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appeal before this Court is briefly stated below:-

The prosecution case in brief is that the complainant Subroto Chakraborty the Assistant Labour commissioner lodged a complaint against the accused/appellant Prestressed Udyog represented by Sri R. P. Sarma President who is Railway Contractor executing contract work of construction and manufacturing of Priestesses Concrete Sleepers for BG New Bongaigaon under the Principal Employer of Deputy Chief Engineer CS, NF Rly. It is alleged that on 21.8.10 the complainant inspected the work premises of the accused/appellant and found that the accused/appellant failed to display notices relating to rate of wages, hours of work, wage period, date of payment, name and addresses of the inspectors and date of payment of the unpaid wages in English and Hindi at the work site, failed to show wages period and place and time of disbursement of wages, failed to display Abstract of the Act & Rules, failed to issue employment card to the employees, failed to maintain register of the persons employed at the work place, failed to maintain register of deduction of damage or loss, register of fines and advances, failed to maintain register of overtime, failed to issue wage slips and there were 35 employees against the 20 employees as specified in the licence. Hence, the case was filed against the accused/appellant for prosecution u/s 23/24 of Contract Labour (Regulation and Abolition) Act. 1970.

3. On receipt of the complaint, the learned Chief Judicial Magistrate, Bongaigaon registered the case being Bongaigaon C.R case No. 251/10 against the accused Prestressed Udyog and transferred the same to the learned Additional Chief Judicial Magistrate, Bongaigaon for disposal. Accordingly, on appearance of the accused being represented by

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its representative, after furnishing necessary copies particulars of offence u/s 23/24 to the Contract Labour (Regulation and Abolition) Act, 1970 on being read over and explained to the accused, he pleaded not guilty claimed for trial.

4. In course of trial, the prosecution side examined as many as 2 (two) witnesses i.e. the complainant and the Manager of the Firm. In statement u/s 313 Cr. P.C. defence denied all the allegations and examined none.

5. After hearing the argument from both the parties, the learned Additional Chief Judicial Magistrate, Bongaigaon vide Judgment dtd. 07.05.13 convicted the accused/appellant and sentenced to pay of Rs.500/- U/S 23 and Rs.500/- U/S 24 of the C.L (R & A) Act. 1970 in default of simple imprisonment for one month under each sections of the law.

6. Being highly aggrieved and dissatisfied with the above judgment and order dtd. 07.05.13 passed by the learned Additional Chief Judicial Magistrate, Bongaigaon in C.R No. 251/10 U/S 23 and 24 of the Contract Labour (Regulation & Abolition) Act. 1970, the present appellant had preferred this appeal on the grounds amongst others that the Id/trial court failed to carefully revolves the entire case of the prosecution and also failed to closely and dispassionately scrutinize the evidence available on record, that the Id/court below failed to appreciate the cross examination of the witnesses and committed total failure of justice in convicting the accused/appellant U/S 23/24 C.L (R & A) Act. 1970 and as such, it is liable to be set aside.

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7. I have heard the learned counsel appearing for the accused/ appellant as well as for the respondents. I have also gone through the memo of appeal, the entire trial Court case record and the impugned judgment and order.

8. **Now the point for decision before me is:**

Whether the impugned judgment and order of conviction recorded by the learned Additional Chief Judicial Magistrate, Bongaigaon in C.R No. 251/10 suffers from any illegality of infirmity?

DISCUSSION, DECISION AND REASONS THEREOF:

9. During hearing of the appeal, the learned counsel Mr. H. Das made an emphatic argument contending that the prosecution has failed to prove the allegation and prays for allowing the appeal and set aside the impugned judgment and order dtd. 07.05.13 passed by the Ld Addl. CJM, Bongaigaon.

10. Per contra forcefully resisting the submission made by the Ld/Counsel for the appellant, the Id/PP for the State submits that the learned court below after full application of judicial mind and after carefully considering the evidence and materials found that the prosecution proved the alleged offence Sec. 23 and 24 of the Contract Labour (Regulation & Abolition) Act against the accused/appellant beyond all reasonable doubt and therefore, has rightly passed the impugned judgment and order of conviction in conformity with law and the same need not be interfered by this court.

