

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.5830 of 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Honourable Court may be pleased to issue a Writ of Certiorari or any other appropriate writ and quash the complaint and investigation in FIR No.25 of 2016 on the file of the 2nd respondent police and grant such other relief as it deems fit in the circumstances of the case.”

2. I have heard the submissions of Sri *Vedula Venkata Ramana*, learned Senior Counsel appearing for the petitioners; of the learned Government Pleader for Home (Telangana) appearing for the respondents 1 & 2; and of Sri *P.Venkata Ramana*, learned counsel appearing for the 3rd respondent. I have perused the material record.

3. To begin with, it is necessary to state the introductory facts, which are as follows: ‘On the report of the 3rd respondent, Gurram Sathyavani, the 2nd respondent herein, that is, the Station House Officer, Maheshwaram Police Station, Cyberabad, Ranga Reddy District, registered a case in Crime No.25 of 2016, on 08.02.2016, against the petitioners 1 to 3 herein and also another person, who is the Supervisor of M/s.Hasita Aromatics Private Limited, IDA Mankal, Mankhal Village, Maheshwaram Mandal, Ranga Reddy District. The said crime was registered for the offences punishable under Sections 304-A & 337 of Indian Penal Code, 1908 (for short, ‘IPC’). The present writ petition is filed by the petitioners/accused

1 to 3 to quash the report lodged by the 3rd respondent and the FIR.'

4. The case of the petitioners, in support of the said request, in brief, is this: 'The 1st petitioner is the Managing Director; the 2nd petitioner is the General Manager; and the 3rd petitioner is the Plant Head of M/s.Hasita Aromatics Private Limited, which has got plant and machinery at IDA Mankhal, Mankhal Village, Maheshwaram Mandal, Ranga Reddy District. The said company is a manufacturer of Pharma intermediates. It is in existence since about 15 years. The plant and machinery of the said company are well maintained. The manufacturing process adopted by the said company is scientifically perfect. The maintenance of the plant and machinery is always upto the mark. The said company is registered as a factory under the Factories Act, 1948, ('the Act', for short), and is scrupulously observing the mandates of the said Act. While so, the 3rd respondent lodged a report with the 2nd respondent stating that in the factory premises of the said Company, an accident occurred, on 08.02.2016 at about 6.30 am, due to the blast of Nutsche Filter and that the said blast has resulted in the death of her husband and five others and that the said blasting occurred due to pressure released from the contents of the said Nutsche Filter. In her report to the Police, she alleged that the petitioners herein have not taken precautionary measures and that the blast had taken place due to their contributory negligence in regard to the manufacturing process. On the said report of the 3rd respondent, the 2nd respondent registered the subject crime showing the petitioners 1 to 3 as the accused. On account of the registration of the said crime, the petitioners 1 to 3

are being put to hardship and are under a threat of arrest in connection with the said crime. The registration of the crime on the report of the 3rd respondent, the investigation being sought to be undertaken pursuant to the registration of the said crime and issuance of FIR are all an abuse of process of law. Offences under the Indian Penal Code are coupled with *mens rea* (guilty mind). In a manufacturing process in a plant, if an accidental blast takes place, the directors and officers of the Company are not liable to be prosecuted for any offences under the Indian Penal Code. The ingredients of Sections 304-A and 337 of IPC are not attracted and the offences punishable under the said provisions of law cannot be attributed to the directors and the officers of the Company since the Company is a juristic person. The company is not made an accused. The offences under the Penal Code do not contemplate any vicarious liability. A crime shall not be registered unless the complaint/report disclosed the commission of an offence punishable under the IPC. There is no such disclosure in the report of the 3rd respondent. Except a bald allegation that there is negligence and that no precautionary measures are taken to ensure that the manufacturing process does not result in any blasting, there is no material in the complaint/report to implicate the petitioners in the criminal offences, particularly under the Penal Code. The Factories Act, 1948, takes care of the matters related to maintenance of the factories and the prosecutions, which can be initiated for failure to abide by the provisions of the said Act. The invocation of the provisions of the Indian Penal Code is wholly misconceived and is an abuse of process of law. A civil wrong cannot be converted and dubbed into a criminal offence. In

the report there are no specific allegations about the role to the petitioners, which resulted in the blasting of the Nutsche Filter. Hence, the police ought not to have registered the crime on the report of the 3rd respondent. Hence, the question of continuing investigation is impermissible. Hence, the present writ petition is filed.'

