IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2018

PRONOUNCED ON : 08.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.Nos.17936 & 17937 of 2013
and
M.P.Nos.1+1 & 2+2 of 2013

Rajiv Kaul ... Petitioner in both the Crl.OPs

Vs.

Government of Tamil Nadu,
Represented by
The Inspector of Factories,
Ambattur Taluk, Chennai. ... Respondent in both the Crl.OPs.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records and quash the proceedings in C.C.Nos.83 & 82 of 2013 on the file of the Chief Judicial Magistrate, Tiruvallur.

For Petitioner : Mr.R.Shanmuga Sundaram,
Senior Counsel for M/s.Giridhar& Sai
in Crl.OP.No.17936/2013
Mr.N. Ravindran,
Senior counsel
for M/s.Giridhar and Sai
in Crl.OP.No.17937/2013

For Respondent
in both OPs : Mr. T. Shanmugarajeswaran
Government Advocate (Crl.Side)

COMMON ORDER

These petitions have been filed by the accused to quash the proceedings against him in C.C.Nos.83 of 2013 and 82 of 2013 respectively on the file of the Chief Judicial Magistrate, Tiruvallur.

2. The respondent herein had filed a complaint stating that on 12.02.2013, he had inspected the premises of the petitioner's company and noticed certain irregularities and hence the

petitioner being the occupier of the said Company, is liable to be punished under Sections 112 of the Factories Act r/w Rule 103 of the Tamil Nadu Factories Rules, and Section 61(1) (9) of the Factories Act r/w Rule 79 of the Tamil Nadu Factories Rules. He also filed another complaint stating that the petitioner is liable to be punished under Sections 6 (1)(2) and 7(1) of the Factories Act r/w Rules 3 (1) (2), 4 (1) (2) (3) and 12 of the Tamil Nadu Factories Rules.

3. Based on the aforesaid complaints, the learned Chief Judicial Magistrate, Tiruvallur, has taken the cases on file in C.C.Nos.82 of 2013 and 83 of 2013 and issued summons to the petitioner herein. After receipt of summons, the petitioner/accused has filed the present petitions under Section 482 Cr.P.C., to quash the proceedings against him in the aforesaid C.Cs. The respondent has filed a counter affidavit denying the averments made in the petitions.

4. Heard Mr.R.Shanmuga Sundaram, learned Senior Counsel, assisted by M/s. Giridhar & Sai, counsel for the petitioner in Crl.No.17936 of 2013; Mr.N.Ravindran, learned Senior Counsel assisted by M/s.Giridhar & Sai, learned counsel for the petitioner in Crl.OP.No.17937 of 2013 and Mr.J. Shanmugarajeswaran, learned Government Advocate (Crl.Side) for the respondent in both the petitions.

5. Mr.R.Shanmuga Sundaram, learned Senior Counsel, who is appearing for the petitioner in Crl.OP.No.17936 of 2013 has submitted that after receipt of show-cause notice dated 05.03.2013, the petitioner had sent a reply dated 05.04.2013 requesting the complainant/respondent to furnish the complete text of the inspection report but the respondent/complainant has not furnished the complete text of the inspection report. He further submitted that in the reply notice, the petitioner has categorically stated that the petitioner's Company will not come under the definition of 'Factory' and no manufacturing process is carried on and hence the provisions of 'Factories Act' would not attract. He further submitted that after receipt of the said reply, without passing any order on the said show-cause notice, the respondent had straightaway filed the complaint before the court and thereby deprived the rights of the petitioner from filing appeal under Section 105 of the Factories Act. In support of the aforesaid contentions, the learned senior counsel for the petitioner has relied upon the decision of the Division Bench of this court in R. Seelan Raj, R. and 14 Others Vs. The Presiding Officer, I Additional Labour Court and 3 Others, 1997 (II) CTC 317.

6. Mr.N. Ravindran, learned senior counsel, who is appearing for the petitioner in CRL.OP.No.17937 of 2013 has adopted the arguments advanced by the learned senior counsel for

the petitioner in CRL.OP.No.17936 of 2013. He further submitted that the word 'repairing' which occurs in the definition of " manufacturing process" as per Section 2(k) (i) of the Factories Act has to be read along with the words "any article or substance with a view to its use, sale, transport, delivery or disposal" coming thereafter. So, the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. He further submitted that despite the fact that the petitioner had submitted the explanation through reply notice, in the complaint nothing has been mentioned as to why the said explanation has not been accepted and therefore, the impugned complaint is vitiated due to non-application of mind by the respondent/complainant. In support of the aforesaid contentions, he relied upon the following decisions:-

1) National Service Centre and Petrol Pump, Chandigarh Vs. Employees, State Insurance Corporation, Chandigarh.

2) K.Masthan Rao Vs. State, 2015 1LW(Crl) 254=2014(3) MLJ (Crl) 523.