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11. I have given my anxious and thoughtful consideration as regards to the rival contentions raised by the learned counsel for both sides. I have also perused the impugned judgment and order passed by the Ld. Addl. Chief Judicial Magistrate, Bongaigaon in C.R No. 251/10 and the materials available in the record. For appreciation the rival contentions, let us travel through the evidence and materials so far the prosecution brought on record to prove the charge against the accused/appellant.

12. PW1 the complainant Subroto Chakrabarty the Assistant Labour Commissioner stated that on 21.08.10 at about 2:30 P.M he inspected the Pres-tressed Udyog and finding one Jitendra Singh working there asked him to show the official records maintained under contract labour. He stated that when he inspected the work premises, he found about 35 workers against labour limit of 20 workers according to licence. He further stated that as per requirement the accused/appellant was to display notice in the notice board regarding rate of wages, working hours, wage period, date of payment, name and address of the inspector having jurisdiction over the premises and the place and time of the disbursement of wage on the notice board in both Hindi and English language but the accused did not display. He also stated that the accused had also not displayed the abstract of the Act and rules in the form approved by the Chief Labour Commissioner in Hindi and English at the work spot and did not issue employment cards to the workers and also did not maintain any register of the persons employed and the register of deduction of damage or loss, register over time, wage slip to the workers. The accused was required to maintain all those registers which is

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mandatory as per the Act but the accused did not maintain the same. During cross he stated that he had no knowledge if the accused firm was not opening for a period of 5 years. He admitted that he did not furnish any document to prove that 35 labourers were working against limit of 20 numbers.

13. PW2 Jitendra Singh the manager of the Prestressed Udyog stated that on 21.08.10 while he was working as a manager of the Prestressed Udyog, then PW1 Subroto Chakrabarty came to the office and introducing himself as the Assistant Labour Commission stated that he came to inspect the Prestressed Udyog. He stated that at the time of inspection he had not shown any displays to PW1 which were mandatory and he also could not show the number of laborers. During cross he stated that their factory remained close for the last one year an during those period only for the purpose of cleaning machineries, they sometimes kept it open. He further stated that on 21.08.10 the factory was closed.

14. In this case the manager of the accused Prestressed Udyog was examined by the prosecution as PW2 who clearly stated that the factory was closed for the last one year and they did not get any contract in the year of 2010 for which it was kept closed and only for purpose of cleaning the machines, the premises was sometimes opened. He also clarified that 21.08.10 i.e. the day of inspection, the factory was closed. PW1 also admitted that he has no knowledge whether for last five years the firm had not been operating other than maintenance.

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15. PW1 the complainant also admitted during cross that he had not verified the necessary licence issued by different authority, to the factory. Though PW1 alleged that as per requirement, the accused's firm was to display notice in the notice board both in English and Hindi showing rate of wage, hours of work, date of payment, name and address of the inspector which the accused did not display but when as per evidence of PW2 the witness of the complainant itself, it was closed for one year and no work was allotted for five years, it cannot be said that the firm violated the provisions of contract labour (Regulation & Abolition) Act. 1970. PW1 also cannot say when showcase notice was issued. Moreover PW 1 admitted that in spite of receiving reply from the accused, no correspondence was made by them with the accused. That apart though PW1 alleged that on the day of inspection he found about 35 people working against labour limit of 20 people but during cross admitted that he had not furnished any document regarding working of 35 labourers. No document is also proved to show that the accused is a contractor with N.F railway and that he was involved with constructional work. Moreover, the complainant went alone for inspection. Complainant also admitted that against the alleged violation, he had not furnished any document to substantiate the same.

16. On a totality of the evidence on record as recited hereinabove, I am of the unhesitant opinion that the testimony of the PWs in isolation are not safe to be acted upon to base the conviction of the accused/appellant.

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17. I also perused closely the impugned judgment and order and in the background of the analysis of the evidence made, I do not find in agreement with the conclusion recorded by the Ld/Trial Court.

18. In the wake of the above, I am constrained to held that prosecution had failed to prove the charge against the accused. The impugned judgment and order as a consequence is interfered with. The appeal is allowed. Appellant/accused is accordingly acquitted and be set at liberty forthwith. Sent back the LCR to the Ld. Court below along with a copy of this judgment.

19. Given under my hand and seal of the court on this the 16th day of **December, 2017** at Bongaigaon.

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(I. Barman)
Sessions Judge,
Bongaigaon.

Dictated and Corrected by me,

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(I. Barman)
Sessions Judge,
Bongaigaon.
