

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20989 of 2010
and
M.P.No.1 of 2010

[Orders Reserved on 26.10.2018]

Mr.R.M.Mayilvasagam ... Petitioner / A1

Vs.

The State [Government of India]
Rep.by the Inspector of Mines,
Chennai Region,
Old No.46, New No.:5,
2nd Street, Block AA,
Anna Nagar,
Chennai - 600 040 ... Respondent / Complainant

PRAYER: Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.678 of 2006, on the file of Judicial Magistrate at Tambaram, Chennai and quash the same.

For Petitioners : Mr.M.Ravi Kumar

For Respondent : Mr.G.Karthikeyan, ASG

WEB COPY
ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.678 of 2006, on the file of the learned Judicial Magistrate at Tambaram, Chennai. Petitioner is A1 / owner of Mine.

2. The short facts of the case are as follows:-

On 15.11.2005, there was a fatal accident at

Thalakananchery Stone Quarry No.3 (S.F.No.139 Part) owned by one RM Mayilvasagam. One Shri Niranjan Sharma, Dy. Director of Mines Safety, Chennai Region, Chennai, who is also an Inspector of Mines, inspected the site of accident on 17.11.2005, 18.11.2005 and 13.03.2006 and enquired into the causes and circumstances which lead to the accident and found that while four persons was engaged for loading a tipper at the bottom of about 41.6m high vertical die (bench) consisting of weathered & jointed stone (Charkonite), suddenly, a mass of stone, detached from edge of high side, at height of about 41m above, fell over one of them, including serious bodily injuries, to which he succumbed 7 days in the hospital. In contravention of provisions of Section 18 (4) of the Mines Act, 1952 read with Regulation 106(2) & (3) of Metaliferous Mines Regulation, 1961, the accused No.1 failed to see that mining operations in the mine were carried on by formation of proper benches as required. The contraventions constitute offenses, which are punishable under Section 72-A, 72C(1)(a) and 73 of the Mines Act, 1952 and the accused are severally and vicariously liable for the same.

3. The learned counsel appearing for the petitioner would submit that the complaint is not at all maintainable as the alleged offence said to have committed on 15.11.2005 and it came to the knowledge of the respondent is on 17.11.2005 and complaint was filed on 10.05.2006, which does not come under the time limit framed either under Sub Section [I] or [ii] of Section 79 of the Mines Act, 1952 (Hereinafter referred to as, 'the said Act') and filing of the complaint on 11.08.2006 would hit by Section 79 of the Mines Act, 1952, as taking cognizance was barred by law. Further, the learned Judicial Magistrate at Tambaram has no jurisdiction to entertain the above complaint, since the place of occurrence situated within the police limits of pazhavanthangal Police Station, which comes under the jurisdictional limits of learned Judicial Magistrate at Alandur. In fact, the said Judicial Magistrate at Alandur given a verdict of acquittal against the petitioner in a case tried on a Police report preferred by the Pazhavanthangal Police on the same set of facts in C.C.No.301 of 2006, dated 05.07.2006, under Section 304(A) of IPC. The petitioner was already tried by the learned Judicial Magistrate at Alandur for an offence under Section 304 (A) of IPC., in C.C.No.301 of 2006 and putting the petitioner for the trial of the present complaint preferred by the respondent herein before the learned Magistrate at Tambaram in C.C.No.678 of 2006 on the same set of facts would amount to double jeopardy and the same would hit by Section 300 of Cr.P.C., Article 20(2) of the Indian Constitutional Law and also by Section 26 of General Clauses Act. The learned counsel invited the attention of this Court to the Judgments of Hon'ble Supreme Court in Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao & Anr reported in (2011 (2) CTC 4569) and in

Sangeetaben Mahendrabhai Patel Vs. State of Gujarat & Another reported in (CDJ 2012 SC 295), prayed for quashment.

4. The learned Assistant Solicitor General appearing for the respondent would submit that pursuant to a fatal accident on 15.11.2005, the Inspector of Mines, inspected the site of accident on 17.11.2005, 18.11.2005 and 13.03.2006. On enquiry, he found while loading a tipper at the bottom of about 41.6m high vertical die (bench consisting of weathered & jointed stone (Charkonite), suddenly, a mass of stone, detached from edge of high side, at height of about 41m above, fell over one of them, including serious bodily injuries, to which he succumbed 7 days in the hospital. In contravention of provisions of Section 18 (4) of the Mines Act, 1952 read with Regulation 106(2) & (3) of Metaliferous Mines Regulation, 1961, the accused No.1 failed to see that mining operations in the mine were carried on by formation of proper benches, as required. The contraventions constitute offenses, which are punishable under Section 72-A, 72C(1)(a) and 73 of the Mines Act, 1952 and the accused is severally and vicariously liable for the same. In support of his contention, he relied on a Division Bench Judgment this Court in Sengol & Others Vs. State Rep. by the Inspector of Police, R.S.Mangalam Police Station & Others reported in (CDJ 2012 MHC 049).

