

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.23034 & 23035 of 2015
and
M.P.Nos.1,1,2,2 of 2015

L.Ganesh ..Petitioner
in Crl.O.P.No.23034 of 2014

T.Solaippan ..Petitioner
in Crl.O.P.No.23035 of 2014

.Vs.

The State of Tamil Nadu
Rep by Deputy Director of Industrial Safety & Health
Ambattur Circle, Guindy, Chennai 32.

...Respondents in
Crl.O.P.No.23034 & 23035/2015

COMMON PRAYER : Criminal Original Petition is filed under
Section 482 of Cr.P.C., to call for the records in C.C.Nos.124 &
125 of 2015, on the file of the Chief Judicial Magistrate,
Tiruvallur, and to quash the same.

For Petitioner : Mr.Ravi
(in both Crl.OPs) for Mr.Gupta and Ravi

For Respondent : Mr.C.Raghavan
(in both Crl.OPs) Government Advocate

COMMON ORDER

These Criminal Original Petitions have been filed
challenging the private complaint instituted by the respondent
against the petitioners for offences under Sections 7A, 32 & 41
of the Factories Act, 1948 r/w Rules 61-E & F of the Factories
Rules, 1950 made thereunder.

2.The petitioners are the occupiers and the Manager of the Factory.

3.The first violation cited in the complaint is that one Suresh, a maintenance operator who was carrying on his work, cleaning the exhaust chimney sustained burn injuries at the back of his left hand. He was exposed to an unsafe working condition without being properly monitored. There is a violation of Sections 7A & 41 of the Factories Act, 1948 r/w Rule 61(E) and (F) of the Tamil Nadu Factories Rules, 1950.

4.The 2nd violation cited in the complaint is that one R.G.Thirumalai, working in the finishing and packing area, while handling a trolley sustained a fracture in his right leg as the break lining fell on his leg. He was exposed to an unsafe work place as the trolley was not properly maintained. Therefore, there is violation of Sections 7A, 32 & 41 of the Factories Act, 1948 r/w Rule 61 F of the Tamil Nadu Factories Rules, 1950.

5.The 3rd violation cited in the complaint is that, one Sriramulu, who was working in the curing press fell down and sustained fracture in his left hand. This happened due to bad maintenance of the handrails thereby exposing him to an unsafe condition. Therefore, there is violation of Sections 7A & 32 of the Tamil Nadu Factories Act, 1950.

6.The incident pertaining to R.G.Thirumalai was immediately informed to the concerned authority by filing Form No.18 under Rule 96 of the Factories Rules, 1950 on 19.02.2014. In the said

Form, the reason for the incident has been clearly set forth at column 11. Similarly, with regard to the third incident pertaining to Sriramulu, Form 18 under Rule 96 of the Factories Rules, 1950 has been filed before the concerned authority on 27.08.2014. The manner in which the accident took place is clearly explained in column 11 of the said Form.

7.In all the cases, a Show Cause Notice was issued by the respondent only on 26.03.2015, for which a detailed reply was sent by the petitioners on 11.05.2015. After the receipt of the reply, the respondent has proceeded to file the private complaint against the petitioners for the above said offences.

8.The learned counsel for the petitioners submitted that the prosecution itself is barred by limitation since no Court can take cognizance of any offence under the Factories Act, 1948 unless the complaint is made within three months of

the date on which the commission of the offence came to the knowledge of the Inspector. The learned counsel submitted that incidents were brought to the knowledge of the concerned authority in the months of February and August 2014 respectively; by filing Form No.18. However, the complaint has been filed only in the month of June, 2015 and therefore the same is barred under Section 106 of the Factories Act, 1948. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in J.J.Irani and Another .Vs. State of Jharkhand reported in [2014 3 LLN 299].

9.The learned counsel for the petitioners further submitted that the reply that was given to the Show Cause Notice was neither considered at the time of sanctioning nor at the time of filing the complaint. Therefore, the complaint itself is unsustainable. The learned counsel relied upon the judgment of this Court in K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore reported in 2014 (3) MWN (Cr.) 86.

10.The learned Government Advocate appearing on behalf of the respondent submitted that limitation is a mixed question of fact and law and the same can be gone into only at the time of trial. The learned counsel further submitted that the complaint as such makes out an offence against the petitioners, and therefore this Court should not interfere with the proceedings at this stage and the petitioners must be made to face the trial before the Court below.

11.This Court has carefully considered the submissions made on either side and the materials available on record.

12.It is seen from the records that the second incident pertaining to R.G.Thirumalai happened on 18.02.2014. This was brought to the notice of the concerned authority by filing Form 18 the next day. Similarly, the third incident pertaining to Sriramulu happened on 26.08.2014, and the same was brought to the notice of the concerned authority by filing Form 18 the next day. In both cases, the cause for the accident has been clearly explained in the Form.

13.The respondent has chosen to give a Show Cause Notice to the petitioners only on 26.03.2015. The petitioners gave their reply in May 2015 and the complaint was filed in June 2015.

14.It will be relevant to consider at this stage as to whether the complaint is barred by limitation under Section 106 of the Factories Act.

