

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.22072 of 2010

and

M.P.No. 1 of 2010

C.V. Subramanian

.. Petitioner/Accused

Vs.

The Assistant Inspector of Factories -4
Division - II,139, ATTC Building,
Goundampalayam, Mettupalayam Road,
Coimbatore 641 030.

.. Respondent/Complainant

Prayer: Criminal Original Petition was filed under Section 482 of Cr.P.C to call for the records and quash the complaint in C.C.No.47 of 2010 on the file of the Chief Judicial Magistrate, Coimbatore.

For Petitioner : M/s.C.Usha

For Respondent : Mr. B. Ramesh Babu
Government Advocate(Crl. Side)

O R D E R

This criminal original petition is preferred by the Petitioner/Accused against the proceedings pending in C.C.No.47 of 2010 of the learned Chief Judicial Magistrate, Coimbatore and quashes the same.

2.Brief case of the petitioner/accused:

The facts of the case is that on 22.1.2010, the Assistant Inspector of Factories, Coimbatore, carried inspection in the petitioner's/accused factory, at that time two persons namely K.Balamurugan and Muniappan were allegedly identified as childrens below 14 years employing as packing work in the factory which is punishable under section 67 of the Factories Act. Hence the petitioner/accused was charged under section 92 of the Factories Act and complaint was filed under section 105 of the Factories Act 1948. The learned Magistrate took

cognizance of the offence as per the report filed by the Assistant Inspector of Factories, Coimbatore in C.C.No.47 of 2010 and issued summons to the petitioner/accused. Therefore this quash petition is filed.

3.Heard the arguments on either side and perused the entire materials available on record.

4.The learned counsel for the petitioner/accused submits that the court below failed to see that on the day when the Inspection was said to have been carried out in the factory on 22.1.2010, two persons namely K.Balamurugan and Muniappan were allegedly identified as children below 14 years and the Radiology examination conducted on 22.1.2010 by the Medical Officer of the PHC, Boomalur clearly reveals that the age of K.Balamurugan and Muniappan is above 14 years and 18 years respectively and having obtained a certificate to that effect, the respondent has proceeded to obtain another certificate on 23.1.2010 as if the age of the above said persons is below 14 years and on the fact of two contradictory reports , the basis on which the complaint was filed referring to only one report is illegal, improper and opposed to law.

5.The learned counsel for the petitioner/accused submits that the court below failed to see the respondent has issued a show cause notice dated 2.10.2010 to the petitioner to bringing to his notice about the fact of employing two boys below the age of 14 years and the petitioner gave a detailed reply dated 2.3.2010 and categorically informed the respondent that the two boys who were identified as child Labourers are about 14 years and the date of birth of Muniappan is 23.3.1995 and that of Balamurugan is 30.7.1995 and to substantiate the same their record sheet maintained in the school and the transfer certificate issued by the school were also produced considering the same, the respondent has proceeded to file the criminal case as if the petitioner has violated section 67 of the Factories Act.

6.The learned counsel for the petitioner/accused submits that the court below failed to see that the transfer certificate and the record sheet given by the Government school is a valid piece of evidence under Section 35 of the Indian Evidence Act and it has a higher probative value than the report of a radiologist and more particularly in a case where there are two contradictory reports of radiologists and in which event the respondent ought to have gone by the school certificate issued to the relevant persons and closed the very issue itself.

7.The learned counsel for the petitioner/accused submits that the court below ought to have looked into the above said documents which are very germane to the very maintainability of the complaint and taking cognizance of the complaint without reference to the same clearly amounts to non application of mind

and the court below failed to exercise its jurisdiction under Sections 202 and 203 of CrI.P.C.

8.The learned Government Advocate (Criminal Side) appearing for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

9.In the case on hand, the petitioner/accused gave a detailed reply dated 2.3.2010 to the respondent regarding the show cause notice informing that the two boys who were identified as child labourers or above 14 years and the date of birth of Muniappan is 23.3.1995 and that of Balamurugan is 30.7.1995. To substantiate this, transfer certificate issued by the school was produced before the respondent. Inspite of this, the respondent proceeded to file the criminal case.

10.At the outset, the transfer certificate issued by the school authorities were the students last studied is one of the prime evidence listed in the rule 17 of the juvenile justice act. The learned trial court ought to have appreciated the documents of transfer certificates issued by the school authorities. Therefore no complaint has made out by the respondent under section 67 of the factories act. Therefore I am inclined to allow this quash petition.

11.In the result, this criminal original petition is allowed and the proceedings pending in C.C.No.47 of 2010 of the file of the learned Chief Judicial Magistrate, Coimbatore is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To
The Chief Judicial Magistrate, Coimbatore.

+1cc to Mr.C.Usha, Advocate, S.R.No. 24636

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KJ (CO)
GN (04/04/2019)