

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NOS.27833 & 27837 OF 2014

AND

MP.NOS.1,1 OF 2014

L.Ganesh

..Petitioner
in Crl.O.P.No.27833 of 2014

T.Solaippan

..Petitioner
in Crl.O.P.No.27837 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.193 & 197 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 challenging the private complaint instituted by the respondent against the petitioners for an offence under Section 7A(1) & (2) and Section 41 r/w Rule 61-F r/w Section 21(2) and Rule 53 of the Factories Act, and Rules made thereunder.

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

3.The first incident that is said to have taken place resulting in the death of one M.Chandran was already dealt with by this Court in Crl.O.P.Nos.27832 & 27836 of 2014 and the concerned complaints were quashed. The same reasoning will apply in this case also with regard to the first incident that is cited in the complaint with regard to the death of M.Chandran.

4.There are two other incidents which are cited in the complaint filed by the respondent. The first incident pertains to injury caused to one A.Aravind, while he was working in a pre-form machine [power press] on 24.04.2012. The third incident that is cited in the complaint pertains to the injury sustained by one D.Karthik, who was operating a machine on 11.05.2012.

5.The first incident pertaining to A.Aravind was immediately informed to the concerned authority by filing Form No.18 under Rule 96 of the Factories Rules, on 24.04.2012. In the said Form, the reason for the incident has been clearly set forth at column 11 of the Form. Similarly, with regard to the third incident pertaining to D.Karthik Form 18 under Rule 96 of the Factories Rules, has been filed before the concerned authority on 11.05.2012. The manner in which the accident took place is clearly explained in column 11 of the said Form.

6.In both the cases, a Show Cause Notice was issued by the respondent only on 22.11.2012, for which a detailed reply was sent by the petitioners on 09.01.2013. After the receipt of the reply, the respondent has proceeded to file the private complaint against the petitioners for the above said offences.

7.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, 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 month of April and May respectively; by filing Form No.18. However, the complaint has been filed only in the month of November 2012, and therefore the same is barred under Section 106 of the Factories Act. 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].

8.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 un-sustainable. 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.

9.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.

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

11.It is seen from records that the first incident pertaining to A.Aravind happened on 24.04.2012. This was brought to the notice of the concerned authority by filing Form 18 on the same day. Similarly, the second incident pertaining to D.Karthik happened on 11.05.2012, and the same was brought to the notice of the concerned authority by filing Form 18 on the same day. In both cases, the cause for the accident has been clearly explained in the Form.

12.The respondent has chosen to give a Show Cause Notice to the petitioners only on 22.11.2012. The petitioners gave their reply in January 2013 and the complaint was filed in February 2013.

13.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.

14.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.

15. 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.

16. 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 April and May 2012 respectively; after Form 18 was filed for both the incidents. The Show Cause Notice itself came to be given only in November 2012, which itself is beyond the period of limitation. The complaint came to be filed only in the month of February 2013. 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.

17. 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 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".

18. 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.

In the result, the proceedings in C.C.Nos.193 & 197 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

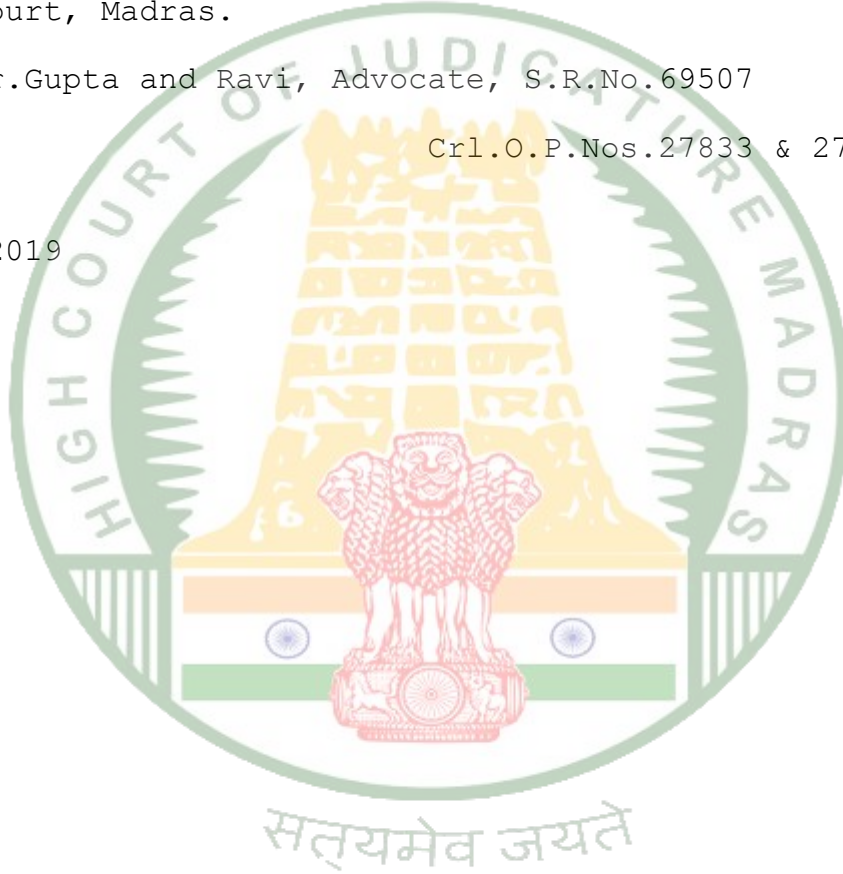
To

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.69507

Crl.O.P.Nos.27833 & 27837 of 2014

SS(CO)
CS/11/10/2019



WEB COPY