

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.21984 of 2019

and

Crl.M.P.Nos.11422 and 11423 of 2019

Uttam Bose

... Petitioner

Vs.

The Deputy Director,  
Industrial Safety & Health,  
Tiruvallur.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Criminal M.P.No.274/2019 in C.C.No.39 of 2019, pending on the file of the Chief Judicial Magistrate, Tiruvallur, and set aside the order dated 04.07.2019, allow the Crl.O.P.

For Petitioner : Mr.Anand Gopal  
for M/s.T.S.Gopalan and Co.

For Respondent : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 205 of Cr.P.C. to dispense with the appearance of the petitioner and to permit the petitioner to be represented by a counsel in the proceedings.

2.The respondent has initiated proceedings against the petitioner in his capacity as the occupier of the factory for violation of certain provisions under the Factories Act. After the summons were served on the petitioner, an application along with an affidavit was filed seeking for dispensing with the appearance of the petitioner.

3.In the affidavit, the petitioner has specifically admitted the charge and the relevant portion of the affidavit is extracted hereunder:

"6).Further I hereby admit the charge made against us under the provisions of the Factories Act and pray that this Hon'ble Court take a lenient view and impose a nominal penalty."

4.The Court below dismissed the application mainly on the ground that the petitioner is punishable under Section 92 of the Factories Act which provides for imprisonment which may extend to two years or fine of up to Rs.1,00,000/- (Rupees One Lakh only) or with both. The Court below therefore thought it fit not to dispense with the appearance of the petitioner taking into consideration the seriousness of the offence.

5.The learned Counsel for the petitioner submitted that the petitioner has already admitted the charge and has pleaded before the Court below to take a lenient view in view of the fact that the offence involved is a technical offence and that a nominal penalty can be imposed. The learned Counsel further submitted that the activities in the factory have come to a stand still and all the employees have been retrenched as early as in the month of July 2019 itself. The learned Counsel further submitted that the petitioner is stationed at Calcutta and therefore he is not in a position to appear before the Court below on every hearing date.

6.Heard the learned Additional Public Prosecutor appearing on behalf of the respondent.

7.Taking into consideration the facts and circumstances of the case and also of the fact that the petitioner has already admitted to the charge and the offence involved is only a technical offence, this Court is of the considered view that the presence of the petitioner can be dispensed with before the Court below. The petitioner can be permitted to be represented by a counsel and the petitioner can be present before the Court below as and when required by the Court below.

8.It is brought to the knowledge of this Court that the Court below has issued a Non-Bailable Warrant for the presence of the petitioner. The petitioner is permitted to file a petition to recall the Non-Bailable Warrant through his counsel. The petitioner shall execute a bond under Section 88 of Cr.P.C. and on receipt of the petition for recall of Non-Bailable Warrant and the bond, the Court below shall recall the warrant.

9.This Criminal Original petition is disposed with the above directions. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

jas/vs

To

- 1) The Chief Judicial Magistrate,  
Tiruvallur.
- 2) The Deputy Director,  
Industrial Safety & Health,  
Tiruvallur.
- 3) The Public Prosecutor,  
High Court, Madras.

+1 cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.69550

Crl.O.P.No.21984 of 2019  
and

Crl.M.P.Nos.11422 and 11423 of 2019

NR(CO)  
SSM(21/08/2019)

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