

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1121 of 2015
and
M.P.No.1 of 2015

Springfeel Polyurethane Foams Pvt.Ltd.,
rep.by its Occupier
Shri.Sameer Malhotra .. Petitioner

Versus

Deputy Director
Industrial Safety and Health-II
Kancheepuram @ Chennai
A-28, Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai 600 032. .. Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. to set aside the order of taking cognizance and issue of the summons in C.C.No.166 of 2015 by the learned Chief Judicial Magistrate, Chengalpattu for the offences under the Factories Act 1948 and Factories Rules, 1950.

For Petitioner : Mr.K.Sridhar

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

सत्यमेव जयते
ORDER

With the consent of both the parties, the main Criminal Revision case is taken up for disposal at the admission stage itself.

2. Mr.V.Arul, learned Government Advocate (Criminal side) takes notice on behalf of the respondent.

3. The petitioner has filed the above Criminal Revision Case as against the summons issued by the Court below in C.C.No.166 of 2015 by the learned Chief Judicial Magistrate, Chengalpattu for the offences under the Factories Act 1948 and Factories Rules, 1950.

4. The case of the petitioner is that the petitioner's company was incorporated under the Companies Act during the year 1997 and after obtaining all necessary statutory approvals, sanctions and permits from the various Departments, they commenced production of flexible polyurethane Foams in the year 1999 and for the past 16 years there has not been any serious violation observed by the Inspector of Factories. While that being so, the petitioner's factory was inspected by the respondent on 17.05.2014 and to their shock and surprise he issued show cause notice dated 19.05.2014 setting out 14 contraventions under the Factories Act and the rules framed thereunder and complaints were filed against the petitioner on 02.09.2014 under Section 105(1) of the Factories Act and cognizance has been taken and it was numbered as C.C.No.166 of 2015 and summons were issued to the petitioner for certain violation of Section 6(1) Rule 6(1)(2), Section 6(1) Rule 3(5) (a) and Section 2cb Schedule I item xxix Section 7A, 112 r/w 41 (A) rule 61 Q3 r/w 92 punishable under Factories Act. It is the further case of the petitioner that as against the summons received, the petitioner has filed discharge petition and the same is pending for disposal. Since the very summons issued is barred by law, the petitioner has preferred this revision.

5. The main ground of attack made by the petitioner in this revision is that the under Section 106 of the Factories Act, 1948, if any offence has been committed or complaint has been preferred the same has to be taken cognizance only, if the complaint is preferred within three months from the date on which the alleged commission of the offence came to the knowledge of the Inspector. In the present case, the petitioner's factory was inspected on 17.05.2014, show cause notice was issued on 19.05.2014, for which reply was given by the petitioner on 30.06.2014; further the complaint was filed by the respondent before the Chief Judicial Magistrate, Chengalpattu on 02.09.2014 and the same was again represented on 21.04.2015. Accordingly, the learned counsel would submit that the learned Magistrate ought not to have taken cognizance of the very complaint as it is a time barred one. Hence, he would pray for setting aside the same and to quash the very summons issued.

6. The only question of law to be decided in this revision is that whether the summons issued by the Court below beyond three months statutory period as contemplated under Section 106 of the Factories Act, 1948 is correct in law in the facts and circumstances of the case?

7. In the latest decision rendered by the Hon'ble Supreme Court in the case of J.J.Irani and another vs. State of Jharkhand in Criminal Appeal Nos.1168-1670 of 2014 dated 08.08.2014, the Hon'ble Supreme Court has held the very same question and held as follows:

"13. The High Court accepted that the starting point for limitation was the date of knowledge of the commission of offence but took the view that in the present case the date of accident and the date of knowledge of the commission of the offence are different. The High Court relied on the decision of this Court in P.D.Jambekar v. State of Gujarat (1973) 3 SCC 524, in which this Court observed as follows:

"As Section 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, we find it difficult to read the section so as to make the date on which the Inspector would or ought to have acquired knowledge of the commission of the offence had he been diligent, the starting point of limitation, especially where, as here the statute does not provide for an inquiry into the accident much less the period with which the inquiry has to be made. It is only in the jurisprudence of Humpty Dumpty that we can equate the "date on which the alleged offence came to the knowledge of an Inspector" with the date on which the alleged offence ought to have come to his knowledge. We think that the High Court was right in its conclusion (para 8)."

