

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRL.A.No.432 of 2016 & 433 of 2016

The State Represented by
The Public Prosecutor,
High Court, Madras.
(The Inspector of Facories,
Udhagamandalam, which was re-designated
as Deputy Director of Industrial
Safety and Health, Udhagamandalam)

... Appellant/Complainant
in both Criminal Appeals

versus

Tr.K.Kandavadivel,
Managing Director / Occupier,
M/s.Swamy & Swamy Plantations (Pvt) Ltd.,
High Field Tea Factor, SF.No.195,
High Field, Coonoor - 643 101
The Nilgiris District.

... Respondent/Accused
in Crl.A.No.432 of 2016

Tr.Benjamin Bino,
Manager of M/s Swamy & Swamy Plantations (Pvt) Ltd.,
High Field Tea Factor, SF.No.195,
High Field, Coonoor - 643 101
The Nilgiris District.

... Respondent/ Accused
in Crl.A.No.433 of 2016

PRAYER in Crl.A.No.432 of 2016: Criminal Appeal filed under Section 378 of Cr.P.C., to allow the appeal and set aside the judgement of acquittal of the respondent/accused passed by the Chief Judicial Magistrate, Udhagamandalam, The

Nilgiris District in S.T.C.No.4 of 2012 dated 22.05.2015 and convict the respondent/accused of the charges framed against him in accordance with law.

PRAYER in Crl.A.No.433 of 2016: Criminal Appeal filed under Section 378 of Cr.P.C., to allow the appeal and set aside the judgement of acquittal of the respondent/accused passed by the Chief Judicial Magistrate, Udhagamandalam, The Nilgiris District in S.T.C.No.5 of 2012 dated 22.05.2015 and convict the respondent/accused of the charges framed against him in accordance with law.

For Appellant in both appeals : Mr.K.Mathan,
Government Advocate (Crl. Side)

For Respondent in both appeals : Mr.ARL.Sundaresan
Senior Counsel

COMMON JUDGMENT

The accused in S.T.C.No.4 of 2012 is the appellant in Crl.A.No.432 of 2016 and the accused in S.T.C.No.5 of 2012 is the appellant in Crl.A.433 of 2016.

2. The Criminal Appeal No.432 of 2016 is directed against the order of acquittal in S.T.C.No.4 of 2012 dated 22.05.2015 on the file of the Chief Judicial Magistrate, Udhagamandalam, The Nilgiris District. The Criminal Appeal No.433 of 2016 is directed against the order of acquittal in S.T.C.No.5 of 2012 dated 22.05.2015 on the file of the Chief Judicial Magistrate, Udhagamandalam, The Nilgiris District.

3. These Appeals arise out of the contraventions of the provisions of Section 41 and Rule 61-E and 61-F of the Tamil Nadu Factory Rules, 1950 in the Tea Manufacturing Factory owned by M/s.Swamy and Swamy Plantations (Pvt) Ltd. Hence, these Appeals are, with the consent of the parties heard together and disposed of by

a common judgment.

4. The facts necessary for the disposal of the Appeals are as follows:-

4.1. M/s.Swamy and Swamy Plantations (Pvt) Ltd. is a Company and it owns a Tea Manufacturing Factory at High Field, Coonoor. The respondent in Crl.A.No.432 of 2016 is the Managing Director of M/s.Swamy and Swamy Plantations (Pvt) Ltd. The respondent in Crl.A.No.433 of 2016 is the Manager of M/s.Swamy and Swamy Plantations (Pvt) Ltd. They are liable for the contraventions of any provisions of the Factories Act or of any rule made thereunder in terms of Section 92 of the Factories Act.

4.2. The complaint in S.T.C.No.4 of 2012 and the complaint in S.T.C.No.5 of 2012 have been filed against the respondents on the allegations that the respondents had contravened the provisions of Rule 61-E and 61-F of Tamil Nadu Factories Rules, punishable under Section 92 of the Factories Act.

4.3. The Company reported that an accident took place in their Factory on 09.02.2012, to the Inspector of Factories, Udthagamandalam. They have stated that a workman, while working in the CTC Roller Machine (Tea Leaves cutting machine), unexpectedly attempted to remove the deposited first cut tea leaves, while the machine was in operation and met with an accident, as a result of which, he sustained injury on his left hand. They sent a report of Accident in Form-18

(Ex.P.1) dated 10.02.2012. The Factory reported the further details of the Accident in Form 18-B (Ex.P.2) dated 04.06.2012 to the Inspector of Factories. They informed that the injured worker resumed duty on 12.04.2012 and it was received by the Inspector of Factories on 05.06.2012.

