

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 10038 of 2014
and M.P.No.1 of 2014

S.Padmanabhan

... Petitioner

Vs.

The Deputy Director,
Industrial Safety and Health-I,
No.A-28, Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 600 032. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.905 of 2014 now pending on the file of the Chief Metropolitan Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.P.T.Ramkumar

For Respondent : No appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.905 of 2014 on the file of the Chief Metropolitan Court, Egmore, Chennai.

2. The learned counsel appearing for the petitioner submitted that the respondent filed a complaint as against the petitioner, for the offences punishable under Section 41 Rule 61C and Section 41 Rule 61A and Section 38 Rule 61(11)(a) & (e) of the Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950. The entire allegations mentioned in the complaint totally vague, false and vexatious and contrary to the real facts of the case. Further he submitted that the contract work to replace the asbestos sheet was entrusted to one Duraisamy, a contractor and there was an agreement between the administration and the contractor on 17.07.2013. As per the agreement, the safety measures on the sites have to be taken by the contractor. While being so, on 05.11.2013, when the contractor was carrying out the work with four persons for allocation of asbestos sheet, while one of the worker walked to a corner, he slipped and fell down from the roof at 12 feet height. Thereafter the treatment failed and he

died. Therefore, the petitioner is not at all liable for the offences as alleged by the respondent.

2.1. He further submitted that the petitioner is the sole accused and he was working as Deputy Chief Engineer of Carriage and Wagon Works, Southern Railway, Ayanavaram, Chennai at the time of the occurrence took place. When the petitioner is the Indian Railway Service on Engineer Category, Grade A officer, governed by the Service Rules of Government of India for all acts discharged by him during the course of his official duties, he is entitled for all the privileges and immunity provided under the Service Rules of Government of India. Therefore, when it is being so, the respondent ought to have been obtained sanction as contemplated under Section 197 of Cr.P.C. before initiating criminal proceedings as against the petitioner. Therefore the learned Magistrate ought not to have been taken cognizance for the offence under Section 41 Rule 61C and Section 41 Rule 61A and Section 38 Rule 61(11)(a) & (e) of the Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950, as against the petitioner. In this regard he relied upon the judgments reported in (2014) 3 MLJ (Cr1) 523 in the case of K.Masthan Rao Vs. The State rep by its Inspector of Factories and (2015) 1 MLJ (Cr1) 75 in the case of P.Shanmuganathan Vs. The State rep by its Inspector of Factories. Hence, he prayed to quash the proceedings.

3. Heard Mr.P.T.Ramkumar, learned counsel appearing for the petitioner. No one is appeared on behalf of the respondent.

4. It is seen that the petitioner is the sole accused. The complaint has been filed by the respondent under Section 105 (1) of Factories Act, 1948 as against the petitioner for the offence punishable under Section 41 Rule 61C and Section 41 Rule 61A and Section 38 Rule 61(11)(a) & (e) of the Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950. The allegation is that the petitioner is the Deputy Chief Engineer of Carriage and Wagon Works, Southern Railway, Ayanavaram and to replace the asbestos sheet, an agreement dated 17.07.2013, was entered between the administration and the contractor. On 05.11.2013, while allocating the asbestos sheet, one of the worker slipped and fell down from roof at 12 feet height and thereafter died. The Joint Director, Industrial Safety and Health-I, visited the accident place on 07.11.2013 along with Deputy Director (Industrial Safety and Health) and found that the petitioner contravened the provisions mentioned in the Factories Act, 1948 and liable to be punished under Section 92 of Factories Act, 1948. Hence the petitioner is charged for the offences under Section 41 Rule 61C and Section 41 Rule 61A and Section 38 Rule 61(11)(a) & (e) of the Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950.

5. Admittedly the petitioner is a Grade-A Officer, appointed by the President of India and being a public servant, he is entitled for all the privileges and immunity provided under the Service Rules of Government of India, for all acts discharged by him during the course of his official duties. Therefore to prosecute the petitioner, the respondent ought to have been obtained prior sanction under Section 197 of Cr.P.C. Here the respondent did not obtain any sanction as contemplated under Section 197 of Cr.P.C. before instituting the complaint under Section 105(1) of Factories Act, as against petitioner for the above said offences.

