

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7930 of 2010

ORDER :

The petitioner is the sole accused and the 2nd respondent- Asst. Registrar of Factories, Tenali, Guntur District, is the complainant in STC No.1 of 2010 pending on the file of the Addl.Junior civil Judge, Mangaligiri. The complaint of the 2nd respondent by name Smt. V.Devasena, Asst.Registrar of Factories reads that the premises known as Reliance Supply Chain Solutions, Yerrabalem, Mangalagiri mandal, Guntur District, is a factory within the meaning of Sec.2m(i) of the Factories Act, 1948(for short, 'the Act') to which the petitioner-Sallagundla Srinivasa Rao(accused) is the Occupier/ Manager. The above premises was inspected by the then Asst. Inspector of Factories by name P.Subba Rao, on 01.06.2009 and found that the accused failed to comply with the provisions of the Act and Rules viz; no manufacturing process shall be carried on in the factory premises without obtaining a valid licence from the Inspector of Factories, for the year 2009 u/ Sec.6 and Rule 4(1)(6) of the Act and the Rules, and similarly to carry on the manufactured process in the premises without approving the plans in writing from the Director of Factories as per Section 6 and Rule 3(A)(1) and also similarly failed to open and maintain a muster roll of all the workers employed in the factory in Form No.25 showing the name of the each worker, his designation, group, relay Number and periods of work and the daily attendance of the worker and made it available for inspection at all times of working hours, which is also violation u/ sec.112 and Rule 103 and as the accused contravening the above provisions thereby liable for

punishment u/ Sec.92 of the Act and there is sanction accorded by the Inspector of Factories to prosecute the accused by virtue of Section 102 of the Act .

The cognizance order of the learned Magistrate pursuant to which in summoning the accused vide order dated 25.02.2010 for appearance on 19.03.2010 is impugned in the present quash petition.

The contentions therein are that the petitioner's warehouse has been registered under A.P. Shops and Establishments Act, 1988 as a shop, and it was renewed upto 31.12.2009 time to time. It is while so, the notice No.A/ 421/ 09 dt. 10/ 06/ 2009 issued by the Inspector of Factories, Tenali, to the quash petitioner(Accused) calling upon to explain within a week why prosecution should not be taken action against him for non-compliance of the provisions of the Act and the Rules supra while including the copy of the Inspection order dated 01.06.2009 stating that in the inspection made to the establishment on 01.06.2009 by the Asst. Inspector of Factories it was noticed that the petitioner's premises constitutes a 'factory' defined under Section 2(m)(1) of the Act. It is further averred that pursuant to which the accused issued a reply dated 25.06.2009 stating that the Establishment is governed by the A.P.Shops and Establishment Act,1988 and cannot come under the definition of manufacturing process defined u/sec.2(k) of the Act and the provisions of the Factories Act, have no application to the shop or warehouse which cannot be termed as Factory and the reply was sent with a request for personal hearing and in utter disregard to the reply, respondent filed a complaint before the learned Magistrate, Mangalagiri. It is

therefrom urged for quashing the proceedings saying the petitioner's shop cannot be treated as a 'factory', that the allegations taken on face value do not disclose any material but the learned Magistrate failed to appreciate that the allegations are not substantiated in any manner and it is lack of material and laconic and vague, and even the respondent's complaint for alleged violations of the provisions of the Act and the Rules no way sustain and the impugned prosecution is bad in law. The so called sanction for prosecution by the Inspector of Factories, Tenali is also outcome of non-application of mind. It is also averred that the Inspector's first inspection itself records against columns 1 to 3- 'Storage, Loading and Unloading of Pulses and FMCG Products" and at the end records against time of inspection 01.06.2009 at 3.00 P.M. and found workers working in storage, packing, loading and unloading of FMC Goods transports, nowhere in the entire document show the elementary requirement of the activities constituting a manufacturing process which is a condition precedent, to invoke the Factories Act and the launching of prosecution is thereby abuse of process and misconceived and is unsustainable from solely based on purported inspection report for the same no way meets the requirements of Section 105 of the Act, and thereby it no way constitutes any offence u/ Sec.6 of the Act or the Rules made thereunder and the alleged allegation concerned in the complaint about violation of Section 112 of the Act, which deals with the general powers of the respective State Governments to make rules for the purpose of giving effect to the Act, which cannot be treated as offence and also placed reliance on the expressions of

Pepsi Foods Limited Vs. Special Judicial Magistrate¹ followed and reiterated in Maskud Saiyed Vs. State of Gujarat² and Keki Hormuusji Gharda Vs. Mehervan Rustom Irani³ held summoning in criminal case is a serious matter and the learned Magistrate has to prima facie be satisfied about the case, the applicable statutes and the position in law and such exercise is conspicuously absent in the proceedings impugned herein and taking cognizance is in a mechanical manner and the activities of the petitioner's shop/ warehouse carried thereon would not fall under any of the categories of Section 2(k) which defines manufacturing process and no packing activity takes place at the petitioner's warehouse.

Heard the learned counsel for the petitioner and also the learned Public Prosecutor and perused the material on record.

In fact, a perusal of the complaint referring to 6 documents including inspection report dt.01.06.2009, and inspection order and show cause notice, dt.10.06.2009 and reply of Occupier-cum-Manager and sanction order, and Reliance Supply Chain Solutions whether comes into the definition of a 'factory' u/ sec. 2(k)(i) of the Act to which the petitioner is the Occupier/ Manager.

Section 2k(i) referring to manufacturing process includes making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. The Inspection report shows there is a non-

¹ (1998) 5 SCC 749

² (2008) 5 SCC 668

³ (2009) 9 SCC 682

compliance of the provisions particularly no valid licence from the Inspector of Factories obtained and carrying on the manufacturing process within the meaning supra without approving plans in writing from the Director of Factories and failed to attend and maintain a muster roll of all the workers employed in the factory in Form No.25 showing the name of the each worker, his designation, group, relay Number and periods of work and the daily attendance of the worker to make available to inspection thereby acted in contravention of the provisions. It is the contention that it is only a shop and not a factory. In fact even along with the quash petition what are the documents filed are the registration and renewal of the registration certificate under AP Shops and Establishment Act, from the Joint Commissioner of Labour of June, 2008 with the name of the Establishment "Reliance Supply Chain Solutions" with Head Office at Hyderabad of the business in retail rates with number of employees 300 in 3 outlets viz; at Kondalakoi village, Uppal and Errupalem, Mangalagiri, of Old Guntur road, and it shows in each about 100 employees by virtue of Annexure, dt. 12.06.2008 of the Joint Commissioner of the Labour.

There is also further renewal of licence for the year 2009 under Shops and Establishment Act, till end of 2009. There is nothing shown from the registration of the main entity with three outlets supra under the Shops and Establishment Act, no way requires registration under the Factories Act, for admittedly in each there are about 100 employees including at the outlets supra. It is not a case of there is no power in the premises in question. Once it is basically an entity with the manufacturing process of making altering, repairing,

ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal apart from preserving or storing any article in cold storage within the meaning of manufacturing process. Having regard to the above, the cognizance order, once otherwise sustainable from the prima facie accusation in the complaint, there is nothing to quash the proceedings against the petitioner.

Accordingly and in the result, the Criminal Petition is disposed of by left open available defences and by giving liberty to file application u/ sec.205CrPC for representing through special vakalath holder for the learned Magistrate to consider but for personal attendance as and when required particularly for Section 313 CrPC examination. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:04.10.2017
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Dr. B.SIVA SANKARA RAO J,