



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 17.09.2018
DELIVERED ON : 20.09.2018

CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A(MD)No.261 of 2017

The State rep. By
The Public Prosecutor,
High Court, Madras.

[The Inspector of Factories - II
Madurai which was re-designated
as Deputy Director of Industrial
Safety and Health-II, Madurai]/

: Appellant/
Complainant

Vs.

N.V.Unnikrishnan,
Occupier,
M/s.AVN Ayurveda Formulation Pvt. Ltd.,
175-A, Villachery Main Road,
Muniyandipuram, Pasumalai (Post),
Madurai District.

[Within the jurisdiction of
Andalpuram Police Station,
Madurai District].

: Respondent/
Accused

PRAYER: Appeal is filed under Section 378 of the Code of Criminal Procedure, against the Judgment of acquittal dated 30.06.2014 passed in S.T.C.No.25 of 2014 by the learned Additional Chief Judicial Magistrate, Madurai.

For Appellant : Mr.A.Robinson,
Government Advocate (Crl. Side).

For Respondent : Mr.G.Manivannan

JUDGMENT

The complaint of the Inspector of Factories, Madurai against the proprietor of M/s.AVN Ayurveda Formulation Private Limited was dismissed. Aggrieved by the order of acquittal passed by the Additional Chief Judicial Magistrate, Madurai in S.T.C.No.25 of 2014, dated 30.06.2014, State has preferred this appeal.



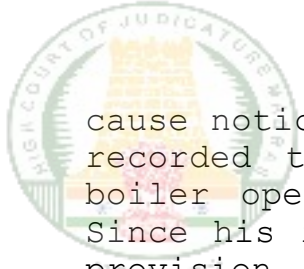
2.The case of the complainant is that on 24.08.2013, the Joint Director, Industrial Safety and health, Madurai inspected the factory premises of M/s.AVN Ayurveda Formulation Private Limited at No.175-A, Villachery Main Road, Muniyandipuram, Pasumalai Post, Madurai, owned by N.V.Unnikrishnan. On that day early morning at about 03.20 a.m., there was a fire accident in the raw material godown of the said factory. The inspection of the Joint Director revealed that inflammable material like toluene and isoprophyl alcohol were stored in the raw material godown. The electrical wire were not drawn through conduit pipe. They were hanging loose. The switch board was not provided with earth leakage circuit breaker or miniature circuit breaker. Vapourisation of the inflammable materials stored and electrical leak due to loose wiring were found to be the cause of the fire accident, resulting in damage of goods worth Rs.97 lakhs.

3.Based on the report, the Deputy Director has preferred a private complaint otherwise than a police report by a public servant. The substance of the complaint prima facie would indicate that the raw material godown of M/s.AVN Ayurveda Formulation Private Limited was not equipped with fire fighting instruments. Due to failure of providing fire protection equipments, like, automatic sprinkler and hydrant and due to storing inflammable materials, the wire which was not drawn through conduit pipe had caused electrical short circuit leading to damage of goods worth Rs.97 lakhs. Had the factory owner taken sufficient precaution by providing automatic sprinkler and hydrant, the accident would have been averted. For failure to take precautionary measures as provided under Section 38 (3) of the Factories Act, 1948 read with Rule 61(4)(a) and Section 38(3) read with Rules 61(10)(a) and 13 of the Tamil Nadu Factories Rules, 1950, punishable under Section 92 of the Factories Act, 1948, complaint was lodged after issuing show cause notice.

4.The learned Chief Judicial Magistrate, Madurai took cognizance for offence under Section 38(3) of the Factories Act, 1948 read with Rule 61(4)(a) and Section 38(3) read with Rules 61 (10)(a) and 13 of the Tamil Nadu Factories Rules, 1950, punishable under Section 92 of the Factories Act, 1948 and made over to the learned Additional Chief Judicial Magistrate, Madurai. The learned Additional Chief Judicial Magistrate, Madurai tried the case for the said offence against N.V.Unnikrishnan, the owner of M/s.AVN Ayurveda Formulation Private Limited.

5.Before the Trial Court, the complainant has examined two witnesses, namely, Deputy Director, Industrial Safety and Health, Madurai and Joint Director, Industrial Safety and Health. 18 exhibits were marked on behalf of the complainant.

6.Mr.V.A.Appavoo Samraj who conducted the inspection of the godown immediately after the fire accident, examined as P.W.2. Based on his inspection report (Ex.P.3), show cause notice (Ex.P.10) issued to the occupier of the premises. In response to the show

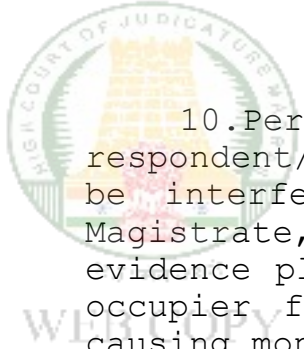


cause notice, the occupier has given his reply (Ex.P.14). P.W.2 had recorded the statements of Thiru.Raja and Thiru.Govindasamy, the boiler operator and shift operator employed in the said factory. Since his investigation revealed contravention of the Factories Act provision, sanction to prosecute has been sought and obtained. The sanction to prosecute accorded by the Additional Director, Factories Safety and Health is Ex.P.18. Mr.P.N.Sankar (P.W.1) has prosecuted the complaint.