14. The High Court took the view that it cannot be said that the complainant came to know of the commission of the offence in the preliminary inquiry

conducted on 5.3.1989 by the Chief Inspector of Factories in his presence by distinguishing the difference between "knowledge of an accident" and "knowledge of commission of the offence". The High Court observed that the complainant could have known of the breach only when the cause of accident, which was inquired into, was reported by the Chief Inspector of Factories in his report, which was received by the complainant on 23.04.1990; and it was only from the inquiry report that it could be gathered that the accident of fire took place because of breach of provisions of law.

15. We have heard the matter and considered the issue at length and we find ourselves unable to uphold the reasoning of the High Court. Jambekar's case (supra) is of no assistance in deciding the present case. In that case this Court accepted that from a reading of the report of the incident it was difficult for anyone to come to the conclusion that an offence under Section 21(1)(iv)(c) has been committed. The Inspector's statement that the report did not convey to him any knowledge of the 'commission of the offence' when he received the report. The case before us is entirely different. Here the Inspector was himself part of the team, which conducted the preliminary inquiry between 5th and 6th March, 1989. As observed earlier, the inquiry is a detailed investigation going into all aspects of the occurrence. In these circumstances it is not possible to hold that the Inspector of Factories, who undertook a detailed inquiry into the accident along with the Chief Inspector of Factories, remained ignorant that the offences in question have been allegedly committed. It is proper to assume that an officer, conducting an investigation, comes to know what has happened, that being the only purpose of the investigation.

16. We find that it has not been disputed at any stage that the complainant was not associated with and did not participate in the preliminary investigation from 5th to 6th March 1989 along with the Chief Inspector of Factories. This is obvious from the letter/report of preliminary investigation dated 08.03.1989. The Inspector must be taken as having

acquired knowledge of the alleged commission of the offence soon before or at least on 08.03.1989, when the report of preliminary investigation was sent to the Commissioner of Labour, Bihar. In fact, a perusal of allegations of the offence against the appellants, makes it clear that an inquiry or investigation at the site of the accident was not necessary in order to gain knowledge of the alleged breach. For instance, the failure to submit "Plans of Pandals and Structures" as required under Section 6(1)(aa) of the Act read with Rule 8 of the Bihar Factory Rules, 1950; not drawing up an "on-sight" Emergency Plan and Disaster Control for the Pandals and Structures as required under Section 41B(4) of the Factories (Amendment) Act, 1987 are alleged breaches, which could have been ascertained even from the office record of the Inspector. The third breach is not taking precautions in case of fire as envisaged under Section 38 of the Factories Act, 1948 read with rule 62 of the Bihar Factories Rules, 1950 or providing a safe means of escape in the event of fire for all persons, and providing necessary equipment and facilities for extinguishing fire, can be easily and must have been ascertained at the first inspection of the site. We are clearly of the view that it was not necessary for the Inspector to have waited to receive the report on 23.04.1990 from the Government under cover of the letter dated 21.04.1990 directing him to file a complaint for the prosecution of the appellants. We thus agree with the view of the learned Chief Judicial Magistrate, Jamshedpur and disagree with the view of the High Court.

19. It was argued by Mr. Tapesh Kumar Singh that the above sequence of events meant that the Criminal revisions before the High Court remained stayed notwithstanding the disposal of the writ petition under Article 32 of the Constitution, and therefore, it could not have proceeded to decide the matter. We fail to understand this submission coming from the State. In the first place, there is no warrant for assuming, unless specifically directed or necessarily intended, that an interim order such as the stay of the proceedings in the higher forum is disposed of. This court has made observations to that effect in Prem Chandra Agarwal and another vs. Uttar Pradesh

Financial Corporation and others, (2009) 11 SCC 479. In any case, in this case the parties understood that the true position was that the stay had ceased to operate and argued the matter on that understanding before the High Court. What is more surprising is that this contention comes from the State, which has succeeded before the High Court. Accordingly, we see no reason whatsoever to consider this submission any further. We are informed that in pursuance of the order of this Court in Lata Wadhwa and Others vs. State of Bihar and Others, (2001) 8 SCC 197 the TISCO has deposited an amount of Rs.6.95 crores in the Registry of the Supreme Court. Shri.F.S.Nariman, learned Senior counsel, appearing for the appellants has very fairly submitted that the appellants and TISCO have no grievance whatsoever in making any payment to the victims by way of compensation since the accident was a terrible tragedy. Shri Nariman submitted that the TISCO has not treated any litigation in this matter as an adversarial litigation."

