

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

Crl.Rev.Pet.No. 957 of 2015

(AGAINST THE ORDER IN C.M.P.4345/2014 IN CC.767/2013 OF CJM COURT,
THIRUVANANTHAPURAM)

REVISION PETITIONER/PETITIONER/ACCUSED:

HARIKUMAR
SENIOR DIVISIONAL RETAIL SALES MANAGER
M/S.INDIAN OIL CORPORATION LTD., EANCHAKKAL BYPASS
THIRUVANANTHAPURAM.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENTS/COUNTER PETITIONER/COMPLAINANT & STATE:

1. INSPECTOR OF FACTORIES
AND BOILERS, GRADE I, PERURKADA,
THIRUVANANTHAPURAM -695 001.
2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM -682 031.

BY PUBLIC PROSECUTOR, SHRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.957 of 2015

Dated this the 1st day of September 2015

ORDER

The revision petitioner is the accused in C.C. No.767 of 2013 on the files of the Court of Chief Judicial Magistrate, Thiruvananthapuram. The revision petitioner filed C.M.P. No.4345 of 2014 before the court below praying for a discharge. The said petition was dismissed by the court below. Aggrieved by the said order, the

revision petitioner has come up with this revision petition.

2. The prosecution allegation is that on 29.06.2013, the complainant inspected the Indian Oil Corporation Petrol Pump, By-Pass road, Thiruvananthampuram and at that time, it was noticed that there was violation of certain provisions of the Factories Act. It is alleged that the above said establishment is an unregistered factory engaged in the business of storing, pumping and selling of petrol and diesel. It is further alleged that ten employees were working in the said premises and the functioning of the said premises was with the aid of electricity having a power of 16.05 K.W. On the said allegations, show cause notice was issued to the revision petitioner and thereafter, a complainant was filed before the court below by the first

respondent herein alleging offences under Rules 3 and 5 of the Kerala Factories Rules, 1957 read with Section 112 of the Factories Act punishable under Section 92 of the Factories Act, 1948.

3. Heard the learned senior counsel for the revision petitioner, Sri.P.Vijaya Bhanu and the learned Public Prosecutor Sri.Justin Jacob.

4. The main argument advanced by the learned senior counsel for the revision petitioner is that the revision petitioner is not the occupier of the establishment and hence the prosecution against the revision petitioner is bad in law.

5. The occupier of a factory is defined in Section 2 (n) of the Factories Act, which is extracted hereunder:

“(n) “occupier” of a factory means the person who has ultimate control over the affairs of the factory

[Provided that-

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier]

Provided further that.....”

It is clear from proviso to sub section 2(n) that provision was made for deciding as to who should be deemed to be

the occupier of the factory in case it belongs to the Central Government or State Government or any Local authority. The said provision is a separate provision made in the case of a factory belonging to the Central Government or State Government or any Local authority.

6. The Apex Court in **Indian Oil Corporation Ltd. v. Chief Inspector of Factories and others** (AIR 1998 SC 2456) held in paragraph 16 thus:

“Therefore, the legislature appears to have provided that in a case of a factory owned or controlled by the Central Government, the State Government or the local authority the person or persons appointed to manage the affairs of the factory by the Central Government, State Government, or the local authority as the case may be, shall be deemed to be the occupier. Therefore, if

it is a case of a factory in fact and in reality owned or controlled by the Central Government or the State Government or any local authority then in case of such a factory the person or persons appointed to manage the affairs of the factory shall have to be deemed to be the occupier, even though for better management of such a factory or factories a corporate form is adopted by the Government.”

7. The Apex Court in *Indian Oil Corporation Ltd. v. Chief Inspector of Factories and others* (supra) further held that when the factories run by Indian Oil corporation Ltd., are factories owned and controlled by the Central Government, they would fall within the purview of Clause (iii) of first proviso to Section 2(n) of the Factories Act. It is clear from a reading of Clause (iii) of Section 2(n) that in

the case of a factory owned or controlled by the Central Government or State Government or any Local Authority, a person or persons appointed to manage the affairs shall be deemed to be the occupier.

