



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.OP[MD]No.4612 of 2014

and

M.P.(MD)No.1 of 2014

P.Loganathan

... Petitioner

Vs.

1.The State represented by the
Sub-Inspector of Police,
Pasupathipalayam Police Station,
Karur District.

2.M.Hemalatha ... Respondents

PRAYER: Petition is filed under Section 482 of Cr.P.C, to call for records relating to the impugned C.C.No.210 of 2013 on the file of the Judicial Magistrate Court No.1, Karur and quash the same and consequently, allow this criminal original petition.

For Petitioner : Mr.J.Anandkumar

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)

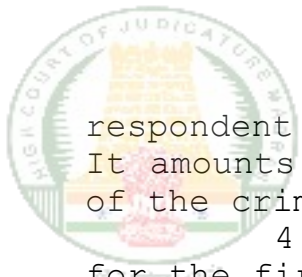
For R2 : No appearance

O R D E R

This petition is filed to quash the criminal proceedings in C.C.No.210 of 2013 on the file of the learned Judicial Magistrate No.1, Karur having taken cognizance for the offence under Sections 287, 337, 338 and 304 (A) IPC as against the petitioner.

2.The case of the prosecution is that on 06.12.2011 due to non maintaining the boiler properly and due to negligence of the petitioner, it was bursted and as such, the employees died and so many persons sustained injury. Hence, the charge sheet has been filed against the petitioner.

3.The learned counsel for the petitioner would submit that on the date of occurrence, the Deputy Inspector of Factory submitted a report alleging that he has taken cognizance as per the Factories Act. In the meanwhile, the first respondent also registered the case in Crime No.695 of 2011 for the offence under Sections 287, 337, 338 and 304 (A) IPC. On the basis of the report of the Inspector of Factories, an enquiry conducted and imposed a sum of Rs.2,21,000/-as per the order of the Chief Judicial Magistrate in S.I.C.Nos.13 and 14 of 2012 dated 01.03.2012. When the Inspector of Factories initiated proceedings under the Factories Act, the first



respondent police has no authority to initiate criminal proceedings. It amounts to double punishments and as such, he prays for quashing of the criminal proceedings.

4. Per contra, the learned Government Advocate (Crl.side) for the first respondent submitted that due to the negligence of the petitioner alone, the accident took place, in which, several persons died and several persons suffered grievous injuries. Therefore, he is liable to be punished for the offence under Sections 287, 337, 338 and 304(A) IPC. Hence, he prays for dismissal of the criminal proceedings.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the first respondent.

6. Admittedly, the accident took place due to the negligence of the petitioner and due to which, unfortunately, six persons died and five persons severely injured and 12 persons also sustained injury. The Inspector of Factories submitted a report stating that an enquiry conducted by the Chief Judicial Magistrate in S.T.C.No.13 and 14 of 2012 against the petitioner, in which, the petitioner found guilty and paid penalty of Rs.2,21,000/- and Rs.6,000/- as per the order of the Chief Judicial Magistrate, dated 01.03.2012. The first respondent has also laid charge sheet before the learned Judicial Magistrate No.1, Karur in C.C.No.210 of 2013 for the offence under Sections 287, 337, 338 and 304(A) IPC.

7. The learned counsel for the petitioner has relied upon the judgment of this Court in *Manoharan Vs. State of Tamil Nadu* reported in 2012 (2) MWN (Cr.) 335, wherein it has been held that:-

"7. Now, on the basis of the complaint given by one Govindaraj, on the same day, a case in Crime No.365 of 2009 has been registered for the offence under Sections 338 and 304-A IPC by the respondent police and after the completion of investigation, charge sheet has been filed against the petitioners and the same has been taken cognizance in C.C.No.63 of 2010 and pending before the learned Judicial Magistrate No.V, Trichy.

8. The point now raised by the petitioner is that the occurrence has been taken place within the factory premises and on information, enquiry has been conducted and the Deputy Chief Inspector has filed a complaint against the occupier and the Manager of the Factories under the Factories Act. Since the complaint under the Factories Act have been disposed of the proceedings under the Penal Code, which is a general provision of law is not sustainable.

9. At this juncture, it is appropriate to consider the decision in Ashwini Kumkar Singh and another Vs. State of Jharkhand, 2007 LLR 866, wherein, in Paragraph No.7, it has been held as follows:-

Para 7: The law is settled in the various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. I find that when the complaint case has been instituted vide C/2 No.5211/05 under Special law



(Factories Act, 1948), the continuation of the criminal prosecution against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable. In both the statutes viz., under Section 304-A, Indian Penal Code (general law) and under Section 92 of the Factories Act, 1948 the sentence prescribed to the convict is similar but with additional fine to the extent of Rupees One Lakh in the Special Act to the Occupier and in this manner the extent of find is more severe in special law and both cannot proceed at a time. The criminal prosecution of the petitioners, therefore, under Indian Penal Code is unsustainable.

10. Considering the above said decision, two proceedings will not be sustainable for the same cause of action / same incident. In the present case, since to 15 to 2009 filed under the Factories Act have been disposed of and the first petitioner herein and one Narasimha Rao were convicted and they paid the find amount, the continuation of the criminal proceedings against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable".

8. The above said judgment is squarely applicable to the case on hand. The two proceedings will not be sustainable for the same cause of action/same occurrence. In the present case, under the Factories Act, the petitioner has found guilty and punished in S.T.C.Nos.13 and 14 of 2012 by the Chief Judicial Magistrate and paid penalty. Therefore, the continuation of the criminal proceedings as against the petitioner for the offence prescribed in general law of Indian Penal Code is unsustainable.

9. In view of the above, this court is of the considered opinion that the criminal proceedings cannot be sustainable as against the petitioner. Accordingly, this Criminal Original Petition is allowed and C.C.No.210 of 2013 on the file of the Judicial Magistrate No.1, Karur is quashed. Consequently, M.P(MD) No.1 of 2014 is closed.

Sd/
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-III)

To

1. The Judicial Magistrate No.1, Karur

2. The Sub-Inspector of Police,

Pasupathipalayam Police Station, Karur District.

3. The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.J.ANANDKUMAR, Advocate, SR.No. 91501

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