

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.9999 and 10000 of 2011
and M.P.Nos.1 and 2 of 2011

B.Swaminathan ... Petitioner in both Crl.OPs.

Vs.

The Tamil Nadu State
Rep by Inspector of Factories
II Circle, Kancheepuram
130/1 Gandhi Irwin Road
Sriperumbudur. ... Respondent in both Crl.OPs.

Criminal Original Petitions filed under Section 482,
Cr.P.C. to call for the records in C.C.Nos.67 and 68 of 2011
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.67 and 68 of 2011 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 04.12.2010, the Labour Inspector inspected the
factory of M/s Visteon Automotive Systems Pvt. Ltd.
[hereinafter referred to as "Visteon"] and found certain
violations of the provisions of the Factories Act, 1948
[hereinafter referred to as "the Act"], pursuant to which two
complaints have been filed in C.C.Nos.67 and 68 of 2011 before
the Chief Judicial Magistrate, Chengalpet, against
B.Swaminathan, Occupier of Visteon, challenging which these
quash applications are filed.

4. In the two complaints it is alleged that, Visteon 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, Visteon is not an industry which will fall within the definition of Section 2(cb) of the Act, because they are into the manufacturing of automobile products. 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 Visteon 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.67 and 68 of 2011 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
II Circle, Kancheepuram
130/1 Gandhi Irwin Road
Sriperumbudur.
- 2.The Chief Judicial Magistrate,
Chengalpet.
- 3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.T.S.Gopalan & Co., Advocate, S.R.No.56231

Crl.O.P. Nos.9999 and 10000 of 2011

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

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