

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

C O R A M : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Crl.O.P.No.10227 of 2009 and  
M.P.No.1 of 2009

Vaighai Agro Products Limited,  
Kurumbapatti Road,  
Valayapatti Village,  
Namakkal - 637 020.  
rep by Chairman

(Amended as per the order of this Court dated  
16.10.2015 made in M.P.No.1 of 2015 by PNPJ)

...  
Petitioner

Vs.

The District Magistrate and  
District Collector,  
Namakkal.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of  
Cr.P.C to call for the records and quash the order dated  
28.05.2009 in Form No.22 passed by the District Magistrate and  
District Collector, Namakkal.

For Petitioner : Mr.A.R.Ramanathan

For Respondent : Mr.B.Ramesh Babu,  
G.A. [Crl.Side]

O R D E R

The petitioner is a public limited company and it is engaged  
in the business of manufacturing and trading in rice brand oil,  
for which purpose, it has a manufacturing facility in  
Valayapatti Village, Namakkal, where it runs a factory in a 11  
acre premises.

2. The petitioner's factory commenced its activity in 2007  
and according to the petitioner, it has complied with all the  
necessary formalities of obtaining license/ permission/ sanction  
from all concerned authorities and has provided copies of the  
same in its typed set of papers. While so, on 06.05.2009, in  
its godown, which is a separate building in itself, there was a  
fire accident that led to the death of 17 workers working there  
at the relevant time. Promptly, criminal cases were registered

concerning this accident against the petitioner. The forensic experts, who had investigated and provided their report dated 15.05.2009, had ruled out human interference as the cause of fire but suspected that it might be an electrical spark that might have triggered the fire when aerosol mixture came into contact with it.

3. It is in this backdrop, the District Collector, Namakkal, in his capacity as the Executive Magistrate has passed an order under Section 142 Cr.P.C., directing the closure of the factory of the petitioner. This is being challenged in this petition. It may be stated here that the petitioner obtained an order of stay of further proceedings in this case, which enabled it to continue to run the factory in question.

4. The learned counsel for the petitioner contended that any order to be passed under Section 142 Cr.P.C., must necessarily be preceded by an interim conditional order under Section 133 Cr.P.C. and thereafter, to issue notice to show cause as to why the factory should not be permanently closed, and the District Magistrate should do this based on the evidence as to the opinion that he receives from any sources. The specific mode for service of notice, as submitted by the learned counsel, is provided under Section 134 Cr.P.C.. His fundamental objection to the impugned order is that the District Magistrate, in the instant case, has ignored to follow the procedures contemplated under Section 133 Cr.P.C., and has passed the final order directing the closure of the factory without giving any opportunity of being heard to the petitioner in the matter. Further, except his laying emphasis on the opinion he has received and his belief that it would be hazardous or dangerous to the public to let this factory run, he has not appeared to have relied on any evidentiary material to come to the conclusion that he had arrived at. He submitted that the impugned order does not even refer to forensic expert's opinion as to the cause of the accident. He added except that solitary and very unfortunate accident that took place on 06.05.2009, the factory is running without any untoward event, nor posed any danger to any.

5. Per contra, Mr.B.Ramesh Babu, the learned Government Advocate appearing for the respondent submitted that the petitioner had run the factory without following any of the norms to be adhered to for securing the safety of those who might be affected by any accident. This precisely is the circumstance in which the respondent was considered to have passed an order such as the one he had passed.

6. Heard both sides.

7. It is not so much about the authority or power of the District Collector/District Magistrate to pass an order under Section 142 Cr.P.C., but it is more about the manner in which the said authority should be exercised. The power under Section 142 Cr.P.C., in one sense acts as an external power that directly interferes with the right of a citizen to pursue his fundamental right to any business or avocation under Article 19 (1) (g) of Constitution of India. Therefore, it is not just the civil right of the citizen which is involved, but also its fundamental right to business, trade or profession. In circumstances such as this, it is imperative for the District Magistrate to have conducted an enquiry into the matter giving due and effective opportunity to the petitioner to defend the respondent's proposal to close the business for the safety of the public around. The duty to hear the other side is a security against arbitrariness and is an aid in favour of fairness. It is ingrained in the very terminology employed under Sec. 133 Cr.P.C., but unfortunately and perhaps hastily the respondent appears to have jumped the guns and overlooked the procedure and ordered closure of business under Sec.142 Cr.P.C. In this context, it is pertinent to state that the learned counsel for the petitioner submitted that after service of the impugned order, a notice as contemplated under Section 133 Cr.P.C., was affixed on the factory premises, but this precisely is not one of the methods provided for service of such notices within the meaning of Section 134 Cr.P.C. Thus, the impugned order cannot be held to have been legitimately passed for more than one reason. Either it is bad for flouting the conditions under Section 133 Cr.P.C., or for ignoring the procedure contemplated for service of notice under Section 134 Cr.P.C., thereby denying the petitioner of an effective opportunity of being heard or a combination of both.

8. In such circumstances, I have no hesitation in holding that the impugned order is bad in law and necessarily the same is to be quashed. Having stated that, it does not preclude the respondent from initiating any appropriate proceedings under Section 142 Cr.P.C., if any ground exists now. This impugned order is quashed as prayed for. The Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

-s/d-  
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The District Magistrate and  
District Collector,  
Namakkal.

+1 CC to Mr A.R. Ramanathan, Advocate sr 13974

Crl.O.P.No.10227 of 2009

RR(CO)  
sp/3/4



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