

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.04.2017

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.23285 and 23286 of 2009 and
M.P.Nos.1 and 1 of 2009

Sumit Banerjee .. Petitioner in both the Crl.O.Ps

vs

State of Tamilnadu,
rep. by Inspector of Factories,
1st Circle, Kancheepuram,
No.617, Anna Salai,
Chennai-6. ..Respondent in both the Crl.O.Ps

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.Nos.71 and 72 of 2008 pending on the file of the Chief Judicial Magistrate, Chengelpet and quash the same.

For Petitioner : Mr.D.Abdullah

For Respondent : Mr.R.Rajaratnam
Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed by the petitioner to call for the records in C.C.Nos.71 and 72 of 2008 pending on the file of the learned Chief Judicial Magistrate, Chengelpet.

2. The respondent lodged complaints before the learned Chief Judicial Magistrate, Chengelpet under Factories Act, 1948 and Tamil Nadu Factories Rules 1950 against the petitioner alleging that on 17.6.2008 when the respondent inspected the factory viz., ACC Concrete Limited, S.No.239/1 pt, Thirumudivakkam Main Road, Thirumudivakkam, Chennai-44, he found the Occupier-cum-Manager had contravened the provisions of Section 45(3) Rule 63-B; Section 56 read with Section 54, Section 112 Rule 103-B, Section 6(1) Rule 3(1)(2), Section 6(1) Rule 3(5)(a) and Section 29(1)(a)(iii) Rule 55A(4) and therefore, the Occupier-cum-Manager was liable to be punished under Section 92 of the

Factories Act, 1948.

3. The learned Chief Judicial Magistrate has taken cognizance of the offence on its file as C.C.Nos.71 and 72 of 2008 and issued Summon to the petitioner. Challenging the criminal proceedings in C.C.Nos.71 and 72 of 2008, the petitioner has filed the Criminal Original Petitions.

4. I heard Mr.D.Abdullah, learned counsel for the petitioner and Mr.R.Rajaratnam, learned Public Prosecutor for the respondent and also perused the materials available on record.

5. The learned counsel for the petitioner submitted that the petitioner was one of the Directors and Chairman of ACC Concrete Limited and ACC Concrete Limited at the relevant point of time. M/s.ACC Concrete Limited has got one of its Concrete ready-mix Plant at Thirumudivakkam in Chennai. He would submit that at the time of inspection by the respondent, the petitioner was not the Occupier-cum-Manager and one Hans Fuchs was the occupier of the said plant. Since petitioner was one of the Directors during the relevant period, the respondent has no right to lodge complaints under the Factories Act against the petitioner and prayed for quashing of the same.

6. Per contra, the learned Public Prosecutor submitted that when the respondent inspected the factory premises, they have noticed that the petitioner was the Occupier-cum-Manager and had contravened the provisions of Factories Act and therefore, the respondent has lodged the complaint before the Chief Judicial Magistrate Court, Chengelpet. The learned Magistrate after having satisfied with the allegations in the complaint has taken cognizance of the offence and therefore, there is no necessity to quash the criminal proceedings.

7. The grievance of the petitioner is that he is not the Occupier-cum-Manager of the factory and at the relevant point of time one Hans Fuchs was the Occupier of the factory, which was evident from Form IV of the Factories Rules. In fact, in Form IV, the respondent has notified the petitioner as one of the Directors during the relevant period.

8. On a perusal of Form IV annexed to the typed set of papers, it is seen that the petitioner name has been mentioned as one of the Directors in the year 2008 and one Hans Fuchs was mentioned as Occupier. The said document has not been rebutted by the respondent.

9. Section 92 of the Factories Act, 1948 provides for prosecution of the Manager and the Occupier of the factory in the event of contravention of any provision of the Factories Act. The said Section further provides guilt both on the

Occupier and the Manager individually.

10. The specific case of the petitioner is that one A.K.Jain was nominated as an Occupier during 2006 and one Hans Fuchs was the Occupier since 2008. The petitioner was never nominated as an Occupier of the factory at Thirumudivakkam for the period 2006 to 2008. Hence, at no point of time the petitioner was charged with duties of an Occupier under Section 7A of the Factories Act.

11. It has been brought to the notice of this Court that the respondent has initiated prosecutions against the Occupier A.K.Jain, the Manager P.H.Badhnur of the factory alleging contravention of certain provisions of the Factories Act. The complaints against the said Occupier were taken on file by the Chief Judicial Magistrate, Chengelpet in C.C.Nos.80 and 81 of 2008 and the complaints filed against the Manager was taken on file as C.C.Nos.82 to 84 of 2008.