4.4. N.Sabeen [P.W.1], the Inspector of Factories during the relevant time, who received the reports Ex.P.1 and Ex.P.2, inspected the Factory on 08.06.2012 and recorded the statement of the injured worker. According to her, the machinery was not fenced properly and it was maintained in such a manner as to cause risk of bodily injury and work was also carried on in such a manner as to cause risk of bodily injury. Based on the inspection report, the respondents were called upon by a notice (Ex.P.5) to show cause against the proposed prosecution and sought their explanation. Thereafter, the Factory sent a reply (Ex.P.6) dated 27.06.2012, stating that the CTC roller machine and the conveyor belt in question were constructed, operated and maintained in such a manner that there was no risk of bodily injury. They have further stated that the CTC roller machine process is being carried on in the Factory, without risk of bodily injury. According to them, the said workman / mechanic ignoring the instructions of the Management in this regard had attempted to remove the deposited the first cut green tea leaves, while the CTC roller was in operation and met with an accident. They have claimed that they have not violated the provisions of Factories Act and Rules made thereunder.

4.5. P.W.2, the Inspector of Factories, who succeeded P.W.1 was not satisfied with the reply sent by the Factory and informed that they were going to take further action by a letter (Ex.P.8) dated 24.07.2012. He obtained sanction order dated 13.08.2012 (Ex.P.9) from the Joint Chief Inspector of Factories, Coimbatore, to prosecute the case against the respondents and thereafter, the complaints were filed on 30.08.2102 before the District and Sessions Court, Udhagamandalam.

5. The Court has taken cognizance of the contraventions of the provisions of Rules 61-E and 61F of Tamil Nadu Factories Rules punishable under Section 92 of the Factories Act.

6. The respondents pleaded not guilty and they have claimed that false case has been foisted. They have not examined any witness on their behalf.

7. After full trial, the Trial Court acquitted the respondents, holding that the complaints were barred by limitation. The Trial Court has not gone into the merits of the case.

8. Aggrieved by the orders of acquittal, the present Criminal Appeals have been filed.

9. The point that arises for consideration is, whether the complaint were barred by Limitation ?

10. The learned Senior Counsel appearing for the appellant has pointed out that the Trial Court has failed to consider the fact that the knowledge of the accident is not knowledge of the offence and the offences/contraventions came to the knowledge of the Inspector, when she inspected the Factory on 08.06.2012.

11. Admittedly, M/s Swamy & Swamy Plantations (Pvt) Limited is a Factory, within the scope of the Factories Act. It is also not in dispute that the respondent in Crl.A.No.432 of 2016 is the Managing Director and the respondent in Crl.A.No.433 of 2016 is the Manager of the said Company and for the purpose of the Factories Act, they are occupiers of the Factory. Under Section 92 of the Factories Act, the Occupier and the Manager of the Factory are responsible for any contravention of any of the provisions of the Act or the Rules.

12. The learned counsel appearing for the respondents would submit that the accident had taken place on 09.02.2012 and it was reported to the Inspector of Factories on 11.02.2012 in Form No.18 (Ex.P.1). He further submitted that the respondents also informed further details of the Accident to the Inspector of Factories in Form No.18-B (Ex.P.2) dated 04.06.2012, that the injured worker

resumed duty on 12.04.2012 and it was received by him on 05.06.2012 and that therefore, he submitted that it is not correct to contend that the violation/contravention came to the knowledge of the complainant only on 08.06.2012, at the time of inspection.

13. In the cases at hand are concerned with Section 106 of The Factories Act, which reads thus:-

"106. Limitation of prosecution. —No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

[Explanation.—For the purposes of this section,—

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation

shall be computed from the date on which the time so granted or extended expired.]"

14. The Honourable Supreme Court in ***P.D.JAMBEKAR vs. STATE OF GUJARAT [(1973) 3 SCC 524]***, while dealing with Section 106 held thus:-

"One cannot equate the "date on which the alleged offence came to the knowledge of the Inspector" with the date on which the alleged offence ought to have come to his knowledge."

15. The Honourable Supreme Court in ***J.J.IRANI vs. STATE OF JHARKHAND [(2014) 15 SCC 813]*** held that *"knowledge acquired during preliminary investigation or which could be acquired by inspection of office record of Inspector of Factories, is, relevant knowledge."*

16. In the case at hand, the evidence on record would show that the accident was reported to the Inspector of Factories by the respondent in Form No.18 (Ex.P.1) on 10.02.2012. However, in their letters addressed to the complainant, the respondents have not informed that they have contravened the provisions of Rules 61-E and 61F of Tamil Nadu Factories Rules punishable under Section 92 of the Factories Act.

