Corona and get vaccinated and that the same would be contrary to his basic human rights.

8. On receipt of the said notice dated 14.8.2021, the petitioner was informed by the Human Resources Department of the petitioner company that no one was forced or compelled to test for Covid-19 or to vaccinate themselves, that however, guidelines were issued by the Government of Tamil Nadu recommending for vaccination with two



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doses and that if the respondent did not want to vaccinate himself, he could continue to work through on-line mode wherever possible and if it involved physical presence at the office premises, he could apply for leave as per the allotted quota or on loss of pay.

9. Thereafter, the respondent absented himself and the same was treated as an unauthorized absence. A show cause notice was issued to the respondent and after receiving his reply, the termination notice dated 07.12.2021 was issued to the respondent. It is important to note that this termination notice has not been put to challenge by the respondent in a manner known to law. Rather, the respondent proceeded to file a private complaint against the petitioner company and its officers and the Court below had taken cognizance of the complaint for the offences under Sections 43A and 72A of the IT Act.

10. The manner, in which, the Court below had taken cognizance is extracted as hereunder :

"On perusal of complaint and records prima facie case made out. Hence taken on file. For complainant side evidence by 3.4.23."



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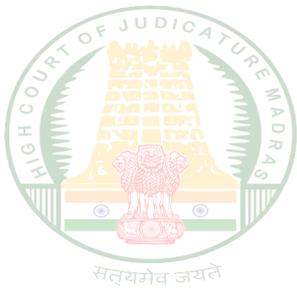


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11. It is to be noted that Section 43A of the IT Act is not categorized strictly as an offence under the IT Act. On carefully reading the provision, it is seen that it is categorized more in the nature of a tort and the consequence of commission of such tort only leads to payment of damages or compensation and no punishment has been prescribed under the IT Act. Therefore, strictly, it cannot be construed as an offence, which can be taken cognizance by a court of law.

12. In the considered view of this Court, even if the allegations made in the complaint are taken as such, this Court finds that no offence has been made out against the petitioner company and its officers. The present complaint is clearly attended with mala fides since the petitioner company had taken action against the respondent by terminating his services for his unauthorized absence. This has acted in the mind of the respondent and in order to spite his vengeance, the respondent came up with a frivolous complaint against the petitioner company and its officers.



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13. The first petitioner (A1) is clearly outside the territorial jurisdiction of the Court below. Therefore, the Court below ought to have conducted an inquiry as mandated under Section 202(1) of the Criminal Procedure Code. The order taking cognizance has been extracted supra and this Court finds that absolutely, there has been no application of mind.

14. Useful reference can be made to the judgment of the Apex Court in the case of **Vijay Dhanuka Vs. Najima Mumtaj [reported in 2014 (14) SCC 638]** wherein the relevant portions are extracted as hereunder :

"10. However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:

'202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192,



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may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under Sub-Section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under Sub-Section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.'

(emphasis supplied)

11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process 'in a case where the accused is residing at a place



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beyond the area in which he exercises his jurisdiction' and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23.6.2006. The aforesaid amendment, in the opinion of the Legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

'False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this Clause seeks to amend Sub-Section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.'

The use of the expression 'shall' prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word 'shall' is ordinarily mandatory but sometimes, taking into account the



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context or the intention, it can be held to be directory. The use of the word 'shall' in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the Legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression 'shall' and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

13. In view of the decision of this Court in the case of Udai Shankar Awasthi v. State of Uttar Pradesh, (2013) 2 SCC 435, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment: (SCC p.449, para 40)

'40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be



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made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases'.

(emphasis supplied)"

15. Before parting with the case, it is worthwhile to observe that the Corona virus virtually shut down the entire world from the end of March 2020. No one understood its impact and scores of people were dying due to infection. There was no medication to treat a person infected with the Corona virus. It was a medical miracle that the scientists were able to come up with a vaccine in such a short period of time. It was found that the vaccination substantially acted as a preventive measure to subside the effect of Corona virus. The entire world was in a state of confusion and interaction between human beings started happening only through screens. This was the situation when the petitioner company was requesting its employees to get vaccinated.

16. No one can be forced to vaccinate himself/herself since such a compulsion will result in infringement of bodily integrity and personal autonomy of an individual. This right was, in fact, recognized by the



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Apex Court in the case of **Jacob Puliyei Vs. Union of India**
[reported in 2022 SCC OnLine SC 533].

A person cannot be compelled to vaccinate himself or herself. However, an organization must necessarily take into consideration the welfare of majority of its employees and therefore, a person, who does not vaccinate and follow the Covid-19 Safety Protocol, cannot be allowed to have access to others in a public sphere, as, between the rights of an individual and a larger group of persons, it is the right of larger group of persons, which will take predominance. Hence, the petitioner company informed the respondent that he could not physically attend work in the office without vaccinating himself and following the Covid-19 Safety Protocol. This step taken by the petitioner company cannot be considered to be coercion or compulsion inflicted on the respondent. In fact, this was the norm that was followed by every institution including courts during those difficult times.

17. The follow up made by the petitioner company by getting a list of persons, who have not vaccinated, will not tantamount to circulating the sensitive personal data. The petitioner company was following up with its employees to ensure that they got vaccinated and



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took preventive measures to safeguard themselves from the Corona virus attack. Such an effort within the petitioner company or any other organization cannot and will not become an offence, per se, under Section 43A of the IT Act. That apart, the termination of the respondent for his unauthorized absence, cannot indirectly become an offence under Section 72A of the IT Act.

18. This Court finds that the private complaint filed by the respondent against the petitioner company and its officers is a clear abuse of process of court, which requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code.

19. Accordingly, the above criminal original petition is allowed and the entire proceedings in C.C.No.4 of 2023 on the file of the Judicial Magistrate No.1, Udumalpet is hereby quashed. Consequently, the connected Crl.M.Ps. are closed.

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N.ANAND VENKATESH,J

RS

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To
1.The Judicial Magistrate No.1,
Udumalpet.

2.The Public Prosecutor,
High Court, Madras.

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