8. As per the complaint, the revision petitioner is the Senior Divisional Manager of Indian Oil Corporation Ltd. No material has been produced before the Court to show that the revision petitioner was appointed by the Central Government to manage the affairs of the establishment in this case. It has been submitted by the learned senior counsel for the revision petitioner that ordinarily a Senior Divisional Manager will be having supervisory control over the entire division and hence, it cannot be accepted that he is appointed by the Central Government to manage the

affairs of a single outlet of the establishment. Admittedly, the revision petitioner is the Senior Divisional Manger. Therefore, it cannot be normally expected that such a Senior Divisional Manger would be appointed to manage the affairs of a petrol pump of the establishment. I may also notice that in document No.2 produced along with the complaint, the name of Smt.Ramla Beevi was initially written as the name of the Manager. Subsequently, it was struck off and that name was replaced by the name of the revision petitioner.

9. In this case, the primary question to be decided is as to whether the revision petitioner was appointed to manage the affairs of the establishment or not. No document has been produced by the first respondent to

show that the revision petitioner was appointed as the occupier as provided under Clause (iii) of Section 2(n) of the Factories Act by the Central Government. If the revision petitioner is not the occupier of the establishment, it is not proper and correct to direct the revision petitioner to face the trial. Having gone through the relevant inputs, I am of the view that there must be material to show that the revision petitioner was the occupier of the establishment before directing the revision petitioner to face the trial. Since no such material is produced before the Court, I am of the view that it will not be proper and correct to direct the revision petitioner to face the trial, particularly when the revision petitioner has a specific contention that Smt.Ramla Beevi mentioned above and not the revision

petitioner was the occupier of the premises in question. It is true that the notice issued by the complainant in the name and address of the revision petitioner was received by the revision petitioner. It is only natural that if a letter is addressed to his name and address, that would be collected by the revision petitioner. The mere fact that the notice was collected by the revision petitioner when sent to his name and address, it cannot be said that the revision petitioner is the occupier of the premises for that reason alone. Positive evidence could be made available by the prosecution to show that the revision petitioner was the occupier of the premises, if he is indeed the occupier. However, no such document is produced before the Court by the first respondent. In the said circumstances, I am of

the view that it is unjust to direct the petitioner to face the prosecution.

10. It has been argued by the learned counsel for the respondents that the Apex Court in **Adalat Prasad v. Rooplal Jindal** [2004(7) SCC 338] held that the Magistrate has no power for discharging the accused after issuing process to the accused in a summons case and in the said circumstances, the court below was correct in dismissing the application filed by the revision petitioner for discharge. In **Adalat Prasad** (supra), the Apex Court held that the only remedy available to an aggrieved accused to challenge the order in an interlocutory stage is the extraordinary remedy under Section 482 Cr.P.C. and not by way of an application to recall the summons or to seek

discharge, which is not contemplated in the trial of a summons case.

11. The Apex Court in **Raj Kapoor & others v. State (Delhi Administration) & others** [1980 (SC) 258] held that the inherent power under Section 482 Cr.P.C. does not stand repelled when the revisional power under Section 397 Cr.P.C. overlaps. In **Madhu Limaye v. State of Maharashtra** [1978 (SC) 47], the Apex Court held that the label of the petition is immaterial and in a petition filed under Section 397 and 401 Cr.P.C., the inherent jurisdiction of the High Court under Section 482 Cr.P.C. could be invoked. This court in **Abdul Rahiman v. State of Kerala** [2012(4) KLT SN 26 (Case No.26)], held that the High Court is not precluded from treating a petition filed under

Section 397 as a petition under Section 482 Cr.P.C. and to grant necessary relief, if it is found necessary for securing the ends of justice. Considering the facts and circumstances of the case, including the fact that no purpose will be served by directing the petitioner to face the trial, as the primary document to show that the revision petitioner was appointed to manage the affairs of the petrol pump by the Central Government is not produced, it may not be proper to direct the revision petitioner to face the trial. Consequently, the proceedings against the revision petitioner are liable to be quashed to secure the ends of justice. Accordingly, I set aside the order impugned and quash the proceedings against the revision petitioner in C.C. No.767 of 2013 on the files of the Chief Judicial

Magistrate Court, Thiruvnanthapuram invoking the inherent power vested with this court under Section 482 of Cr.P.C.

In the result, this revision petition stands allowed as above.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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/ True copy /

PA to Judge