

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	Pronounced on
06.12.2018	04.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P.Nos. 24196 & 24174 of 2017

Seshasayee.R .. Petitioner/Accused in both
Petitions

-Vs-

The Inspector of Labour,
6, Lalbahadur Sastri Street,
Periyakuppam,
Thiruvallur - 602 001. .. Respondent/Complainant in
both Petitions

COMMON PRAYER : These Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C. Nos. 55 & 56 of 2006, on the file of the Learned Chief Judicial Magistrate, Tiruvallur and quash the prosecution.

For Petitioner : Mr.Haran AL. Rasheed
for M/s.T.S.Gopalan & Co
in both Petitions

For Respondent : Mr.T. Shanmuga Rajeswaran
Government Advocate
(Criminal Side) in both Petitions

COMMON ORDER

The petitioner has filed these criminal original petitions challenging the proceedings pending as against him in C.C.Nos.55 & 56 of 2006, on the file of the Learned Chief Judicial Magistrate, Tiruvallur, which were instituted at the instance of the respondent / Inspector of Factories, Thiruvallur.

2. Sum and Substance, the case of the petitioner is as follows:

2.1. The petitioner is the Managing Director of M/s.Ashok Leyland Limited and they are having factories at Ennore and Hosur, in Tamil Nadu and also in other States, which are engaged in the manufacture of Chassis for commercial vehicles. The Chassis produced at the factories are kept in a yard at Sembarambakkam, near Chennai, measuring about seven acres. Every month, they are handling about 1000 Chassis and 600 to 700 Chassis will be stored in the place for sale. Since the Chassis in large numbers are stored in the open yard and due to the longer storage, the battery may require recharging or the tyres may require inflation or some touching on the paints would be carried out in the yard. For this purpose, they keep a battery charger and a compressor to inflate the tyres.

2.2. On 06.09.2006, the respondent visited this yard at Sembarambakkam and found that 15 persons were working, thereby, issued a show cause notice pointing out certain contravention including non-observance of the provisions of the Factories Act. The petitioner gave a reply to the show cause notice on 09.10.2006 that the place is only a stock yard and it would not fall within the provisions of the Factories Act. The respondent, by his letter dated 06.11.2006, stated that he was not satisfied with the response and he would be proceeding with the prosecution. As against this letter dated 06.11.2006, the petitioner had filed a writ petition before this Court in W.P.No.45053 of 2006 and obtained an order of interim stay on 22.11.2006. This interim order was also periodically extended. While so, the complaint in C.C.Nos.55 & 56 of 2006 have been filed by the respondent on 28.11.2006. Therefore, the petitioner has attacked the prosecution instituted in C.C.Nos.55 & 56 of 2006 on the following grounds:

- the prosecution have instituted the complaints despite the interim stay granted in W.P.No.45053 of 2016; and
- the place where the vehicles have been parked is only a stock yard, which cannot be termed as a factory under the Factories Act.

3. Learned Government Advocate (Crl. Side) strenuously opposed these applications by referring to the provisions under Section 2(k) of the Factories Act that even repairing and adapting the Chassis with a view to its use, sale, transport or delivery, in the premises is a manufacturing process as defined under Section 2(k)(i) of the Factories Act and the petitioner, being the Managing Director of the Company, was deemed to be the occupier as per Section 2(n)(ii) of the Factories Act and therefore, they have been prosecuted for the violations found during the inspection. With regard to the interim order of stay, the learned Government Advocate would submit that they were not put on notice as to the passing of the interim order.

4. Heard the learned Counsel appearing on either side and perused the documents placed on record.

5. Admittedly, the place in which the inspection was made by the Deputy Chief Inspector of Factories on 06.09.2006 is a stock yard, where around 600 to 700 Chassis have been parked and the place is also used as a Regional Sales Office. The case of the complainant is that at the time of inspection, they have noted 15 persons working there and an air compressor of 2 HP and two battery chargers, totalling 0.3 HP were found in the premises and also certain repair works as well as painting of Chassis were carried out in the premises. But the petitioner had failed to register the premises under the Factories Act, 1948 and a license under the Factories Act, 1948 and Tamil Nadu Factories Rules, 1950 was not obtained. The petitioner, on the other hand, would stoutly oppose the same that the vehicles have been parked for a long time and therefore, for inflating the tyres and charging the batteries, these things have been kept in the premises and this will not come under the process of manufacturing as per Clause (i) of Section 2(k) of Factories Act. The allegation that 15 persons were employed in the premises was also denied.

6. Based on the inspection on 06.09.2006, the Deputy Chief Inspector of Factories, had issued a show cause notice on 18.09.2006, for which, a reply was also made on 09.10.2006. Having not satisfied with the same, the authorities decided to proceed with the prosecution and also intimated the same to the petitioner vide letter dated 06.11.2006. This letter dated 06.11.2006 was challenged by the petitioner before this Court in W.P.No.45053 of 2006, raising various grounds including that the premises is a stock yard / Tippo, which cannot be termed as a Factory under Section 2(k)(i) of the Factories Act. This Court has ordered notice in that writ petition and also granted an order of interim stay on 22.11.2006. Both the Counsel submitted in unison that this writ petition is still pending. Therefore, it is clear that when the subject matter is pending adjudication before this Court in W.P.No.45053 of 2006, the prosecution was instituted on 28.11.2006.

7. In this regard, the learned Government Advocate, on instructions from the respondent, submitted that they were not aware of the order dated 22.11.2006 and they have not proceeded further with the complaint in C.C.Nos.55 & 56 of 2006, on coming to know about the interim order and also the provisions of the Factories Act have not been enforced in the petitioner's factory till date. This contention of the respondent cannot be accepted for the reason that the Deputy Chief Inspector of Factories, Thiruvallur, is a respondent in W.P.No.45053 of 2006 and a copy of the interim order was also marked to him. That apart, the Counsel for the petitioner had also intimated about the interim

order of this Court to the Deputy Chief Inspector of Factories, Thiruvallur, through Registered Post on 22.11.2006, which was also acknowledged by the respondent on 24.11.2006. While so, the complaint filed through the Inspector of Factories, Thiruvallur, a subordinate to the Deputy Chief Inspector, cannot be accepted and cannot be allowed to proceed. The issue as to whether the premises will fall within the category of Factories is still subjudiced in W.P.No.45053 of 2006. Therefore, the complaints instituted by the respondent on 28.11.2006, pending the interim stay in W.P.No.45053 of 2006, in C.C.Nos.55 & 56 of 2006 before the learned Chief Judicial Magistrate, Tiruvallur, are liable to be quashed and accordingly, they are quashed.

8. In fine, both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gk

To

- 1.The Chief Judicial Magistrate,
Tiruvallur.
- 2.The Inspector of Labour,
6, Lalbahadur Sastri Street,
Periyakuppam,
Thiruvallur - 602 001.
- 3.The Inspector of Factories,
Tiruvallur, Chennai -19.
4. The Public Prosecutor,
High Court,
Madras.

CRL. O.P.Nos. 24196 & 24174 of 2017

MG(CO)

RRS(18/06/2019)