

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2018

DELIVERED ON: 12.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.20395 of 2010 and

Crl.O.P.No.8156 of 2011

and

Crl.M.P.Nos.1/10 and 2 of 2011

Crl.O.P.No.20395 of 2010

Sachin Saxena, the then occupier,
M/s Nokia India Private Ltd.,
Nokia Telecom SEZ,
SIPCOT Industrial Estate,
Phase III, A-1, National Highway No.4,
Sriperumbudur 602 105. ... Petitioner/ Accused

Vs.

The Inspector of Factories,
Circle-I,
Kancheepuram @ Sriperumbudur ... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of
Cr.P.C to call for the records in C.C.No.273 of 2010 on the
file of the Chief Judicial Magistrate, Chengleput and to quash
the same.

Crl.O.P.No.8156 of 2011

Klaus Goll, Manager,
Manager, M/s Nokia India Pvt.Ltd.,
Nokia Telecom SEZ, SIPCOT Industrial Park,
Phase III A-1,
National Highway No.4,
Sriperumbudur Taluk,
Kancheepuram District. ... Petitioner / Accused

Vs.

The Tami Nadu State Rep. by
Inspector of Factories,
First Circle, Kancheepuram,
130/1, Gandhi Road, Sriperumbudur 602105.
... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.287 of 2010 on the file of the Chief Judicial Magistrate, Chengleput and to quash the same.

For Petitioner
(in both petition) : Mr. Suraj for
M/s Sai Raaj Associates

For Respondent
(in both petition) : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.side)

COMMON ORDER

The petitioner in Crl.O.P.No.20395 of 2010 is the accused in C.C.No.273 of 2010 while the petitioner in Crl.O.P.No.8156 of 2011 is the accused in C.C.No.287 of 2010 on the file of the Chief Judicial Magistrate, Chengleput.

2. The Inspector of Factories, Kancheepuram filed a complaint against one Sachin Saxena (occupier), who is the petitioner in C.C.No.273 of 2010 and against one Klaus Goll (Manager), who is the petitioner in C.C.No.287 of 2010, on the file of the Chief Judicial Magistrate, Chengalpattu for the alleged offence punishable under 92 of the Factories Act 1948. The contention of the respondent/complainant is that in contravention of the provisions of Section 41 of the Factories Act and Rule 61 F of the Tamil Nadu Factories Rules 1950, the petitioners transported 5 bundles of fire hydrant pipes on 10.04.2010 through a crane, as a result of which, the pipe bundle hit one Mr.Sarathy Reddy s/o Appan Reddy, who sustained injuries all over his body and died on the way to the hospital. According to the respondent/ complainant, the accused is guilty of the offence punishable under Section 92 of the Factories Act 1950.

3. In the instant petitions, the petitioners have contended that M/s Nokia India Private Limited was engaged in the manufacture of mobile phones with its manufacturing unit located inside the notified Special Economic Zone at SPICOT Industrial Estate, Phase III, A-1, National Highway No.4, Sriperumbudur 602 105 popularly known as Nokia Telecom SEZ. It is the further contention of the petitioners that the factory, as part of certain maintenance operations, entrusted the work of laying of fire hydrant pipes, on contract basis to one M/s Metec Design and constructions Engineers, having their office at No.1/430, Multi Nagar Industrial Estate, Gerugampakkam, Porur,

Chennai with instructions to adhere to the safety plans as provided by the factory. According to them, the contractor, instead of moving the fire hydrant pipes manually, engaged a crane for transporting the pipes and on 10.04.2010 at about 12.00 a.m., one of the workers of the contractor Mr.Sarathi Reddy was hit by the swinging bundle of pipes and was knocked down to the ground and ran over by the tyre of the crane, resulting in his death. It is their contention that though the accident took place outside the factory premises, the petitioners intimated about the accident to the Deputy Chief Inspector of factories out of abundant caution and submitted an accident report in Form No.18 and that they were shocked to receive a show cause notice from the Deputy Chief Inspector of Factories calling for an explanation in the matter alleging violation of the provisions of the Factories Act.

4. Mr.Sai Raaj, learned counsel appearing for the petitioners would contend that as per the definition, ' a factory ' is a space enclosed by walls and since the accident did not take place in the factory premises or within its precincts, the question of initiation of prosecution by the respondent/complainant would not arise. He would further contend that the respondent/complainant failed to note the various documents namely Form-18, Form 26 and the approved factory plan etc. before coming to a conclusion that the accident took place in the premises or precincts of the factory.

5. Per contra, the learned Government Advocate (Crl.Side) would contend that since the accident took place within the factory premises, the prosecution initiated by the respondent/complainant is in order and cannot be faulted with by the petitioners herein.

6. When the matter came up for hearing, one Mr.M.Pakkiri Murugan s/o Mani Pakkiri, Director of M/s Nokia India Private Limited, filed an affidavit dated 27.06.2018, contending that while transporting 5 bundles of fire hydrant pipes, accident took place in the common road of the special economic zone, which leads to various units, that the Manager, who is one of the accused in C.C.No.287 of 2010 left India, even before initiation of criminal proceedings against him and is permanently residing in Germany and that presently he is not also associated with any of the companies of Nokia Group. He has further averred that the occupier of Nokia India Private Limited, the accused in C.C.No.273 of 2010, resigned his post during the year 2010 and all the employees of Nokia India Private Limited were transferred to M/s Microsoft and that the said company is not functioning now. It is also contended that late D.Sarathy Reddy, who was an employee of the contractor of M/s Metec Design and Construction Engineers, Porur was an

insured person under the ESI Act with IP No.17105057 and his family is entitled to all pensionary benefits and that in order to give quietus to the entire issue relating to the prosecution, the Manager of Nokia India Private limited may be permitted to pay a fine amount before the Chief Judicial Magistrate, Chengleput, in view of the peculiar nature of facts and circumstances of the present case.

7. At the outset, it may be observed that the primordial submission of the petitioners is that the accident did not take place within the premises of the factory and that it occurred in the common area of special economic zone, leading to the various units. According to them, it is not also within the precincts of Nokia India Private Limited. Whether the accident took place within the premises / precincts of the Nokia India Private Limited or not is a disputed question of facts, which cannot be decided in the present petition under Section 482 of the Code of Criminal Procedure. Merely because, Nokia India Private Limited is not operational in India at present, this court cannot direct the Chief Judicial Magistrate, Chengleput to impose a fine amount alone on the accused. Hence, I do not find any reason to quash the proceedings against the petitioners in C.C.No.273 of 2010 and C.C.No.287 of 2010 on the file of the Chief Judicial Magistrate, Chengleput.

8. In the result, CrI.O.P.No.20395 of 2010 and CrI.O.P.No.8156 of 2011 are dismissed. Consequently, connected criminal miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mst

To

1. The Chief Judicial Magistrate,
Chengleput.
2. The Inspector of Factories,
Circle-I,
Kancheepuram @ Sriperumbudur

3. The Public Prosecutor,
Madras High Court

+1 CC to M/s Sai Raaj Associates, Advocate sr 45929.

Cr1.O.P.No.20395 of 2010
and Cr1.O.P.No.8156 of 2011

BS (CO)
SP (23/07/2018)



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