

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.Nos.7 and 8 of 2016
and
Crl.M.P.Nos.33 and 35 of 2016

Krishna Srivastava
Occupier
Zuari Cement Limited
S.No:87/1,2,3,90,93/5,112/3,115/9 etc.,
Athipattu Village,
Chennai - 600 120

.. Petitioners in both revisions

Vs.

The Joint Director,
Industrial Safety and Health,
Thiruvottiyur,
Chennai.

.. Respondent in both revisions

Criminal Revisions filed under Sections 397 and 401 Cr.P.C. against the order taking cognizance in S.T.C.Nos.219 and 220 of 2015 and consequently, quash the complaints in S.T.C.Nos.219 and 220 of 2015 on the file of learned Chief Judicial Magistrate, Tiruvallur.

For Petitioners : Mr.N.R.Elango, senior counsel
for Mr.S.Rajmakesh

For Respondent : No appearance

COMMON ORDER

These revisions challenge the proceedings in S.T.C.Nos.219 and 220 of 2015 on the file of learned Chief Judicial Magistrate, Tiruvallur.

2. S.T.C.Nos.219 and 220 of 2015 arise out of complaints preferred by respondent informing commission of offences u/s.7A(3), 41B(2) 112 and 2(cb) Schedule I item (8) Rule 62 N (1), Rule 62 (o)(i)(b)(ii) of Factories Act; and 21 (2) Rule 53 Schedule XI Part A Item 2(8)(b); Section 7(4) Rule 12-A of Factories Act respectively. Aggrieved over the learned Chief Judicial Magistrate, Tiruvallur, taking cognizance of complaints, the present revisions have been filed.

3. Heard learned senior counsel for petitioner and learned Government Advocate [Crl.side].

4. Learned senior counsel for petitioner submits that pursuant to a show cause notice dated 27.04.2015 issued by respondent, petitioner had initially sought time to submit a reply under communication dated 07.05.2015 and thereafter, afforded such reply under communication dated 20.05.2015. Learned senior counsel submits that without considering such reply, the respondent had proceeded to file complaints. Learned senior counsel relies on

the judgment of the Division Bench of this Court in *Inspector of Factories, Vellore v. Showa Engineering Limited, Sholinghur [2007 (4) L.L.N. 828]*, a case wherein this Court found that the Inspector of Factories had proceeded to prefer the complaint without considering the explanation submitted by the accused in the case for the reason that the prosecution had to be launched within a period of three months from the date of knowledge on the facts of that particular case. In such case, this Court found unacceptable the contention of the complainant that explanation had been submitted by the accused only towards dragging on the proceedings towards avoiding launching of the prosecution within the period prescribed. Learned senior counsel submits that in the instant case also, towards satisfying the requirement of Section 106 of the Factories Act, which requires preference of a complaint within three months from the date commission of offence came to knowledge, the complaints hastily have been preferred.

5. In response, learned Government Advocate [Crl.side], refers to the complaints to submit that Document No.5 filed along with the complaint was a re-inspection report and Document No.6 was the communication of the respondent to petitioner that prosecution would follow. On placing of relevant materials before the Sanctioning Authority, sanction order in Document No.7 had come about. Learned Government Advocate [Crl.side], therefore, contends

that it is erroneous to submit that the prosecution had been hastily launched.

6. In response, learned senior counsel, refers this Court to the communications of the respondent dated 01.06.2015, i.e., Document No.6 in the complaints, which inform of the intent to prosecute the petitioner. Learned senior counsel submits that petitioner had not received any such communication and no acknowledgement there regards had been filed along with the complaints. Learned senior counsel further submitted that such communication merely stated that the explanation of the petitioner was unacceptable and that the defects pointed out in the inspection report had not been fully set right. Learned senior counsel contends that as a matter of fact no further inspection had taken place and the communications of alleged date 01.06.2015, Document No.6, were merely a ruse. Learned senior counsel would seek to support such contention by referring to Document No.7 in the cases to inform that the annexure thereto did not contain the report of the further inspection allegedly conducted. Learned senior counsel would submit that in any event, the communications dated 01.06.2015, Document No.6, itself were untenable. Learned senior counsel refers to the judgment of this Court in *The Management of DHL Express (I) Pvt. Ltd. v. Assistant Inspector of Factories - III [W.P.No.26258 of 2008 dated 17.06.2010]*, wherein it has been observed thus:

“4. The writ petitioner has challenged the validity and enforceability of the said order mainly on the ground that it is in violation of principles of natural justice and suffers for want of due opportunity to the petitioner of being heard. This Court is of the reasonable view that the contention as raised by the petitioner is well justified. Though the petitioner has sent his detailed explanation on 24.9.2008, the respondent has rejected the same and passed the impugned order directing the petitioner to comply with the earlier show cause notice by rectifying the defects mentioned therein. The respondent has not at all dealt with and discussed the serious objection raised by the petitioner. The impugned order is to that extent non-speaking as no reason is given as to why and how the objections raised by the petitioner are not acceptable and as to how the activity carried on by the petitioner is manufacturing in nature so as to bring the same within the purview of Factories Act. The perusal of the impugned order shows that there is totally non-application of mind and on that ground alone the order is legally bad and is unsustainable.”

7. Considering the rival submissions, this Court is of the view that
- (i) As the sanction orders do not contain a reference to the further inspection allegedly conducted by respondent and the communications of respondent dated 01.06.2015 are not supported by an acknowledgement of petitioner, the very conduct of further inspection informed by respondent highly is suspect.

(ii) In rejecting the explanations of petitioner informing due compliance, absolutely no reason stands stated. It is to be seen that Section 107 of the Factories Act provides for appeals against finding of an Inspector and the respondent not informing its reasons seriously prejudices such right.

(iii) In the facts and circumstances of the case, this Court would hold that the complaints indeed have been filed in a most hasty manner merely towards meeting the requirement of Section 106 of the Factories Act.

For the said reasons, these Criminal Revision Petitions shall stand allowed. The proceedings in S.T.C.Nos.219 and 220 of 2015 on the file of learned Chief Judicial Magistrate, Tiruvallur, shall stand quashed. Connected miscellaneous petitions are closed.

18.11.2016

Index: Yes/No
Internet: Yes
gm

To
The Chief Judicial Magistrate,
Tiruvallur.

C.T. SELVAM, J

gm

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18.11.2016

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