8. From the reading of the above, it is seen that the Hon'ble Supreme Court has made it very clear that when the Officer has knowledge about the offence, then under law he has to prefer the complaint within three months from the date of knowledge. However, in the case on hand, the respondent has made inspection of the petitioner premises on 17.05.2014 and issued the show cause notice on 19.05.2014, that is the date, the officer has come to the knowledge that the offence has been committed and knowing fully well the offence committed by the petitioner, he has preferred the complaint only on 02.09.2014, which is admittedly beyond the period of three months as stipulated under law; the same was returned and he has again represented only on 21.04.2015, that is after a period of seven months. It is also seen that no reason has been adduced for the long delay in preferring the complainant. The Court below also without taking into consideration all these facts has taken cognizance of the offence committed, issued summons, which is definitely hit by Section 106 of the Factories Act, 1948 and the same is questionable under revisional jurisdiction as per the decision of the Hon'ble Supreme Court reported in 2012(11) SCC 252 [Om Kr.Dhankar vs. State of Haryana]. The relevant portion reads as follows:

"8. The counsel for the appellant is not present. However, from the special leave petition, it transpires that two questions have been raised, namely, (one) whether Criminal Revision Petition against the order of summoning is maintainable, and (two) whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure (Cr.P.C.) is required.

9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in the case of Rajendra Kumar Sitaram Pande and Others vs. Uttam and another (1999) 3 SCC 134. In Rajendra Kumar Sitaram Pande case (supra) this Court considered earlier decisions of this Court in the cases of Madhu Limaye vs. State of Maharashtra (1977) 4 SCC 551, V.C.Shukla vs. State 1980 Supp.SCC 92, Amar Nath vs. State of Haryana (1977) 4 SCC 137 and K.M.Mathew vs. State of Kerala (1992) 1 SCC 217 and it was held as under:-

"6.... this being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisions jurisdiction under Section 397 could be exercised against the same."

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C., was available to the respondent No.2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly."

9. In view of the above, the impugned summons issued by the learned Chief Judicial Magistrate, Chengalpattu in C.C.No.166 of 2015 is set aside and the complaint filed by the respondent is quashed.

10. In the result, this Criminal Revision Case is allowed.
Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

vj2

To

1. The Chief Judicial Magistrate,
Chengalpattu.

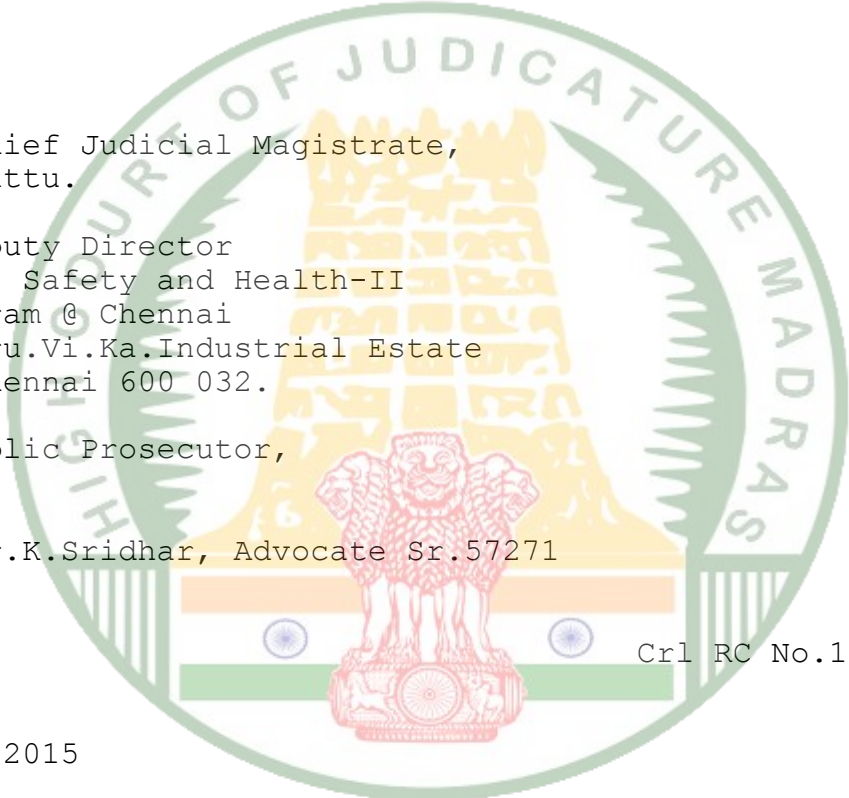
2. The Deputy Director
Industrial Safety and Health-II
Kancheepuram @ Chennai
A-28, Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai 600 032.

3. The Public Prosecutor,
Madras.

+1cc to Mr.K.Sridhar, Advocate Sr.57271

Cr1 RC No.1121 of 2015

vs[col]
srg 10/12/2015



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