

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T. SELVAM

Crl. O.P.Nos.1287 to 1293 of 2012

and

M.P.Nos.1, 1, 1, 1, 1, 1 and 1 of 2012

Mr. A. Goutam Datta ... Petitioner in Crl.O.P.Nos.1287
to 1291 of 2012

Mr. D. Sesha Rao ... Petitioner in Crl.O.P.Nos.1292 &
1293 of 2012

Versus

- 1) State by the Inspector of Factories,
No.6, Lalbahadur Sastri Street,
Periyakuppam, Thiruvallur.
- 2) The Deputy Chief Inspector of Factories,
Thiruvallur. ... Respondents in all petitions

Criminal Original Petitions filed under section 482 of the Code of Criminal Procedure praying to call for the records in C.C.Nos.35, 36, 37, 38, 39, 40 and 41 of 2011 pending on the file of learned Chief Judicial Magistrate, Thiruvallur District and to quash the same.

For Petitioners
(in all petitions) : Mr.Ashokkumar, senior counsel
for Mr.A.Sasidharan

For Respondents : Mr. Mohammed Riyaz,
Government Advocate [Crl.side]
[R1]

COMMON ORDER

Petitioners seek quash of proceedings in C.C.Nos.35, 36, 37, 38, 39, 40 and 41 of 2011 on the file of learned Chief Judicial Magistrate, Thiruvallur District.

2. These petitions challenge prosecution in C.C.Nos.35, 36, 37, 38, 39, 40 and 41 of 2011 pending on the file of learned Chief Judicial Magistrate, Thiruvallur District, for offences under the Factories Act. CrI.O.P.Nos.1287 to 1291 of 2012 have been preferred by the 'occupier' challenging his prosecution in C.C.Nos.35, 36, 37, 38 and 39 of 2011 while CrI.O.P.Nos.1292 and 1293 of 2012 have been moved by the 'Manager' challenging his prosecution.

3. Pursuant to an inspection of the company viz., M/s.Compact Automotive Lamps Private Limited, by second respondent, Deputy Chief Inspector of Factories, on 08.03.2011, a show cause notice was issued by him on 16.03.2011. Therein, the second respondent informed as many as 17 violations. Petitioners caused their replies/explanations dated 04.04.2011 informing that they had effected certain rectifications and sought time to further set right matters. By communication dated 25.04.2011, petitioners informed that all errors pointed out in the show cause notice stood fully rectified. On receipt of summons from learned Chief Judicial Magistrate, Thiruvallur, petitioners learnt that they were to be prosecuted for offences under the Factories Act. Challenging the same, petitioners have moved the present petitions.

4. Heard learned senior counsel for petitioners and learned Government Advocate [CrI.side].

5. Learned senior counsel for petitioners submitted that though the replies/ explanations of petitioners to the show cause notice stood acknowledged in the complaint, no intimation either accepting or rejecting the same was caused by second respondent. In such circumstance, the action of second respondent in preferring the complaint was erroneous, in that a valid right of appeal against the decision of second respondent on the replies of petitioners provided under section 107 of the Factories Act was denied. In support of such contention, learned senior counsel relied on the decision of the Division Bench of this Court in Inspector of Factories, Vellore v. Showa Engineering Ltd., Sholinghur [2007 (4) LLN 828] followed by a learned Single Judge in Writ Petition No.7434 of 2015.

6. Learned Government Advocate [CrI.side] submitted that subsequent to the replies of petitioners, a re-inspection was

conducted on 03.05.2011 and it was found that only some of the errors stood rectified and a reply informing such position was caused on 12.05.2011.

7. The reply referred by learned Government Advocate [Crl.side] is not be found as an annexure to the complaint. As such, no reliance thereupon can be placed.

8. Section 107 of the Factories Act, 1948, reads as follows:

"107. Appeals.- (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the prescribed authority, and such authority may, subject to rules made in this behalf by the State Government, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf by the State Government (which may prescribe classes of appeals which shall not be heard with the aid of assessors) the appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed:

Provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

(3) Subject to such rules as the State Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal."

9. This Court is in respectful agreement with the observations of the Division Bench of this Court in Inspector of

Factories, Vellore v. Showa Engineering Ltd., Sholinghur [2007 (4) LLN 828] which is to the effect that non-acceptance of reply/explanation by a factory/company would provide occasion for filing an appeal u/s.107 of the Factories Act, 1948. Any prosecution launched in denial of such right would have to be nipped in the bud.

The Criminal Original Petitions are allowed. The proceedings in C.C.Nos.35, 36, 37, 38, 39, 40 and 41 of 2011 pending on the file of learned Chief Judicial Magistrate, Thiruvallur District, are quashed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm/ah

To

- 1) The Chief Judicial Magistrate,
Tiruvallur.
- 2) The Inspector of Factories,
No.6, Lalbahadur Sastri Street,
Periyakuppam, Thiruvallur.
- 3) The Deputy Chief Inspector of Factories,
Thiruvallur.
- 4) The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

+7cc to Mr.A.Sasidharan, Advocate, S.R.No.20358 to 20364

Cr1.O.P.Nos.1287 to 1293 of 2012

SAI (CO)
RS (21/06/2017)

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