

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.06.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.9737 of 2016
and Crl. M.P.No.5069 of 2016

N.K.Choudhary ... Petitioner/Accused

Vs

Government of Tamil Nadu,
Rep. by the Deputy Director
Industrial Safety & Health
(Inspector of Factories)
Ootacamund.

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records relating to S.T.C.No.3 of 2014 on the file of the Chief Judicial Magistrate Court, Ootacamund, and quash the same.

For Petitioner : Dr.D.Simon

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.3 of 2014 on the file of the Chief Judicial Magistrate Court, Ootacamund.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is seen that the petitioner is working as Additional General Manager in Cordite Factory, in which an accident took place on 02.06.2014, on account of which, eight workmen were injured. Pursuant to the said accident, the respondent has initiated prosecution against the petitioner herein, under the provisions of Factories Act.

4. The learned counsel appearing for the petitioner submitted that the petitioner was not an occupier, as contemplated under Section 2(N) of the Factories Act, and therefore, the prosecution against him is abuse of process of law.

5. On perusal of the complaint and the connected documents, it is seen that the petitioner himself has signed Form No.2, in his capacity as Additional General Manager in Column No.5, which is stated as follows :

5.	Particulars of the Manager of the factory for the purpose of the Act Name : Age: Residential Address: Father's Name:	SHRI.N.K.CHOUDHARY, 56 YEARS 10 MONTHS 144, TYPE V, CORDITE FACTORY ESTATE, ARUVANKADU 643 202 SHRI GOURISHANKER CHOUDHARY
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6. From the above, it is clearly seen that the petitioner has been designated as Manager of the Factory for the purposes of Section 2(N) of the Factories Act.

7. Under such circumstances, in the considered opinion of this Court, when an incident of this nature has taken place and caused injuries to eight persons, the petitioner cannot be allowed to escape from the prosecution, especially in the teeth of the fact that he has been designated as Manger of the factory as stated above.

8. In the result, this Criminal Original Petition is devoid of merits and accordingly dismissed. Consequently, connected miscellaneous petition is closed.

9. However, the learned counsel for the petitioner has submitted that the petitioner has been transferred to Jabalpur and therefore his appearance before the Trial Court may be dispensed with. Accepting this submission, the petitioner is directed to appear before the trail Court for receiving copies under Section 207 Cr.P.C., for framing charges, for questioning

under Section 313 Cr.P.C. and on the date of judgment. For other hearings, the presence of the petitioner can be dispensed with, provided if the petitioner files an undertaking before the trial Court that he will not dispute his identity and that in his absence his counsel will cross-examine the prosecution witnesses on the date of examination in-chief, without adopting dilatory tactics as held by the Hon'ble Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MCJ [Cr1] 288. The trial Court is directed to dispense with the personal appearance of the petitioner and proceed with the trial and complete the trial expeditiously.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Chief Judicial Magistrate,
Ootacamund.
- 2.Government of Tamil Nadu,
Rep. by the Deputy Director,
Industrial Safety & Health,
(Inspector of Factories),
Ootacamund.
- 3.The Public Prosecutor,
High Court, Chennai.

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Cr1.OP No.9737 of 2016

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