5. On 24.02.2016, this Court admitted the writ petition and granted the following interim order in W.P.M.P.No.7412 of 2016:

"Perusal of the complaint, which led to the registration of Crime No.25 of 2016 on the file of Maheshwaram Police Station, reflects that no specific allegations are made against the accused as to the negligence on their part which contributed to the accident. As it is stated that proceedings have already been initiated under the Factories Act, 1948, for determining the cause of the accident, there shall be interim stay as prayed for."

6. The Inspector of Police filed a vacate petition on behalf of the official respondents 1 & 2, along with his counter affidavit. The submissions in the said counter affidavit, in brief, are as follows:

During the course of investigation, the Inspector of Police examined the 3rd respondent and other witnesses and recorded their detailed statements. He seized material objects from the place of incident. The seized material objects were sent to the Director, Forensic Science Laboratory, Red Hills, Hyderabad, for obtaining forensic expert's opinion. A letter, dated 08.02.2016, was addressed to the Inspector of Factories, Ranga Reddy-III Circle, Masabtank, Hyderabad, requesting him to depute a team of experts to the Company for obtaining information about the Company. A letter, dated 08.02.2016, was also addressed to the Director, Forensic Science Laboratory, Red Hills, Hyderabad, requesting to depute a team of experts to the Company to clarify

whether the management of the company used the permissible components of chemical ingredients; whether the composition of ingredients are within the permissible ratio; and, whether there are any foreign materials in the composition. Another letter, dated 08.02.2016, was also addressed to the Assistant Engineer, Electricity Department, Maheshwaram, requesting him to visit the Company and verify whether the management of the Company has taken permission from the Electricity Department; whether they are following the necessary conditions and are taking precautionary measures regarding supply of electricity; whether there are any lapses and/or contribution from the side of the management of the Company; and, whether the cause of accident is short circuit, etcetera. A letter, dated 08.02.2016, was also addressed to the Station House Officer, Fire Station, Maheshwaram, Ranga Reddy District, requesting to visit the Company and to note whether the management of the Company has taken all precautionary fire safety measures and has necessary permissions from the Fire Department. A letter, dated 08.02.2016, was addressed to the Assistant Commissioner of Labour, RTC X Road, Hyderabad, requesting to depute a team of experts to the Company to know the number of permanent & casual labourers working in the company; whether they are trained; whether the management of the Company is maintaining the statutory registers; and whether the Company has necessary permissions from the Labour Department. Inquests were conducted over the dead bodies of the deceased labourers/employees in the presence of mediators. The Assistant Commissioner of Labour, Ranga Reddy District, furnished the details of the deceased employees/

labourers in his letter, dated 13.02.2016. He also stated that notices under Section 10-A of the Employees Compensation Act are being issued to the Owner and Occupier of the factory with regard to payment of compensation to the members of the families of the deceased and that the management did not produce any registers and that a notice under the provisions of the Minimum Wages Act was also issued to the management and that steps will be taken to launch prosecution against the management under the provisions of the said two enactments, in the event it is found that the Management failed to comply with the provisions of the said enactments. The Additional Assistant Electricity Engineer, in his letter, dated 14.02.2016, opined that the accident is not related to electricity short circuit and that the electrical equipment in the premises of the Company where the plant and machinery are installed is healthy and that the cause for the incident was internal accident. The Inspector of Factories, Ranga Reddy-III Circle, stated that the factory is registered, on 26.10.1999, with Registration No.64152 & Licence No.43517 and that its plans are approved. The Assistant District Fire Officer also visited the accident spot, on 16.02.2016, and gave a report, on 16.02.2016, stating that enormous blast occurred due to the chemical composition in Nutsche Filter and that the mandatory fire preventive measures are not provided in the plant/factory and no fire accident had occurred in the premises of the factory, on 08.02.2016. The Assistant Commissioner of Labour, Hyderabad, submitted a report, dated 16.02.2016, as regards the number of permanent & casual workers, their experiences. He stated that the management did not produce register of casual labourers stating that the same

which was with the security went missing on the day of accident; that the management produced the permanent workers' muster roll; and, that the management of the Company is not required to take permission for running the factory from the Labour Department. The investigation is, thus, under progress. The writ petition is filed with false and frivolous allegations. Until full-fledged investigation is conducted by the Investigating Agency, it cannot be decided as to whether the petitioners have anything to do with the criminal overt acts related to the crime. However, on account of the interim orders of this Court, further investigation was stopped. The investigation so far done revealed that the accident occurred at the first stage of manufacturing of Dess Martin Periodinane and while carrying filtration in the Nutsche Filter under vacuum with blanketing effect by supplying nitrogen and that the contents in the Nutsche Filter are Iodo Benzoic Acid & Acetone and that the incident occurred due to failure of the management in taking any precautions with regard to explosion followed by fire. In the incident, six employees were involved and five out of them died. Hence, the interim order is to be vacated. After completion of investigation, a final report either way will be submitted to the Court concerned. Hence, the writ petition may be dismissed.

