

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CrI. M. C. No.1845/2008**

Reserved on : 22.07.2009
Date of Decision : 01.09.2009

Sh. T. V. Ramanathan

.....Petitioner

Through: Mr. D.C. Mathur, Sr. Adv.
with Mr. I.Ghosh, Adv.

Versus

Government of NCT of Delhi

..... Respondent

Through: Mr. Pawan Bahl, APP

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. The petitioner by virtue of the present petition has prayed for quashing of complaint dated 4th January, 2008 and the summoning order passed by the learned Metropolitan Magistrate on 10th January, 2008.
2. Briefly stated facts of the case are that on 2nd November, 2007 an inspection of the premises bearing No. B-24 Okhla, Industrial Area, Phase-I, New Delhi was conducted by the Inspector of Factories and it is alleged that there were 30 persons employed who were servicing and repairing the batteries. Sixteen workers were found to be working at the relevant time. Accordingly, a panchnama was prepared on a factory inspection form and signatures

of one Alok Bose representative of the management were obtained. On the basis of the aforesaid inspection, a show cause notice dated 22nd November, 2007 was issued to Sh. T. V. Ramanathan, M/s Exide Industries Ltd. who was alleged to be running a servicing and repairing centre of the Exide Batteries. Interestingly, the inspection report shows the name of the occupier as Sh. T. V. Ramanathan although it is not explained as to why his signatures were not obtained.

3. The M/s Exide Industries Ltd. gave a reply to the show cause notice on 18th December, 2007 and took the plea that no manufacturing of battery was taking place at the premises in question in as much as no new article or goods were brought into existence having distinct name, character or use resulting from particular process. It was stated that a mere servicing and repairing of batteries cannot amount to manufacturing process as defined in Section 2 (k) of the Factories Act, 1948, and therefore, no violation of provisions of the Factory Act, 1948 or the rules framed thereunder was allegedly committed by them.
4. The petitioner after receipt of the reply chose to file the present complaint against Sh. T. V. Ramanathan, Director in the capacity of occupier of M/s Exide Industries Ltd. under rule 3, 3(A), 4, 5, 11(A), 63, 102 of the Delhi Factories Rule, 1950 read with Sections 6, 7, 9(b) and 45 of

the Factories Act, 1948. The complaint is filed by Sh. P.K. Goswami, Inspector of Factories, Delhi during the discharge of his duties and it is stated that since he is busy public servant, therefore, his personal appearance may be dispensed with.

5. On the basis of the aforesaid complaint, the learned Magistrate issued an order dated 10th January, 2008 wherein it has been observed that the complaint has been filed by a public servant during the discharge of his official duties and written examination of the complainant under Section 200 Cr.P.C. is dispensed with. The petitioner feeling aggrieved by the aforesaid summoning order filed the present petition praying for quashing of the complaint and the summoning order.
6. I have heard the learned senior counsel Mr. D.C. Mathur for the petitioner and Mr. Pawan Bahl, APP for the State.
7. The first contention of the learned senior counsel for the petitioner is that a perusal of the complaint would show that the first four paragraphs and the last three paragraphs are in printed proforma, but only the columns have been filled with hand and the name of the petitioner has been shown as a Director and the occupier of the premises in question. Similarly, the name of the Exide Industries Ltd. has been mentioned though the spelling is wrong. But no evidence whatsoever has been placed on record to show

wherefrom the respondent learnt about the fact that Sh. T. V. Ramanathan was occupier of the premises in question. It is stated that Sh. T. V. Ramanathan was neither present on the spot nor his signatures were obtained to show that he was actually the occupier of the lessee of the premises, therefore, the complaint against Sh. T. V. Ramanathan was without any basis whatsoever. It was contended by the learned senior counsel that even though the complaint was filed by a public servant in the official discharge of his duties but it must reflect from the complaint as well as from the documents annexed that how the averments made by him in the complaint were sustainable. Since this has not been done, therefore, there was absolutely no reason on the part of the learned Court to have issued summons against the petitioner Sh. T. V. Ramanathan.

8. The second contention of the learned senior counsel for the petitioner is to the effect that the complaint is admittedly on typed proforma in which only two columns have been written with hand. Further, it has not been mentioned in the complaint that this is a complaint filed by the Inspector of Factories in the official discharge of his duties, and therefore, by virtue of Section 200 proviso of Code of Criminal Procedure his examination may be dispensed with. But instead it has been stated in the complaint that it is filed by the Inspector of Factories, namely, the

respondent in the official discharge of his duties and since he is a busy public servant, therefore, the complainant may be exempted from personal appearance. That means the learned Metropolitan Magistrate ought not to have written in the impugned order that this is a complaint filed by the petitioner in the official discharge of his duties, and therefore, the examination of the complainant under Section 200 Cr. P.C. is dispensed with, although there was no such prayer from the side of the Inspector of Factories. Consequently, both the complaint as well as the impugned order shows the lack of application of mind on the part of the Inspector of Factories as well as the Court in issuing the order. Various judgments of this Court have been cited in order to substantiate his contention that there must be an application of mind both by the complainant as well as by the learned Metropolitan Magistrate while passing an order of summoning reliance in this regard can be placed on:

