

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NOS.27832 & 27836 OF 2014

AND

MP.NOS.1,1 OF 2014

L.Ganesh

..Petitioner  
in Crl.O.P.No.27832 of 2014

T.Solaippan

..Petitioner  
in Crl.O.P.No.27836 of 2014

.Vs.

The State of Tamil Nadu  
Rep.by Inspector of Factories,  
Ambattur Circle,  
Bharathkumar Bhavan,  
617, Anna Salai,  
Chennai 600 006.

..Respondent  
in Both Crl.OPs

COMMON PRAYER : Criminal Original Petition is filed under  
Section 482 of Cr.P.C., to call for the records in CC.Nos.192 &  
196 of 2014, 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  
seeking to quash the proceedings initiated by the respondent  
for an offence under Section 41 of the Factories Act, 1948 r/w  
61-F of the Tamil Nadu Factories Rules, 1950.

2.The petitioners are the occupier and the Manager of Rane Brake Linings Limited.

3.The private complaint has been instituted based on two incidents. The first incident pertains to the death of one R.Sundar, who was found lying unconscious on the floor below the electrical board. He was taken to Madras Medical Mission Hospital, Chennai, and he was declared brought dead. The relevant Form No.18 prescribed under Rule 96 was filed by indicating that the said R.Sundar was sitting in a chair provided to him at the work spot in the Sub Station rest room and he suddenly fell down and became unconscious. The Post Mortem Report indicates that the said R.Sundar died due to Coronary Arterial heart Disease (heart attack).

4.The second incident that has been cited in the complaint pertains to the death of one M.Chandran, who is said to have fallen down from a dining table and he had sustained head injury and was shifted to Government General Hospital, Chennai, and he succumbed to head injuries on 21.11.2012. Form 18 under Rule 96 was filed indicating that the said M.Chandran, was sleeping during working hours on a dining table at the canteen and he rolled over and fell down and sustained head injury. The Post Mortem Report indicates that the deceased sustained head injuries and had died due to the effects of arachnoid hemorrhage.

5.The learned counsel for the petitioners submitted that a Show Cause Notice was issued by the respondent calling upon to explain both the incidents and a detailed reply was given to the respondent. However, this reply was neither considered by the sanctioning authority nor was it considered in the complaint filed before the Court below. The learned counsel further submitted that Rule 61-F of the Tamil Nadu Factories Rules will not apply to the present case, since it deals with only cases where any process or work is carried on in a factory in such a manner which could cause risk of bodily injury. In the present case, both the incidents did not take place during the process or a work and in the first incident, it was due to a heart attack and in the 2<sup>nd</sup> incident it was due to head injury sustained when the deceased rolled over and fell down when he was sleeping in a dining table. The learned counsel submitted that the entire complaint is an abuse of process of Court and even if the allegations are taken as it is, no offence has been made out as against the petitioners.

6.The learned Government Advocate appearing on behalf of the respondent submitted that both the incidents happened due to the carelessness of the petitioners, who are the occupier and Manager of the factory. The learned counsel submitted that the

reason for the death and the circumstances under which it took place, are all matters of evidence and the same cannot be gone into at the stage of considering the petition under Section 482 of Cr.P.C.

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

8.From the facts stated above, it has to be seen whether the death of the deceased viz; R.Sundar and M.Chandran, was caused due to any negligence on the side of the petitioners as alleged in the complaint. The complaint proceeds on the basis that R.Sundar was carrying on with the work in the Electrical Sub Station in an unsafe manner and he had the risk of suffering an electrical shock. Therefore, he was exposed to an unsafe working condition, and therefore the petitioners have committed an offence under Section 41 r/w Rule 61-F of the Factories Act and Rules thereunder.

9.The allegation made in the complaint is on the face of it, not correct since the said R.Sundar did not died of any electrical shock. The Post Mortem reveals that he died due to heart attack and since he suffered an attack, he fell down from the chair and became un-conscious.

10.Similarly in the second incident, the complaint proceeds as if, M.Chandran died while he was in canteen work and he was exposed to unsafe condition in the canteen. However, it is seen that the said M.Chandran was sleeping in the dining table and he rolled down and sustained head injuries as a result of which, he died. This is also clear from the Post Mortem Report.

11.Both the incidents therefore did not constitute an offence under Section 41 r/w Rule 61-F of the Factories Act, and the rules made thereunder.

12.When a Show Cause Notice was issued by the respondent, the petitioners have given a detailed reply for the same. This reply has not been considered either by the sanctioning authority 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 due to 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 forth coming 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".

13. 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 to undergo the ordeal of facing a trial before the Court below.

14. In the result, the proceedings in C.C.Nos.192 & 196 of 2014, 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.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Inspector of Factories,  
Ambattur Circle,  
Bharathkumar Bhavan,  
617, Anna Salai,  
Chennai 600 006.
2. The Chief Judicial Magistrate,  
Tiruvallur.
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.Gupta and Ravi, Advocate, S.R.No.69508

Cr1.O.P.Nos.27832 & 27836 of 2014

SS(CO)  
CS/11/10/2019

सत्यमेव जयते  
WEB COPY