12. It is the say of the petitioner that though charges framed against them were not genuine, the said persons against whom complaints were filed submitted to the charges made therein as the said charges were technical and trivial in nature and underwent penalty by way of fine and the fine was duly paid by them on 20.1.2009 and 14.10.2008 respectively. On a perusal of the previous complaints, it is seen that one A.K.Jain was mentioned as Occupier and P.H.Badhnur was mentioned as Manager of the factory.

13. In the case on hand, the respondent lodged complaints against the petitioner stating that on 17.6.2008 when he was visiting the factory, he found that the petitioner had contravened Sections 45(3) read with Rule 63(B), Section 56 read with Section 54, Section 112 Rule 103-B of the Factories Act that as Occupier and Manager of the factory, the petitioner was liable to be prosecuted under Section 92 of the Act.

14. As stated supra, in Form IV, the respondent mentioned one Hans Fuchs as the Occupier of the factory in 2008 and the petitioner name has been noted as one of the Directors of the factory. He was not nominated either as Occupier or Manager of the factory. Nothing has been produced by the respondent to show that the petitioner was the Occupier-cum-Manager of the factory at the relevant point of time. The respondent by simply mentioning the name of the petitioner as Occupier-cum-Manager, lodged the complaint before the Chief Judicial Magistrate without ascertaining details.

15. When the provisions of Section 92 of the Factories Act provides only for prosecuting the person notified as Occupier and Manager, the complaint of the respondent prosecuting the

petitioner merely because he was one of the Directors of the factory and happens to be the Chairman of the factory, was bad in law and without any jurisdiction.

16. For the foregoing reasons, the criminal prosecution initiated against the petitioner is beyond the scope of Section 92 of the Factories Act and therefore, the same is liable to be quashed. Accordingly, Criminal Original Petitions are allowed and the criminal proceedings in C.C.No.71 and 72 of 2008 pending on the file of the learned Chief Judicial Magistrate, Chengelpet is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

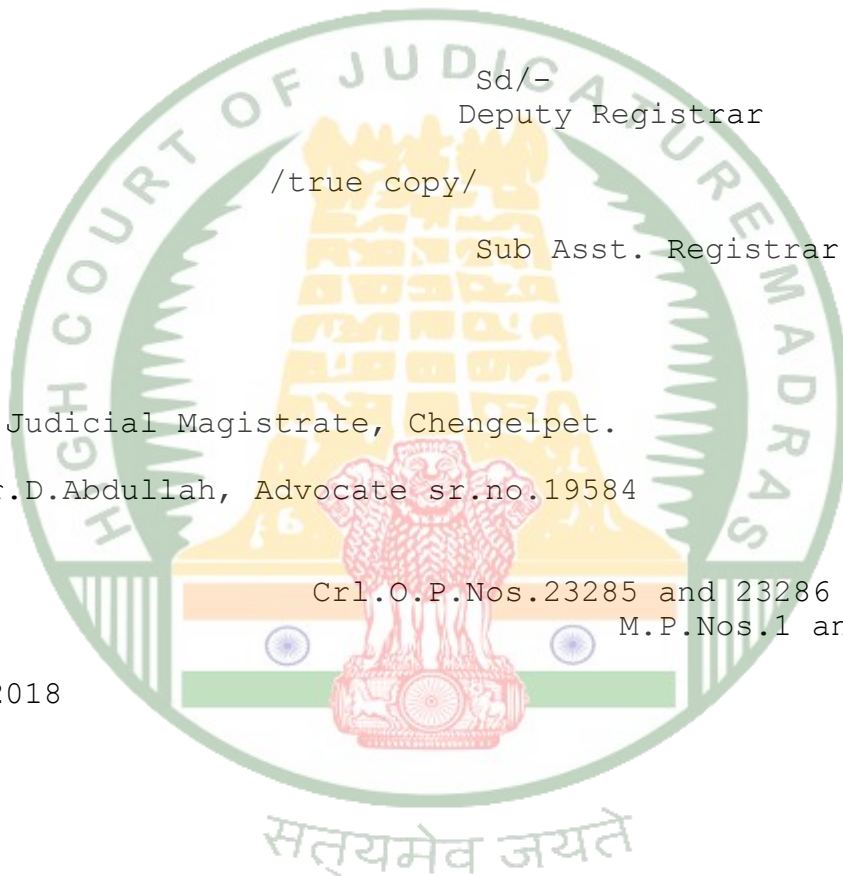
To

The Chief Judicial Magistrate, Chengelpet.

+1cc to Mr.D.Abdullah, Advocate sr.no.19584

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