7. The 3rd respondent, on whose report the criminal law was set into motion, filed a counter affidavit stating that under emotional circumstances, she gave a report to the Police and that subsequently, the management of the factory has helped her financially and a compensation of Rs.10,00,000/- was paid to her and the management of the factory acted in all fairness towards

her when she was in difficult circumstances and, therefore, she does not intend to continue the criminal complaint, which was given by her against the management of the Company.

8. I have given earnest consideration to the facts and submissions.

9. From the pleadings, the submissions made in line with the pleadings and the contents of the First Information Report & other material documents, the following facts are discernable:

The petitioners are the Managing Director, General Manager and Plant Head of the Company, which is a manufacturer of pharma intermediates. It is registered under the provisions of the Factories Act, 1948. On 08.02.2016, at about 6.30 AM, an accident took place in the factory premises of the Company due to blast of a nutsche filter. The said blast resulted in deaths of five out of six workmen who were injured. The 3rd respondent, who is the wife of one of the injured workmen, who succumbed to the injuries sustained in the said blast, lodged a report with the police and that on that report, the 2nd respondent-Station House Officer, Maheshwaram Police Station, registered a case in Crime no.25 of 2016 against the petitioners herein and another officer of the Company for the offences punishable under Sections 304-A & 337 of IPC and took up investigation. The petitioners/accused 1 to 3 approached this Court for quashing the report lodged by the 3rd respondent, the FIR and the investigation done pursuant thereto.

10. The principle contentions of the petitioners are as follows:

For the accidental blast of the nutsche filter that took place in the factory premises, the petitioners are not liable to be

prosecuted under the penal provisions of the Indian Penal Code; that for prosecution under the aforesaid penal provisions, the ingredients of the said provisions coupled with *mens rea* are to be satisfied; that in the case on hand, the ingredients of the said penal provisions are not attracted; that the reasons for the blast of the filter are not attributable to the petitioners; that vicarious liability in a case of this nature does not arise; that registration of the crime, issuance of FIR and initiation of investigation is an abuse of process of law; that there are penal provisions under the Factories Act, 1948; that the said and other provisions of the said Act take care of the maintenance of the factories and the prosecutions, which can be initiated for failure to abide by the provisions of the said Act; that already action is admittedly initiated under the provisions of the said Act; and, hence, the writ petitioners are entitled to the reliefs claimed in the writ petition.

11. In the counter filed by the 2nd respondent, the Station House Officer, Maheshwaram Police Station, while stating about the progress made in the investigation till the granting of the interim order by this Court, it is *inter alia* stated that the culpability of the petitioners 1 to 3 under the provisions of the Indian Penal Code for the offences punishable under Sections 304-A & 337 IPC cannot be stated at this stage and that after completion of the investigation, a final report either way would be filed after arriving at an opinion, based on the investigation done. The 3rd respondent, on whose report, the crime was registered, stated that she had lodged the report under the emotional circumstances and that the management of the factory helped her financially and she was paid a compensation of Rs.10,00,000/- and that the management acted

in all fairness in the matter and towards her when she was in difficult circumstances and that she, therefore, does not intend to continue with the complaint made against the petitioners and another.

12. Having given earnest consideration to the peculiar facts & circumstances of the case and having regard to the fact that there are special provisions under Chapter IX and provisions relating to Penalties & Procedure under Chapter X of the Factories Act, 1948, and that action under the provisions of the said Act has already been initiated, this Court finds that there is acceptable merit in the contentions of the petitioners, which are excerpted to supra. From the narration of the pleadings and events supra, it *prima facie* appears that even if the contents of the report are taken on their face value there is no *prima facie* material to conclude that the blast was due to the negligence of the petitioners, much less the culpable negligence of the petitioners and that, therefore, the case on hand is one for being proceeded against under the provisions of the Factories Act, 1948, and that the ingredients of Sections 304-A & 337 IPC are not attracted to the incident of blasting, which had occurred in the factory premises. Accordingly, and for the above said reasons this Court finds that, in any view of the matter, the petitioners cannot be proceeded against for the alleged offences punishable under the provisions of the Indian Penal Code.

13. Accordingly, this Court holds that allowing the investigation and prosecution against the petitioners for the offences punishable under Sections 304-A & 337 IPC is an abuse of process of law and that, therefore, the petitioners are entitled to the reliefs claimed.

14. In the result, the Writ Petition is allowed as prayed for. *Rule nisi* is made absolute.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

17th August, 2018
KL/RAR