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. The contention of the Learned Assistant Solicitor General by relying on a Judgment of the Court in Sengol & Others Vs. State Rep. By the Inspector of Police, R.S.Mangalam Police Station, & Others reported in (CDJ 2012 MHC 040) is helpful on the point that prosecution of a person both under the Indian Penal Code and under the Mines and Minerals [Development and Regulation] Act, 1957, is permissible. In the said case, this Court had formulated two questions, which reads as follows:

"1. Whether the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, will either explicitly or impliedly exclude the provisions of the India Penal Code, when the act of an accused is an offence both under the Indian Penal Code and under the Provisions of the Mines and Minerals (Development and Regulation) Act, 1957.?"

2. If a case is registered by the police both under the provisions of the Indian Penal Code as well as the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and a final report is submitted, whether it will be

lawful for a Magistrate to take cognizance on the said final report?"

and gave findings, in paragraph 46 of the Judgment, which reads as follows:-

"46. In view of the foregoing discussions, we answer the questions referred to us as follows:-

" (i) Since, the offences under the Indian Penal Code involved in the cases before us and an offence under Section 21 of the Mines and Minerals [Development and Regulation] Act, 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and Minerals [Development and Regulation] Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in Section 154 Cr.P.C., under Section 379 and other relevant provisions of IPC., investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final report under Section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

(ii) If an act of the accused constitutes offences under Indian Penal Code, as well as the provisions of the Mines and Minerals [Development and Regulation] Act, the registration of a case both under the provisions of Indian Penal code and the Mines and Minerals [Development and Regulation] Act is not illegal and

the police may proceed with the investigation. However, the police shall file a police report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals [Development and Regulation] Act, he may file a separate complaint, provided he has been authorised under Section 22 of the said Act.

(iii) In any event, if the police officer, files a final report in respect of offences under IPC., as well as under Section 21 of the Mines and Minerals [Development and Regulation] Act, the Magistrate may take cognizance of the offences under IPC., alone and proceed with the trial.

(iv) In respect of offences under the Mines and Minerals [Development and Regulation] Act, the court shall take cognizance only on a complaint filed by a person authorised in that behalf by the Central Government or State Government and not on a police report.

(v) In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under Section 22 of the Mines and Minerals Act, is in force, on completing the investigation in respect of the offence under Section 21 of the Mines and Minerals Act,, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under Section 22 of the Mines and Minerals Act, before the jurisdictional Magistrate, upon which the

Magistrate may take cognizance."

7. In the said Judgment, the point was that offence under Section 21 of Mines and Minerals Act and the offence under Section 379 of IPC., can be investigated by Police, subject to certain restrictions.

8. The case on hand is with regard to contravention of Provision of Section 18(4) of Mines Act r/w Regulation 106(2) & (3) for Metalliferous Mines Regulation. In this case, the issue raised is regarding the scope and application of Doctrine of Double Jeopardy. The Rules against the double Jeopardy provides foundation for the pleas of 'autrefois acquit' and 'autrefois convict'. The manifestation of the Rule is to be found contained in Section 300 Cr.P.C., Section 26 of General Clauses Act, Section 71 of IPC. And Article 20(2) of the Constitution, which reads as follows:-

(I) Section 300 (1) Cr.PC., reads as follows:-

"A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof."

(ii) Section 26 of the General Clauses Act, 1897 reads, as follows:-

"Provision as to offences punishable under two or more enactments. - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

(iii) Section 71 of IPC., reads as follows:-

"Limit of punishment of offence made up of several offences. - Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided."

(iv) Article 20(2) of the Constitution,

"20. Protection in respect of conviction for offences - (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once. "

9. The Test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in two trials. The plea of 'autrefois acquit' is not proved, unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter charge. At this juncture, it is relevant to refer few Judgments of the Hon'ble Supreme Court, as follows:-

"(a). The Constitution Bench of the Hon'ble Supreme Court in the Judgment in S.A.Venkataraman v. Union of India & Anr., reported in (AIR 1954 SC 375), explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words 'prosecuted' and 'punished' are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attractive.

(b). The Constitution Bench of the Supreme Court in the Judgment in The State of Bombay v. S.L. Apte and Anr. reported in (AIR 1961 SC 578), while dealing with the issue of double jeopardy under Article 20(2) held as follows;;

"To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement

therefore for attracting the Article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out.

xx xx xx xx xx
xx

The next point to be considered is as regards the scope of Section 26 of the General Clauses Act. Though Section 26 in its opening words refers to "the act or omission constituting an offence under two or more enactments", the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to "shall not be liable to be punished twice for the same offence". If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked."

(c) The Hon'ble Supreme Court in the Judgment in Union of India & Anr. v. P.D.Yadav reported in (2002) 1 SCC 405, dealt with the issue of double jeopardy in a case where the pension of the official, who stood convicted by a Court-Martial, had been forfeited. The relevant portion of the Judgment reads as follows:-

"This principle is embodied in the well-known maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa*, meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others....

10. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C., or Section 71IPC or Section 26 of of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge. "

11. There may be some overlapping of facts in both the cases, but the ingredients of the offences are same. The petitioner has been acquitted for the same cause of action in C.C.No.301 of 2006, the ingredients and the facts are one and the same as regards C.C. No.678 of 2006, though the offences are different but the facts are same. Thus, the subsequent case is barred by the aforesaid statutory provisions.

12. Further, it is seen that the incident dated 15.11.2005 came to the knowledge of the respondent on 17.11.2005. On perusal of original records it is seen that the complaint was filed and taken on file by the lower Court on 11.08.2006. At this juncture, it is relevant to refer Section 79 of Mines and Minerals Act, which reads as follows:-

79.Limitation of prosecutions.—No court shall take cognizance of any offence under this Act, unless complaint thereof has been made—

(i) within six months of the date on which the offence is alleged to have been committed, or

(ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or 1[(iia) in any case in which the accused is or was a public servant and previous sanction of the Central Government or of the State Government or of any other authority is necessary for taking cognizance of the offence under any law for the time being in force, within three months of the date on which such sanction is received by the Chief Inspector, or]

(iii) in any case where a court of inquiry has been appointed by the Central Government under section 24, within 2[one year] after the date of the publication of the report referred to in sub-section (4) of that section, whichever is later. 3[Explanation.—For the purposes of this section—

(a) in the case of 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 has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.]

It is within six months the complaint ought to have been filed.

13. The Apex Court in a catena of decisions have held that special enactment will over ride the general provisions of Law and Specific Provisions will override the other provisions. In this case, the case has been filed beyond its period of limitation. Under such circumstances, this Court is of the view that it is a fit case to quash the proceedings.

14. It is true that there are other accused in this case and only one of them viz., A1 has preferred this petition before this Court, seeking to quash the above proceedings in C.C.No.678 of 2006. But, in view of the conclusion that continuation of proceedings will amount to abuse of process of law, it would be futile to allow continuance of the criminal proceedings insofar as the other accused are concerned. Hence, the proceedings in C.C.No.678 of 2006, on the file of the learned Judicial Magistrate, Tambaram, Chennai, is quashed against all the accused. Consequently, the connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate
at Tambaram, Chennai.

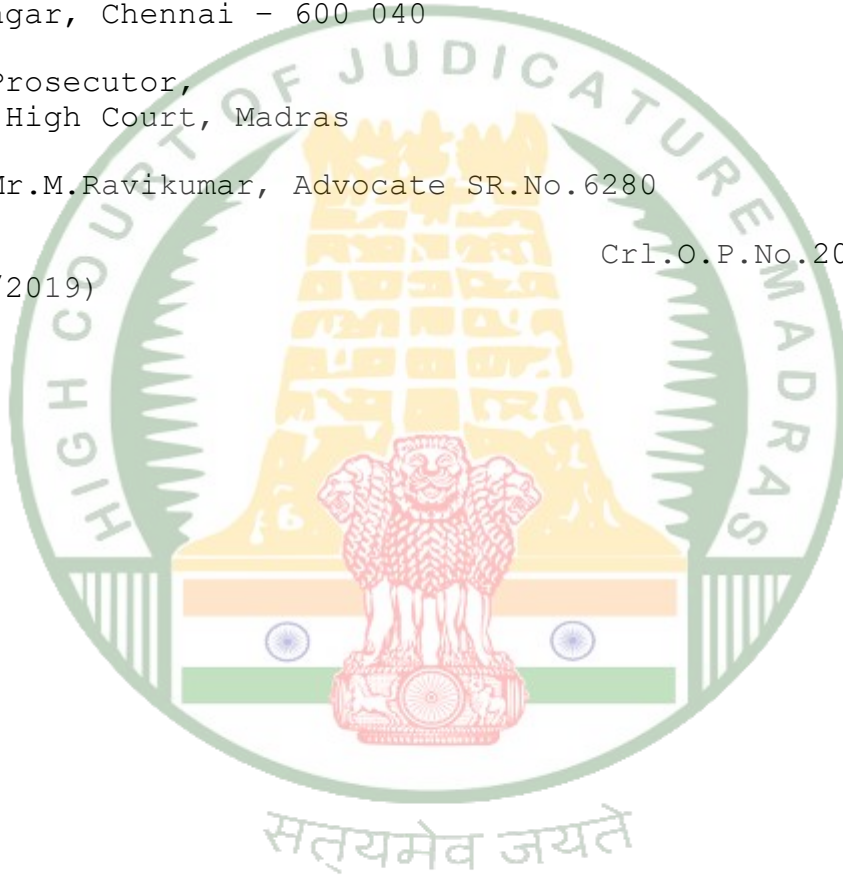
2.The Inspector of Mines,
The State [Government of India]
Chennai Region,
Old No.46, New No.:5,
2nd Street, Block AA,
Anna Nagar, Chennai - 600 040

3.Public Prosecutor,
Madras High Court, Madras

+1cc to Mr.M.Ravikumar, Advocate SR.No.6280

Crl.O.P.No.20989 of 2010

GMV(15/02/2019)



WEB COPY