7.The Trial Court which has taken cognizance of the complaint under Section 105 of the Factories Act, had found that the factory is running for five years and no complaint till the date of accident. Periodically every six months, a factory has to be inspected under the Act. In this case, the failure to keep sprinkler, not providing conduit pipe for electric wire, were never noticed on the earlier inspections. Without conducting inspection properly, the present complaint is filed after the accident, pointing out the failure to comply the safety provisions. The cause for accident is presumed to be due to rat bit of the electric wire. The complaint based on presumption and on the inspection report without the assistance of an Expert, the complaint is not sustainable.

8.The reasoning for acquitting the accused is now under challenge in this revision case.

9.According to the revision petitioner/complainant, the Trial Court order of acquittal is manifestly erroneous and illegal. The Trial Court failed to consider the provisions of the Factories Act, which cast upon the occupier to take precautionary measures to avoid fire accident and the accused had failed to provide those precautionary measures. The Trial Court failed to consider Section 104-A of the Act, where the onus is on the occupier to explain why necessary precaution is not taken. In this case, the occupier admittedly had stored inflammable materials in the raw material godown. He had not provided sprinkler to prevent fire. He has failed to explain in the show cause notice why the wires were not concealed in conduit pipe and why he has not provide earth circuit break or miniature circuit break. Without considering the failure of the occupier in providing precautionary measures, the Trial Court has acquitted him. The inspection report and the enquiry report would clearly prove that the occupier has miserably failed to comply the safety measures prescribed under Rule 61(4)(a). Despite that pointing out that the Inspector of Factories has not conducted periodical check up and allowed the occupier to float the Rules, the Trial Court had acquitted the accused. The Trial Court has failed to consider that there is a clear violation of safety rules by the occupier, which attracts Section 92 of the Factories Act. Though the prosecution has clearly proved about the violation, for extraneous reasons the Trial Court has acquitted the accused. hence, the order requires reconsideration.



10.Per contra, the learned counsel appearing for the respondent/accused would submit that the Trial Court order need not be interfered with since the learned Additional Chief Judicial Magistrate, Madurai has passed an order after considering the evidence placed by the complainant and the explanation given by the occupier for the unexpected accident occurred due to Act of God causing monetary loss to the occupier to the tune of Rs.97 lakhs.

11.The learned counsel would further submit that the prosecution itself is improper and illegal, since the sanction to prosecute is silent about application of mind. P.W.2 had not inspected the premises and submitted his report with the assistance of an expert. Based on his presumption, presumptive cause of action has been shown in the report. Criminal liability cannot be fashioned on presumption. The defective sanction order and inspection report without an expert renders the prosecution unsustainable. Therefore, the learned counsel would submit that the Trial Court order deserves to be confirmed.

12.To buttress his submission, the learned counsel appearing for the respondent would rely upon the following Judgments:

(i)P.C.Joshi and another v. The State of Uttar Pradesh reported in AIR 1961 Supreme Court 387;

(ii)Mansukhlal Vithaldas Chauhan v. State of Gujarat reported in 1997 CRI.L.J. 4059(SC);

(iii)Hemaraj Sharma v. Banwarilal Bathwal and others reported in 1988 CRI.L.J. 1887 [Orissa High Court];

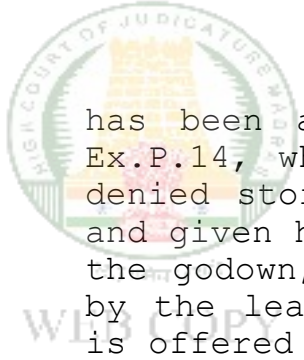
(iv)The Asstt. Collector of Central Excise, Coimbatore v. L.Gheverchand Jain and another reported in 2000 CRI.L.J. 1292 [Madras High Court]; and

(v)H.K.Kala and another v. State of Madhya Pradesh reported in 2008(4) L.L.N. 477 [Gwalior Bench of Madhya Pradesh High Court].

13.Point for consideration:

"Whether the Trial Court has failed to appreciate the law and facts in proper perspective while acquitting the accused?"