7. Per contra, the learned Government Advocate (Crl.Side) who is appearing for the respondent has submitted that the petitioner's Company is carrying out the manufacturing process of repairing work of computer hardware components, spares and accessories with the help of 31 workers and with the aid of motor power of 34.58 HP which was found at the time of inspection on 12.02.2013 at 11.15 a.m., by the Inspector of Factories Ambattur, Chennai - 600032. He further submitted that during the course of inspection, he has noticed that application for the Registration of the Factory, and application for approval have not been submitted. He further submitted that license application also not submitted, further, before occupation, notice of occupation of the premises not sent. He further submitted that the attendance register in Form-25 not maintained and notice of period of work for adult workers in Form-11 not displayed and also not submitted to the Inspector of Factories. He further submitted that a show-cause notice was issued enclosing an extract of inspection report and after receipt of the said notice, the management has submitted a reply denying the contraventions as noted in the show-cause notice. He further submitted that in the reply notice dated 05.04.2013, the petitioner himself admitted that in case of any repairs in computer hardwares, components, spares and accessories which they have sold to customers in the premises of the customers and in some cases in the premises of the Company itself and also they have admitted that the print works also undertaken in the above factory premises. He further submitted that the aforesaid activities would amount to manufacturing process within the definition of Section 2 (k) (i) of Factories Act and hence, the petitioner's Company comes within the definition of 'Factory' as

per Section 2 (m) (i) of the Factories Act and thereafter after getting necessary sanction from the Chief Inspector of Factories, the respondent had filed the aforesaid complaint. He further submitted that a prima facie case is made out against the petitioners and hence he prayed to dismiss the petitions.

8. 'Factory' is defined under Section 2 (m) of the Factories Act, 1948. Section 2(m) of the Factories Act reads as follows:

> "(m) "factory" means any premises including the precincts thereof-
>
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
>
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
>
> but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952),] or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place].
>
> [Explanation. I--For computing the number of workers for the purposes of this clause all the workers in [different groups and relays] in a day shall be taken into account;]
>
> [Explanation. II.--For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory f no manufacturing process is being carried on in such premises or part thereof.]"

9. Relying on explanation 2 which was inserted by Act 20 of 1987, with effect from 01.12.1987, the petitioner contends that merely because an Electronic Data Processing Unit or a Computer Unit is installed in the premises, it shall not be construed that the petitioner's company is a 'Factory' as it was not carrying on any manufacturing process.

10. "manufacturing process" is defined under Section 2 (k) of the Factories Act as follows:

> "(k) "manufacturing process" means any process for-
>
> (i) making, altering, repairing, ornamenting,

finishing, packing, oiling, washing, cleaning, breakingup, demolishing, or other-wise treating or adapting any article or substance with a view to its use,sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithogra-phy, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage”.

11. In R. Seelan Raj and 14 Others Vs. The Presiding Officer, I Additional Labour Court and 3 Others (cited supra), a Division Bench of this court in paragraph No.9 of the judgment has observed as follows:

“9. The word 'factory' has been explained in Section 2(m) and while deciding whether a particular establishment is a factory or not, the meaning attributed to the words "manufacturing process" and "industrial establishment" would, be relevant. But on a plain reading of Explanation II added on December 1, 1987, it becomes abundantly clear that an electronic data processing unit, or a computer unit installed in any premises or part thereof, and such activities may amount to manufacturing process, bringing within the ambit of the word 'factory' as defined under Section 2(m) of the Factories Act, yet Explanation II grants an exemption/ immunity to an electronic data processing or computer unit from being brought within the purview of the welfare legislations namely the labour laws. Thus, an establishment solely engaged as electronic data processing unit or , computer unit, though may be a factory, yet would be exempted from the application of labour laws by virtue of Explanation II and such establishment cannot be held as a factory. The only object of bringing Explanation II. is to march in step together with industrial modernisation and electronic innovation in industrial field. Computer is a recent innovation and has augmented industrial development to a great extent. By computerisation, efficiency has been increased adding to the national resources available for development. The legislature still thought more scope for the use of electronics and computer, and its contribution to the national development. 'Thus, in our view, giving priority to the laudable object of national prosperity, the legislature thought it proper to grant immunity to such units from application of welfare legislation, namely labour laws, so that such developmental projects can strengthen national growth without any hurdle or impediment. Of course, the statement of objects and reasons for bringing out the amendment, does not expressly say so, but, if read in between the lines, we derive the aforesaid scope from para 2 of the statement of objects and reasons. "

12. From the aforesaid decision, it is clear that the Explanation-II of Section 2(m) grants an exemption/immunity to an electronic data processing or computer unit from being brought within the purview of the welfare legislations namely the labour laws. Thus, an establishment solely engaged as electronic data processing unit or, computer unit, though may be a factory, yet would be exempted from the application of labour laws by virtue of Explanation II and such establishment cannot be held as a factory. In this case, admittedly, the petitioner Company is engaged in selling computers. Further, it is undertaking electronic data process. In view of the aforesaid decision, the processing of data cannot be regarded as a manufacturing process.