Ravinder Goel & Anr. Vs. State & Anr. 2007 (1) JCC 465

D.A. Mehta & Ors. Vs. The Regional Director, ESI, Corporation 1991 (3) Crimes 72

Flex Foods Ltd. Vs. Registrar of Companies (Delhi & Haryana) 1996 (37) DRJ 60

Charnjeet Vs. DDA & Anr. 94 (2001) DLT 334

9. The third contention raised by the learned senior counsel for the petitioner is to the effect that the inspection report

dated 2nd November, 2007 itself shows that what was being carried out by the petitioner on the premises in question was only service and repairing of batteries and the said factum of service and repair of batteries being carried out by the petitioner could not be said to be tantamounting to manufacturing process under Section 2 (k) of the Factories Act, 1948. The learned senior counsel for the petitioner further contended that the manufacturing process means a new article or a good being brought into existence or a new or a different article having distinct name, character or use which may result from a particular process. The learned senior counsel for the petitioner in this regard referred to various judgments which are as under:

Employee State Corporation Vs. Ram Chander 1988 (1) SCR 835

Dunlop India Ltd. Vs. UOI 1994 (4) SCC 686

Dy. Commissioner of Sales Tax Vs. M/s Coco Fibres 1990 (3) Suppl. SCR 419

UOI Vs. Delhi Cloth & General Mills 1963 (1) (Supp.) SCR 586

Tega India Ltd. Vs. CCE 2004 (2) SCC 727

In Re: A.M. Chinniah Manger 786 Sangu Soap Works, AIR 1957 Mad 755

10. The learned APP has refuted the contention of the learned senior counsel for the petitioner, however, no case has been cited.
11. I have carefully considered the respective submissions. So far as the question of Sh. T. V. Ramanathan being

impleaded as Director/occupier of the premises in question, no doubt, an averment has been made in the complaint that he is a Director/occupier of the premises in question but there is not even a single shred of evidence which has been placed on record to show as to how the Inspector of Factories came to form an opinion that it was Sh. T. V. Ramanathan who was a Director of M/s Exide Industries Ltd. and the occupier of the premises in question. The occupier of premises in question is admittedly exide industry and Sh. T. V. Ramanathan is not the only Director of the said company. Only if there was a lease deed in respect of the premises in question executed by the land lord in his favour and a copy thereof seized by the Inspector of Factories it could be said that he was the occupier of the premises or alternatively if he was present at the spot at the time of inspection, some inference could have been drawn that he was the in-charge of the service and repairing center, and therefore, there was a reason to assume that he was the occupier of the premises in question. Merely because during the course of inspection the factory Inspector got to know that Sh. T. V. Ramanathan was the occupier of the premises thereby enroped him in criminal proceedings is not sufficient enough to summon him for a criminal offence.

12. Therefore, in my considered view there is absolutely no reason or justification or shred of evidence against Sh. T. V. Ramanathan as Director and the occupier of the premises for which summons could have been issued by the learned Magistrate to the petitioner. This clearly shows lack of application of mind by the Court. On this score, reliance can be placed on ***D.A.Mehta & Ors. Vs. The Regional Director ESI Corporation*** 1991 (3) Crimes 72, ***Flex Foods Ltd. Vs. Registrar of Companies (Delhi & Haryana)*** 1996 (37) DRJ 60, ***Charanjeet Vs. DDA & Anr.*** 94(2001) DLT 334 and ***Ravinder Goel & Anr. Vs. State & Anr.*** 2007 (1) JCC 465.
13. So far as the complaint is concerned the same is substantially on a typed proforma but some of the columns have been filled with the hand. So much so even the printed clause 6 where the complaint is stated to have been made by the Inspector of Factories in the discharge of his official duties it has not been stated that this is a complaint which is being made by the Inspector of Factories in the official discharge of his duties, and therefore, the examination of the complainant be or is dispensed with in terms of Section 200 proviso Cr. P.C. What has been claimed in the said clause is that the complainant is in the discharge of his official duties and since complainant/respondent is busy public servant, therefore

he may be exempted from personal appearance. Under these circumstances it becomes a stereo typed complaint which is prepared without any application of mind as the learned Magistrate could have dispensed with the recording of the statement of the complainant only if such a benefit was claimed. There was no occasion on the part of the learned Magistrate to have dispensed with the examination of the complainant or such other witnesses as might have been present at the time of the presentation of the complaint. Thus, both order of summoning as well as the complaint itself are suffering from non-application of mind. This Court has repeatedly in various judgments as have been cited above come down heavily on the complaints or the summoning order being passed without any application of mind in a printed proforma.

14. For this reason not only the summoning order dated 10th January, 2008 but even the complaint suffers from the vice of arbitrariness and non-application of mind, and therefore, both the order of summoning and the complaint itself deserves to be quashed.
15. So far as the third contention of the learned senior counsel for the petitioner is concerned that the service and repairing of the batteries did not tantamount to manufacturing process, I do not feel that it is necessary to go into such a question as the complaint itself has been

directed to be quashed for the reason that it is passed without any application of mind and along with the summoning order, and therefore, it is not necessary for this particular Court to dwell on the point that the service and repairing center does not fall within the definition of 'manufacturing process'.

16. For the reasons mentioned above, I am of the considered view that both the complaint as well as the summoning order dated 10th January, 2008 deserves to be set aside/quashed. With these directions, the petition stands disposed of.

V.K. SHALI, J.

September 1st, 2009
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