

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Cr1.O.P No.776 of 2010

and M.P.Nos.1 and 2 of 2010

Sanjay Goel
Managing Partner
Goel Steel Company,
NH4 Road, Irungattukottai,
Sriperumbudur Taluk FDD,
Chennai

.... Petitioner/Accused

Vs.

Dongsan Automative India Pvt., Ltd.,
Rep. by its Agent Mr.Devaraj
Sriperumbudur, Kanchipuram Dt. Respondent /Defacto
Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to seeks to quash the complaint filed by the respondent before the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur under Section 190(1)(a) and 200 of Criminal Procedure Code for alleged offences under Sections 268, 269, 278 and 290 IPC.

For Petitioner : Mr.Krishna Ravindran

For Respondent : Mr.R.Prabhakaran

सत्यमेव जयते
ORDER

This Criminal original Petition has been filed by the accused under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the complaint filed by the respondent before the District Munsif-cum-Judicial Magistrate, Sriperumbudur, for the alleged offences under Sections 268, 269, 278 and 290 IPC.

2. It is averred in the petition that the complaint does not clearly reveal whether the allegation is against the individual or the Partnership Firm and that the petitioner, namely, M/s. Goel Steel Company does not have anything to do with the SIPCOT plot and the lessee of the plot is M/s. Sanjay

Steel Syndicate and the petitioner, Sanjay Goel is a partner of M/s. Sanjay Steel Syndicate firm. It is further averred that the complainant does not have any valid evidence to show that the petitioner is deliberately indulging in numerous illegal acts of sending contaminated effluents and dust particles into the land.

3. The activity of the petitioner company does not involve any effluent and the factory has just been erected and manufacturing has just begun. Had there been any truth in the complaint, the police could have registered the complaint but has not done so. There is covenant in the lease deed between the petitioner and the SIPCOT and that lessee shall not at any time during currency of the lease cause or permit any nuisance in or upon the said land and therefore, SIPCOT shall have full right to prohibit or regulate. Further, there is also Pollution Control Board to regulate all the irregularities. Without approaching the concerned authorities, the complaint had been lodged with the Judicial Magistrate. The Judicial Magistrate ought not to have taken cognizance of the offence, including the offences, which are non-cognizable. The Judicial Magistrate ought to have referred the case to police under Section 156 (3) Cr.P.C.

4. The respondent / complainant preferred complaint before the learned Judicial Magistrate at Sriperumbudur under Section 190 (1) (a) and 200 of Cr.P.C, alleging that the petitioner / accused discharge from his factory premises contaminated effluent and dust particles into the complainant's land causing damage to the compound wall besides seriously affecting the health of the factory workers, staff as well as all the people who dwell within the factory premises; it poses a serious health hazards and in addition, it also become breeding place of mosquitoes and various diseases.

5. The learned Judicial Magistrate, after conducting enquiry under Section 202 Cr.P.C and after considering the sworn statement of the complainant and the deposition of witness was satisfied that prima facie case is made out and therefore took cognizance of the offences under Sections 268, 269, 278 and 290 IPC and issued process to the accused under Section 204 (3) Cr.P.C.

6. The learned counsel appearing for the petitioner contends reiterating the points averred in the petition. The learned counsel for respondent per contra contends that the learned Judicial Magistrate has rightly taken the case on file after due enquiry under Section 202 Cr.P.C.

7. The offence under Section 269 IPC is a cognizable offence. When the Judicial Magistrate is taking cognizance of the said offence, he is bound to take along with that even

non-cognizable offences if any. The offence under Section 269 IPC will be attracted if anyone does any act whether unlawfully or negligently with knowledge that such act is likely to spread the infection of any disease dangerous to life.

8. The other offences taken on file are Section 278 IPC for making atmosphere noxious to health and Section 290 r/w 268 IPC, relating to public nuisance.

9. The copy of the statement of witness Delhi Babu recorded by the Judicial Magistrate has not been filed by the petitioner before this Court. Even from the complaint and the sworn statement, it is clearly alleged that discharge of effluent from the petitioner's factory possess a serious health hazard and because of that it became a breeding place of mosquitoes, various diseases and such discharge is seriously affecting the health of the factory workers, staff as well as the people who dwell there.