13. According to the respondent/complainant, that since the petitioner has admitted that they are undertaking minor repairs of the computers and also undertaking printing process, the said activity comes within the definition of 'manufacturing process'. In National Service Centre and Petrol Pump, Chandigarh Vs. Employees State Insurance Corporation, Chandigarh (First Appeal From Order No.138 of 1980 dated 03.12.1981, High court of Punjab and Haryana in Paragraph No.5 has observed as follows:

"As regards service station for repairing motor cars, etc., the counsel for the Corporation wants it to be brought within the definition of "manufacturing process" as per S.2(k) (i) of the Factories Act wherein the word "repairing" has been used. But this word has to be read along with the words "any article or substance with a view to its use, sale, transport, delivery or disposal" coming thereafter. So, the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. This matter was dealt with by me in detail in Employees' State Insurance Corporation v.Triplex Dry Cleaners [F.A.O.No.405 of 1978, dated 22 October 1981- since reported in 1983- I L.L.N.676] (current issue), wherein the process of dry cleaning was sought to be included within the definition of “manufacturing process” because the definition included the words “washing and cleaning”. In that case, I recorded the finding that unless a new marketable commodity comes into being after the process and can be used, sold, transported, delivered or disposed of, the process cannot be called a manufacturing process. The same reasoning would apply in the present case. Customers bring their vehicles and after repair, etc., they pay service charges and take away their vehicles. Therefore, I am of the view that repairing of motor vehicles is also not a manufacturing process.”

14. From the aforesaid decision, it is clear that the word ''repairing'' which occurs in the definition of ''manufacturing process'' has to be read along with words “any article or substance with a view to its use, sale, transport, delivery or disposal'' coming thereafter. So, the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. Therefore, merely because the petitioner undertakes some minor repairs, it cannot be said that the said act comes within the definition of ''manufacturing process''.

15. In clause-(iv) of Section 2 (k) of the Factories Act, it is stated that the composing types for printing, printing by letter press, lithogra-phy, photogravure or other similar process or binding also would come under the definition of manufacturing process. In this case, according to the petitioner, they are just taking print out from the computer and the said process would not be termed as composing types for printing, printing by letter press, lithography, photogravure or other similar process or binding. Taking print out from the computer would not come under any of the aforesaid categories. Further, as already pointed out that in view of the Division Bench decision of this court, the electronic data processing unit or computer unit would be exempted from the application of labour laws by virtue of explanation-II of Section 2 (m) of the Factories Act. Therefore, the Factories Act and the Factories Rules would not apply to the petitioner's Company.

16. In Masthan Rao Vs. State (cited supra), the petitioner had sent a reply to the show-cause notice stating that the building is more than a century old and all parameters are in place, the respondent/complainant has totally ignored all these aspects and proceeded with the complaint, as if no explanation was offered by the petitioners for the alleged contraventions. It was the case of the petitioner that the building has been so constructed to have natural ventilation and necessity to provide a ventilating plant does not arise. But thereafter the

authorities have not made any inspection. Under the said circumstances, this court has held that unless the authority is satisfied that the ventilation plant itself has to be established then and then only the question of it being maintained or certified would arise and thus lack of application of mind is manifest on the face of the complaint. But in this case, the facts are totally different. In this case, it is alleged by the respondent that the petitioner is undertaking manufacturing process and hence the petitioner/company would come under the definition of 'Factory', but the petitioner has not applied for license, etc. Therefore, the aforesaid decision will not apply to the facts of this case. However, as already pointed out that in view of the Division Bench decision of this court, the activities of the petitioner Company would not come under the definition of 'Factory' and therefore, the petitioner cannot be prosecuted as he has violated the provisions of the Factories Act. Therefore, the continuance of the proceedings in the aforesaid C.Cs against the petitioner are abuse of process of the court. Hence, the said proceedings are liable to be quashed.

17. In the result, these petitions are allowed. The proceedings in C.C.Nos.82 and 83 of 2013 on the file of the Chief Judicial Magistrate, Tiruvallur, are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv

To

1.The Government of Tamil Nadu,
Represented by
The Inspector of Factories,
Ambattur Taluk, Chennai.

2.The Chief Judicial Magistrate,
Tiruvallur.

3.The Public Prosecutor,
High Court, Madras.

Crl.OP.Nos.17936 & 17937 of 2013
and
M.P.Nos.1+1 & 2+2 of 2013

LN(CO)

RRS 28/06/2019