

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.27834 & 27839 of 2014
and
M.P.No.1,1 of 2014

L.Ganesh ..Petitioner
in Crl.O.P.No.27834 of 2014

T.Solaippan ..Petitioner
in Crl.O.P.No.27839 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.194 &
199 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 41 r/w Rule

61-B(5) (e), Section 46 r/w Rule 67-A & Section 87 r/w Rule 95 of the Factories Act, and Rules made thereunder.

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

3.There are two other incidents which are cited in the complaint filed by the respondent. The first violation is that electrically heated ovens were used without providing for exhaust ducts and exhaust is discharged inside the work room through the opening on the oven and therefore the same is violation of Section 41 of the Factories Act and Rule 61-B (5) (e) of the Tamil Nadu Factories Rules, 1950. The second violation is that some of the canteen staffs were not medically examined to see if they carry any virus and the same is in violation of Section 46 of the Factories Act and Rule 67A of the Tamil Nadu Factories Rules, 1950. The third violation that is cited in the complaint is that one of the employee working in the shot blasting process has not been medically examined by the Certifying Surgeon and the register is not readily available and the same is in violation of Section 87 of the Factories Act and Rule 95 of the Tamil Nadu Factories Rules, 1950 .

4.In the first two cases, a Show Cause Notice was issued by the respondent only on 15.02.2012, for which a detailed reply was sent by the petitioners on 23.02.2012. In the 3rd case, the Show Cause Notice was issued on 22.11.2012 and reply was sent 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.

5.The learned counsel for the petitioners 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 unsustainable. 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.

6.The learned Government Advocate appearing on behalf of the respondent 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.

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

8.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".

9.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.

10.In the result, the proceedings in C.C.Nos.194 & 199 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(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Chief Judicial Magistrate,
Tiruvallur.

2. The Inspector of Factories,
Ambattur Circle,
Bharathkumar Bhavan,
617, Anna Salai,
Chennai 600 006.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Gupta and Ravi, Advocate sr.70365

CrI.O.P.Nos.27834 & 27839 of 2014

pa(co)
nr 30/09/2019