

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.20477, 20478 and 20479 of 2010
and M.P.Nos.1, 1 and 1 of 2010

Soumitra Hazra ... Petitioner in all Crl.OPs.

Vs.

The Inspector of Factories
2nd Circle, Kancheepuram (E)
Chennai 6. ... Respondent in all Crl.OPs.

Criminal Original Petitions filed under Section 482,
Cr.P.C. to call for the records in C.C.Nos.247, 248 and 249 of
2010 now pending trial on the file of the Chief Judicial
Magistrate, Chengalpet and quash the same.

For petitioner : Mr.V.Karthic, Senior Counsel
for Mr.T.S.Gopalan & Co.

For Respondent : Mr. C. Emalias
Additional Public Prosecutor

ORDER

These petitions have been filed to call for the records
in C.C.Nos.247, 248 and 249 of 2010 now pending trial on the
file of the Chief Judicial Magistrate, Chengalpet and quash
the same.

2. Heard the learned Senior Counsel for the petitioner
and the learned Additional Public Prosecutor appearing for the
State.

3. On 30.12.2009, the Labour Inspector inspected the
factory of M/s Timken India Manufacturing Pvt. Ltd.
[hereinafter referred to as "Timken"] and found certain
violations of the provisions of the Factories Act, 1948
[hereinafter referred to as "the Act"], pursuant to which
three complaints have been filed in C.C.Nos.247, 248 and 249
of 2010, before the Chief Judicial Magistrate, Chengalpet,

against Soumitra Hazra, Occupier of Timken, challenging which these quash applications are filed.

4. In the three complaints it is alleged that, Timken have not provided special care as required in an industry covered by Section 2(cb) of the Act, namely "hazardous process". Section 2(c)(b) of the Act reads as follows:

"2(cb) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would--

(i) cause materials impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment:

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule."

5. From a reading of Section 2(cb) of the Act, it is clear that the factory in question must be specified in the first schedule of the Act. According to the petitioner, Timken is not an industry which will fall within the definition of Section 2(cb) of the Act, because they are into the manufacturing of ball bearings. Of course, this is a disputed question of fact which cannot be gone into by this Court in a petition u/s 482 Cr.P.C. However, the complaints do not even disclose under which entry in the first schedule of the Act Timken falls, so as to attract Section 2(cb) and the other penal provisions of the Act. It is fundamental for the authorities to state in a criminal complaint, this allegation, so that on the proof of it only, the Court can go into whether there is any violation of the clauses required under Section 2(cb). In the private complaints filed by the public servant, the sworn statement is also not recorded.

6. Under such circumstances, it is imperative that the complaints should disclose this minimum fact, so that the accused would set up his defence and refute the allegations of the complainant. In the absence of these minimum particulars in the complaints, merely saying that they do not maintain certain registers and provide certain safety equipments in the factory, thereby violating the provisions of Section 2(cb) r/w the penal provisions would not be sufficient to maintain the

prosecution

In view of the above, these petitions are allowed and the proceedings in C.C.Nos.247, 248 and 249 of 2010 on the file of the Chief Judicial Magistrate, Chengalpet are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Inspector of Factories
2nd Circle, Kancheepuram (E)
Chennai 6.
- 2.The Chief Judicial Magistrate,
Chengalpet.
- 3.The Public Prosecutor
High Court, Madras.

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.56232

Cr1.O.P. Nos.20477, 20478 and 20479 of 2010

SSI (CO)
CA(22/10/2016)

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