

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2018

Pronounced on : 06.09.2019

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1171 of 2013

Pazham Sekar

...Petitioner

Vs.

The State of Tamilnadu
Rep. by the Inspector of Police,
Mudakurichi Police Station.
(Cr.No.152/2011)

... Respondent

This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C. praying to call for the records pertaining to Crl.M.P.No.8287 of 2011 in C.C.No.309 of 2011 on the file of the learned Judicial Magistrate No.III, Erode, and set aside the order dated 01.07.2013 passed therein.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondent : Mr.G.Harihara Arun Soma Sankar
Govt. Advocate (Crl.Side)

ORDER

This criminal revision case has been filed seeking to set aside the dismissal of the petition filed under Section 300 of Cr.P.C., seeking to drop the proceedings in C.C.No.309 of 2011 on the file of the learned Judicial Magistrate No.III, Erode.

2 The respondent police registered a case against the petitioner and yet another for the offence punishable under Sections 287, 338 and 304(A) of IPC and after investigation laid a charge sheet before the learned Judicial Magistrate No.III, Erode, and the same was taken

on file in C.C.No.309 of 2011. During pendency of the above case, the petitioner herein filed a petition under Section 300 of Cr.P.C. in C.M.P.No.8287 of 2011 seeking to discharge him from the present case. The learned Magistrate, after hearing both the counsel, by order dated 01.07.2013, dismissed the petition. Challenging the above said dismissal order, the petitioner is before this Court with the present criminal revision case.

3 The learned counsel appearing for the petitioner would submit that for the very same occurrence, the petitioner was charged by the Inspector of Factories for the offence under Section 37(1)(b)(c) & Section 41 Rule 61 (f) of Factories Act and case was tried in C.C.No.112 of 2011 by the learned Chief Judicial Magistrate, Erode. The petitioner has pleaded guilty and hence the learned Chief Judicial Magistrate by judgment dated 30.06.2011 convicted the petitioner for the offence punishable under Section 92 r/w Section 37(1)(b)(c) of Tamil Nadu Factories Act and sentenced to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of six months and also convicted for the offence under Section 92 r/w 41 of Tamil Nadu Factories Act and sentenced to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of six months. The petitioner has also paid the total fine amount imposed by the Court below. Now the respondent police has registered the present case for the offence under Section 287, 338, 304(A) of IPC for the very same occurrence, which amounts to double jeopardy. It is settled proposition of law that legal action cannot be brought twice for same act. The learned counsel, to support his contentions, has relied on the decision of the Hon'ble Supreme Court reported in 2012 (2) MWN (Cr.) 335 (Manoharan an others vs. State of Tamil Nadu). The learned counsel further contended that no man can be punished twice for the same cause of action and it is settled law that Special Act will prevail over the general law and hence the petitioner is entitled for discharge from present case registered for the offence under Indian Penal Code. The learned Magistrate, without considering the above facts, has erroneously dismissed the petition filed by the petitioner, which warrants interference of this Court.

4 The learned Government Advocate (Crl.Side) would submit that it is true that earlier case was registered and the petitioner was convicted, but, only for the offence

under Section 92 r/w Section 37(1)(b)(c) 92 r/w 41 of Tamil Nadu Factories Act and the Court has imposed only fine and the petitioner has also paid the same. Now, the present case was registered for the offence punishable under Sections 287, 338, 304(A) of IPC and there is no bar for the respondent police to take action against the petitioner for the offence committed by him under Indian Penal Code and any action taken under the Tamilnadu Factories Act will not amount to double jeopardy and judgment passed by the learned Chief Judicial Magistrate, Erode, convicting the petitioner for the offence under the Tamilnadu Factories Act, would not take away the rights of the prosecution to proceed against the petitioner for the offence under Indian Penal Code. Therefore the learned Magistrate has rightly dismissed the petition filed by the petitioner under Section 300 of Cr.P.C and the same does not call for any interference.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is the contention of the revision petitioner that for the very same occurrence, he was convicted and imposed total fine of Rs.50,000/- in C.C.No.112 of 2011 by the learned Chief Judicial Magistrate, Erode, and now the respondent police again registered the present case for the very same cause of action under the provisions of Indian Penal Code. It is further contended that no man can be convicted twice for the very same occurrence, which will amount to double jeopardy. Per contra, the learned Government Advocate (Crl.Side) contended that earlier the petitioner was convicted only for the offence under the Tamilnadu Factories Act and now the present case was registered for the offence under Indian Penal Code and therefore there is no bar for the respondent police for registering the case against the petitioner for the offence comes under Indian Penal Code.

7 This Court is of the view that the earlier case registered against the petitioner and convicted only for the offence under Section 92 r/w Section 37(1)(b)(c) 92 r/w 41 of Tamil Nadu Factories Act, for violating the Rules stipulated therein and now the present case has been registered for the loss of two lives, which offence falls under Indian Penal Code and there is no bar for the respondent police to prosecute the petitioner for the offence under Indian Penal Code. Scope of the proceedings taken under Tamilnadu Factories Act is entirely different

from penal action taken under the provisions of Indian Penal Code. The learned Magistrate, while dismissing the petition seeking discharge, has clearly stated the Tamilnadu Factories Act will only control the acts and functions of the factories and not the human, but, when any kind of loss happens to the human being, Indian Penal Code would protect and the accused can be prosecuted under IPC. Therefore this Court does not find any perversity in the order passed by the learned Judicial Magistrate No.III, Erode, dated 01.07.2013 in C.M.P.No.8287 of 2011.

8 In the result, the criminal revision case is dismissed as devoid of merit and substance.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III, Erode.
2. The Inspector of Police, Mudakurichi Police Station.
3. The Public Prosecutor, High Court of Madras.

CrI.R.C.No.1171 of 2013

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A.SK(14/10/2019)