14.From the evidence of P.W.1 and P.W.2, it is amply clear that M/s.AVN Ayurveda Formulation Private Limited is a licensed manufacturer of herbal products. The factory license has been given to the said factory as early on 25.10.2002. The last inspection of the factory before the fire accident has been conducted on 02.05.2013. On 24.08.2013, the Inspector of Factories has been informed about the fire accident occurred on 24.08.2013 at about 03.20 a.m. The report of dangerous occurrence submitted to the Deputy Chief Inspector of Factories by the Manager of the Factory is marked as Ex.P.7. On receipt of this information, P.W.2 had conducted the spot inspection, taken photographs on fire-cutted factory, recorded the statements of two employees of the factory, namely, Raja and Govindasamy and thereafter prepared his inspection report. In the show cause notice issued to the occupier, the defects found in the godown had been pointed out and the management



has been asked to explain. The explanation of the occupier is Ex.P.14, which is dated 20.09.2013. The occupier has specifically denied storage of inflammable substance in the raw material godown and given his explanation why water sprinkler cannot be installed in the godown, where herbal products are stored. But, as pointed out by the learned Government Advocate (Criminal side), no explanation is offered by the occupier for not providing conduit pipe wiring and not providing earth circuit break and miniature circuit break, which is one of the defects pointed out in the inspection report. Rule 61 (4) (a) of the Tamil Nadu Factories Rules, 1950 reads as under:

"61.Fire protection.____

... ..

(4)Precautions against ignition.-- Wherever there is danger of fire or explosion from accumulation of flammable or explosive substances in air :-

(a)all electrical apparatus shall either be excluded from the area of risk or they shall be of such construction and so installed and maintained as to prevent the danger of their being a source of ignition;

15.Rule 61(10) (a) reads as under:

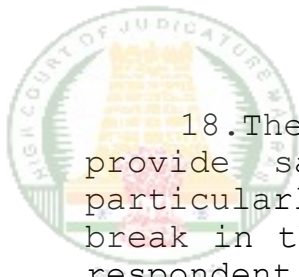
"(10) First-aid fire-fighting arrangements.-- (a)In every factory there shall be provided and maintained adequate and suitable fire fighting equipment for fighting fires in the early stages, those being referred to as first-aid fire fighting equipment in this rule".

16.According to the prosecution, these preventive measures were not maintained by the occupier, which has caused the fire accident on 24.08.2013. These rules are framed under the rule making power conferred to the State Government under Section 38(3) of the Factories Act, 1948, which reads as under:

"38.Precautions in case of fire.--

(3)The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2)".

17.The present complaint is filed under Section 105 of the Act alleging that non-adherence of the provisions of the Act and contravention of the Act which attracts the penal provision under Section 92. The accident has occurred on 24.08.2013. The sanction to prosecute is issued on 04.11.2013. The complaint has been presented before the learned Chief Judicial Magistrate, Madurai on 13.11.2013 and taken cognizance on 26.02.2014 for offence under Section 38(3) of the Factories Act, 1948 read with Rule 61(4) (a) and Section 38(3) read with Rules 61(10) (a) and 13 of the Tamil Nadu Factories Rules, 1950, punishable under Section 92 of the Factories Act, 1948 and made over to the learned Additional Chief Judicial Magistrate, Madurai.



18.The contention of the appellant/State that the omission to provide safety measures as contemplated under the Rules more particularly, not providing miniature circuit break or earth circuit break in the junction board, has not been properly explained by the respondent/accused. Section 104-A of the Act cast upon onus on the occupier to prove the reason for non-complying the duty or requirement under the provisions of the Factories Act. The explanation given by the occupier for the show cause notice, does not indicate any explanation for not providing conduit pipe or earth circuit break or miniature circuit break in the board, when the inspection report specifically indicates that this is one of the cause for the electrical fire.

19.It is the contention of the learned counsel appearing for the respondent/accused that the inspection report itself is bad. The inspection of the factory was not done with assistance of an expert. The said contention does not carry any merit. Section 9 of the Act does not mandate inspection should be done with assistance of an expert. Section 9 empowers the Inspectors to enter any factory and demand for production of register or document, take photographs, measurements, etc. While so, he may take the assistance of any person in the service of the Government or any local or other public authority or an expert, as he thinks fit.

20.In this case, the inspection has been conducted after the accident. It could have been prudent on the part of the Inspector to take the assistance of an expert, but mere omission to take the assistance of an expert will not vitiate his report. More particularly, when the non-compliance of precautionary measures has not been properly explained by the occupier, despite opportunity given to him. Therefore, this Court finds grave error in the finding of the Trial Court, which needs interference.

21.Considering the other aspects, namely, the accident which has caused due to improper electrification, storage of inflammable articles, but at the same time, due to providence, there was no life loss, except material loss. Pointing out the error in the finding of the Trial Court, the appeal against acquittal is allowed. The order dated 30.06.2014 passed in S.T.C.No.25 of 2014 by the learned Additional Chief Judicial Magistrate, Madurai is set aside.

22.For questioning the accused regarding sentence, post the matter on 03.10.2018, for appearance of the respondent/accused. Registry is directed to issue summons to the respondent for appearance before this Court on 03.10.2018.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1.The Additional Chief Judicial Magistrate,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2copies)** .

JUDGMENT MADE IN
Cr1.A(MD)No.261 of 2017
20.09.2018

SMN

ES/RP/SAR 4/20.09.2018/7P/5C