6. The learned counsel appearing for the petitioner relied upon the judgment reported in (2014) 3 MLJ (Cr1) 523 in the case of K.Masthan Rao Vs. The State rep by its Inspector of Factories, which reads as follows :-

" 42. The High Court of Karnataka in the case of D.GhoshRoy, Chief Workshop Manager, Carriage Repair Shop, South Western Railway & Anr., (supra), while dealing with a case arising out of a prosecution launched against the carriage repair shop of south western Railway held that in order to prosecute the Manager of the factory under the Factories Act, the prosecuting agency ought to have obtained sanction. Following the decision of the Hon'ble Supreme Court in the case of State of Maharashtra, (supra), the Hon'ble High Court of Karnataka in the case of General Manager, Wheel and Axle Plant, Bangalore & Anr., (supra), has held that sanction under 197 Cr.P.C., is required and in the absence of sanction, prosecution cannot be lodged. Similar view was taken by the High Court of Madhya Pradesh, Jabalpur Bench, in the case of S.K.Prasad & Anr., (supra), which also related to the Manager of a Coach Rehabilitation Workshop at Bhopal. Thus, by following the above decisions, it is held that the prosecution launched against the petitioners, who are public servant without obtaining permission as contemplated under Section 197 Cr.P.C., cannot be sustained and accordingly, has to be quashed."

7. He also relied upon the judgment reported in (2015) 1 MLJ (Cr1) 75 in the case of P.Shanmuganathan Vs. The State rep by its Inspector of Factories, as follows :-

"18. In my considered opinion, when one compares Section 105 of the Factories Act and Section 197 of the Code of Criminal Procedure and reconciles both the provisions, it would emerge that there is no conflict between these two provisions. One can also find that these two provisions do not overlap and instead they operate in two different spheres which are distinct in their object. Therefore, I hold that for prosecuting a person covered under Section 197 of the Code of Criminal Procedure, if the offence alleged to have been committed under the Factories Act is in discharge of the official duties, sanction is mandatory and in the absence of such sanction, no Court shall take cognizance of the offence.

.....
26. Therefore, I have no hesitation to hold that omission by a public servant, if it constitutes an offence, would fall under Section 197 of Cr.P.C. Thus, the expression discharge of his official duty will include illegal omission to act in accordance with his official duty. In this regard, I may refer to the judgment of the Hon'ble Supreme Court in R.K.Pradhan Vs. State of Sikkim represented by C.B.I. reported in 2001 (6) SCC 704 wherein, in paragraph 15 of the Judgment the Hon'ble Supreme Court has held as follows:

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is a reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then

no sanction would be required. If the case as put forward by the prosecution fails or the defence established that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there maybe certain cases where it may be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

27. As has been held by the Hon'ble Supreme Court in the above judgment, the fundamental test to ascertain whether protection under Section 197 of Cr.P.C. is available or not, is as to whether there is reasonable connection between the act complained of and the discharge of official duty. The Hon'ble Supreme Court has further clarified that an official act can be performed in the discharge of official duty as well as in dereliction of it. The term 'dereliction of it' requires attention. Thus, not only those positive acts of the official but dereliction of it is also an 'act' falling within the scope of Section 197 of Cr.P.C. But, I hastened to add a word of caution that it is not every act or omission of a public servant that protects him under Section 197 of Cr.P.C. The act or omission should have close proximity to the official act. For illustration, policeman causing voluntary

hurt unwarrantedly when the situation does not necessitate at all such an act by him will not fall within the ambit of Section 197 of Cr.P.C."

In the above judgements, this Court has held that to prosecute a person covered under Section 197 of Cr.P.C, if the offence alleged to have been committed under the Factories Act, while he is discharging his official duties, sanction is mandatory and in the absence of such sanction, no Court shall take cognizance of the offence.

8. In the case on hand, the learned Chief Metropolitan Magistrate, Egmore have taken cognizance without any sanction obtained by the respondent as contemplated under Section 197 of Cr.P.C. Therefore the above judgment is squarely applicable to the present case on hand and the complaint is vitiated. Therefore, this Court is inclined to quash the proceeding.

9. In view of the above discussions, this Criminal Original Petition stands allowed and the proceedings in C.C.No.905 of 2014 on the file of the Chief Metropolitan Court, Egmore, Chennai is hereby quashed. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Metropolitan Magistrate
Egmore, Chennai

+1 CC to Mr.P.T.Ramkumar, Advocate sr 81182.

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and M.P.No.1 of 2014

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SP(23/04/2019)