15. Useful relevance can be placed to the judgment of the Hon'ble Supreme Court in J.J. Irani & Another referred supra. The relevant portions of the judgment is extracted hereunder :

"10. There is no dispute about the meaning of the term "commission of the offence" or "knowledge," hence the question is essentially: when did the Inspector come to know of the commission of the offences? Section 106 of the Act reads as follows:

"Section 106: Limitation of prosecution: No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

[Explanation: - For the purpose of this section -

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.]"

13. The High Court accepted that the starting point for limitation was the date of knowledge of the commission of offence but took the view that in the present case the date of accident and the date of knowledge of the commission of the offence are different. The High Court relied on the decision of this Court in P.D. Jambekar v. State of Gujarat, (1973) 3 SCC 524, in which this Court observed as follows:

"As Section 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, we find it difficult to read the section so as to make the date on which the Inspector would or ought to have acquired knowledge of the commission of the offence had he been diligent, the starting point of limitation, especially where, as here the statute does not provide for an inquiry into the accident much less the period with which the inquiry has to be made. It is only in the jurisprudence of Humpty Dumpty that we can equate the "date on which the alleged offence came to the knowledge of an Inspector" with the date on which the alleged offence ought to have come to his knowledge. We think that the High Court was right in its conclusion (para 8)."

14. The High Court took the view that it cannot be said that the complainant came to know of the commission of the offence in the preliminary inquiry conducted on 5.3.1989 by the Chief Inspector of Factories in his presence by distinguishing the difference between "knowledge of an accident" and "knowledge of commission of the offence." The High Court observed that the complainant could have known of the breach only when the cause of accident, which was inquired into, was reported by the Chief Inspector of Factories in his report, which was received by the complainant on 23.04.1990; and it was only from the inquiry report that it could be gathered that the accident of fire took place because of breach of provisions of law.

15. We have heard the matter and considered the issue at length and we find ourselves unable to uphold the reasoning of the High Court. Jambekar's case (supra), is of no assistance in deciding the present case. In that case this Court accepted that from a reading of the report of the incident it was difficult for anyone to come to the conclusion that an offence under Section 21(1)(iv)(c) has been committed. The Inspector's statement that the report did not convey to him any knowledge that the offence was committed was accepted and this Court concluded that the Inspector did not acquire the knowledge of the

'commission of the offence' when he received the report. The case before us is entirely different. Here the Inspector was himself part of the team, which conducted the preliminary inquiry between 5th and 6th March, 1989. As observed earlier, the inquiry is a detailed investigation going into all aspects of the occurrence. In these circumstances it is not possible to hold that the Inspector of Factories, who undertook a detailed inquiry into the accident along with the Chief Inspector of Factories, remained ignorant that the offences in question have been allegedly committed. It is proper to assume that an officer, conducting an investigation, comes to know what has happened, that being the only purpose of the investigation.

16. It is clear from the above judgment, that the limitation has to be calculated either from the date of commission of the offence or from the date on which it came to the knowledge of the concerned authority. The complaint must be filed within three months from the date on which the offence came to the knowledge of the concerned authority. Beyond that, a Court cannot take cognizance of any offence punishable under the Act.

17. In the present case, the alleged commission of the offence came to the knowledge of the concerned authority as early as in the month of February and August 2014 respectively; after Form 18 was filed for both the incidents. The Show Cause Notice itself came to be given only in March 2015, which itself is beyond the period of limitation. The complaint came to be filed only in the month of June 2015. Therefore, the complaint itself is barred by limitation and the Court below ought not to have taken cognizance of the complaint, since it is barred under Section 106 of the Factories Act.

18. The petitioners have given a detailed reply for the Show Cause Notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the Show Cause Notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind. Useful reference can be made to the judgment of this Court in K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore reported in 2014

(3) MWN (Cr.) 86. The relevant portions of the judgment is extracted hereunder:

"27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of

examination of cranes, ropes, etc., building stability certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the propriety of the explanations offered.

28. In terms of Rule 102 of the Tamil Nadu Factory Rules, 1950, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any

order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply.

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint

was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forthcoming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind".

19. In view of the above, this Court comes to the conclusion that the complaint itself is an abuse of process of Court and no useful purpose will be served by making the petitioners undergo the ordeal of facing the trial before the Court below.

20.In the result, the proceedings in C.C.Nos.124 & 125 of 2015, on the file of the learned Chief Judicial Magistrate, Tiruvallur, is hereby by quashed, and accordingly, both the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Factories,
Ambattur Circle,
Bharathkumar Bhavan,
617, Anna Salai,
Chennai 600 006.
 - 2.The State of Tamil Nadu
Rep by Deputy Director of Industrial Safety & Health
Ambattur Circle,A.28, Thiru.Vi.Ka. Industrial Estate Guindy,
Chennai 32.
 - 3.The Chief Judicial Magistrate,
Tiruvallur.
 - 4.The Public Prosecutor,
High Court, Madras.
- +1 CC to M/s. Gupta and Ravi, Advocate sr 70366.

सत्यमेव जयते
Cr1.O.P.Nos.23034 & 23035 of 2015

RR(CO)
SP(27/09/2019)

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