10. The fact that whether the petitioner had discharged effluent with the knowledge that it is likely to spread the infection of disease dangerous to life is to be looked into or analysed only during trial through evidence.

11. The contention of the petitioner that M/s. Goel Steel Company has nothing to do with the plot in SIPCOT and Sanjay Goel is only a partner in the firm functioning in the plot is to be dealt with only by the trial Court. The petitioner, being a partner cannot absolve himself from the liability as he happens to be the partner in a firm functioning in the place, though the firm has been misnamed in the complaint.

12. The contention with respect to the evidence aspect has to be gone into only at the time of trial and therefore, the same is to be brushed aside.

13. The contention of the petitioner that (1) police has not registered the case; (2) as per the covenant, SIPCOT has got full right to prohibit and regulate the nuisance, and (3) there is Pollution Control Board to regulate all the irregularities are not sustainable. Because of the above factors, the right of the petitioner is not precluded in preferring complaint against illegal act or offence committed by the petitioner. Therefore, the contentions of the petitioner are not sustainable and the trial Court took the case on file, after satisfying itself that prima facie case is made out through enquiry under Section 202 Cr.P.C. I do not see any reason to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C and hence, this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to dispose S.T.C.No.1229 of 2009, within three months from the date of receipt of a copy of this order and report the same to the Registry.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn

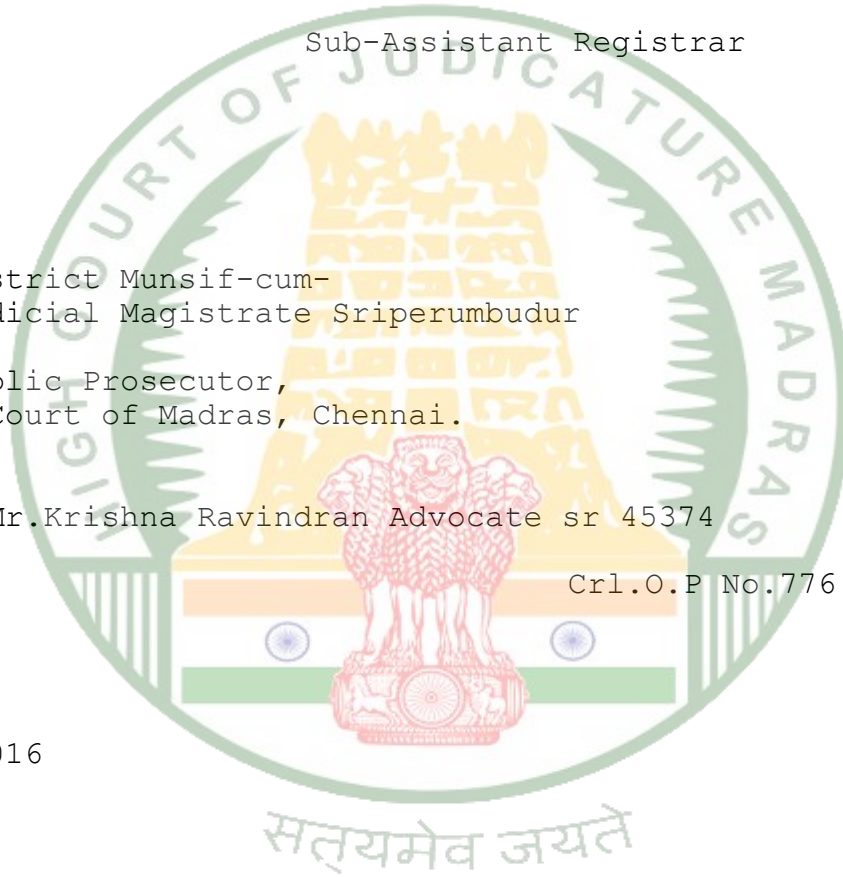
To

1. The District Munsif-cum-Judicial Magistrate Sriperumbudur
2. The Public Prosecutor,
High Court of Madras, Chennai.

+1 cc to Mr.Krishna Ravindran Advocate sr 45374

Crl.O.P No.776 of 2010

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