

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.27835 & 27838 of 2014
and
MP Nos.1, 1 of 2014

L.Ganesh ..Petitioner
in Crl.O.P.No.27835 of 2014

T.Solaippan ..Petitioner
in Crl.O.P.No.27838 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 and quash the
complaint in CC.Nos.195 & 198 of 2014, on the file of the Chief
Judicial Magistrate, Tiruvallur, and to quash the same.

For Petitioner : Mr.S.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 & 87 of the Factories Act, 1948,
r/w 61-E & F & Section 21(2) Rule 53 & 95 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 V.Krishnamurthy who was aligning ejection pins of clutch facing module in pre-form machine. At that time, the press was operated in an unsafe manner, as a result of which, he sustained caused bodily injuries. The relevant Form No.18 prescribed under Rule 96 was filed by indicating that the said B.Krishnamurthy was aligning ejection pins in preform press no.245 with a screw driver and his helper was doing inching up action, the screw driver got slipped and his right hand index finger got crushed.

4.The second incident that has been cited in the complaint pertains to S.Ramesh, who is an apprentice, while he was taking the inspected rail blocks to packing area by trolley and some of the blocks fell down on his right foot causing hairline fracture. Form 18 under Rule 96 was filed indicating that the said S.Ramesh, was moving the inspected Railway blocks to packing area by trolley and unfortunately he lost balance and the Railway blocks fell down on his right foot.

5.The next allegation in the complaint is that the ventilating plant was not maintained properly and particulars of the inspection and test was not sent to the competent authority. Therefore, there is a violation of Section 87 Rule 95 of the Tamil Nadu Factories Rules, 1950.

6.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. 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.

7.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 incidents 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.

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

9.From the facts stated above, it has to be seen whether the incidents that happened to V.Krishnamurthy, S.Ramesh, was caused due to any negligence on the side of the petitioners as alleged in the complaint. The complaint proceeds on the basis that both were carrying on with their work in an unsafe manner and they had been exposed to the risk of sustaining injuries, and therefore the petitioners have committed an offence under Section 41 & 87 of the Factories Act, 1948, r/w 61-E & F & Section 21(2) Rule 53 & 95 of the Factories Act.

10.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".

11. 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 undergo the ordeal of facing a trial before the Court below.

12. In the result, the proceedings in C.C.Nos.195 & 198 of 2014, on the file of the learned Chief Judicial Magistrate, Tiruvallur, is hereby quashed, and accordingly, both the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

KP

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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.

+1cc to M/s.Gupta & Ravi, Advocate, SR.No.70364/19

CrI.O.P.No.27835 & 27838/2014

Kak(22/09/2019)

Kak(16/10/2019)