17. According to the complainant, on the date of Inspection, she found that the CTC Roller machine was maintained in such a manner as to cause risk of bodily injury and work was also carried on in such a manner as to cause risk of bodily injury. The allegations made in the complaint has also to be read, bearing in mind Section 106(a) of the Factories Act also, which speaks about continuing offence. In respect of continuing offence, limitation shall be computed with reference to every point of time during which the offence continues. The contravention pointed out by the Inspector of Police is a continuing offence as the purpose intended to be achieved by the provisions of Rule 61-E and 61-F of Tamil Nadu Factories Rules are to safeguard the interest of the workmen.

18. It is not the case of the respondents that they have taken steps to ensure safety as required by the Inspector of Factories after the alleged accident or after the date of inspection. Fresh cause of action for filing complaint would arise every day as long as the long the contravention is allowed to continue. A careful reading of the complaint would show that action has been taken against the respondent only on the basis of the contravention which has come to the notice of the complainant when the Factory was inspected by her on 08.06.2012. There is no allegation in the complaint that the action was taken on the basis of violation taken place, prior to 08.06.2012. Therefore, limitation begins from the date of inspection (i.e. on 08.06.2012). The complaints had been presented by the complainant within

the prescribed period of three months [30.08.2012].

19. Therefore, the Trial Court was not justified in rejecting the complaint as barred by limitation. The order of the Trial Court is liable to be set aside. As the Trial Court has not gone into the merits of the case, the matters are remitted to the Trial Court for being dealt with on merits having due regards to the evidence on record. The observations made herein before ought not to be treated as opinion on the merits of the case.

20. In the result, these Criminal Appeals are allowed and the judgment of acquittal in S.T.C.Nos.4 and 5 of 2012 dated 22.05.2015 on the file of the Chief Judicial Magistrate, Udhagamandalam, The Nilgiris District, are set aside. These matters are remitted to the said Court for further proceedings in accordance with law.

The parties are directed to appear before the Trial Court on 30.10.2017.

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Index : Yes/No

Internet : Yes

Speaking order/Non speaking order

mst/sri

To

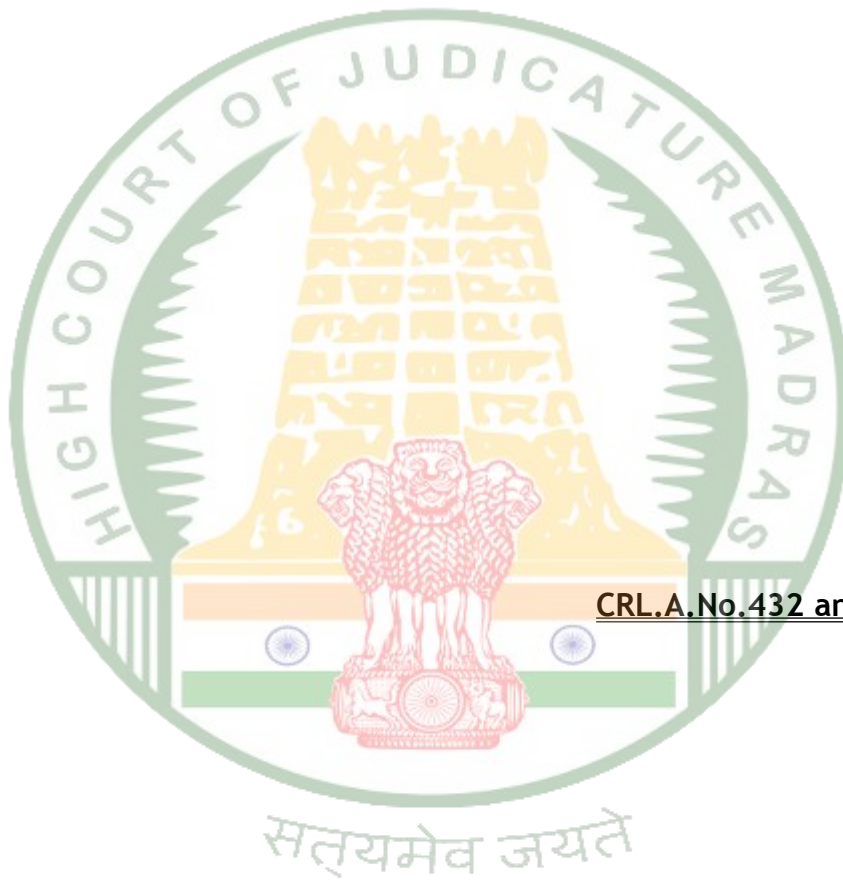
1. The Chief Judicial Magistrate,
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N.AUTHINATHAN, J.

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