

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.2738 of 2015
and M.P.No.1 of 2015

P.Ravindra Babu,
S/o.P.Sathyannarayana Murthy

..Petitioner

/versus/

The Deputy Director,
Industrial Safety and Health - I,
A-28, Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 600 032.

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.906 of 2014 now pending on the file of the Chief Metropolitan Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.P.T.Ramkumar
For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

This petition is filed by the petitioner who is the accused in C.C.No.906 of 2014, for violation of Section 38(1)(b) and Section 38 Rule 61 (11) (a) & (e) of the Factories Act.

2. The gist of the case is that the petitioner is the Deputy Chief Mechanical Engineer of Carriage and Wagon Works, Southern Railway, Ayanavaram, Chennai. On 07.11.2013, the Coach No.WSCZAC 92155 was brought from Villivakkam yard to Carriage and Wagon Works for periodical overhauling. On receipt of this coach various POH activities like unloading and loading of AC, electrical equipments, carpentry work, painting etc., were carried out and the coach was lifted for under gear attention and the same was also carried out. Painting of interior and exterior portion was done at paint shop. Then loading of AC and electrical equipments has been done. The coach was offered for Neutral Train Examiner's inspection.

3. The defects noticed by the Neutral Train Examiner were attended at LBR shop and the coach was re-offered for

inspection. Then the coach was moved from TDL for electrical testing at AC deluxe shop 15th line at about 19:45 hours on 02.09.2013. On the same day at about 22:50 hours a patrolling constable (RPF) noticed a fire in the above coach and he immediately called SIRF/CW/PER who was on duty. They attended to extinguishment of fire with available fire tender at carriage works, added assistance was taken from TNF&R service, fire was controlled at about 23.45 hours. The incident was brought to the knowledge of the respondent on 10.09.2013. Based on which a show cause notice was issued on 11.12.2013 and reply was sent by the petitioner on 20.12.2013. The respondent filed a complaint for the above offence under Sections 38(1)(b) and Section 38 Rule 61 (11) (a) & (e) of the Factories Act, before the Chief Metropolitan Magistrate, Egmore, Chennai on 10.02.2014. Against which the present quash petition is filed.

4. The learned counsel for the petitioner submitted that the petitioner is the Deputy Chief Mechanical Engineer of Carriage and Wagon works, Southern Railway, Ayanavaram, Chennai. The petitioner is a Group-A Officer, appointed by the President of India, the petitioner is public servant, nominated as Manager of the premises as per the proceedings of the Railway Board, Ministry of Railways. The respondent filed the present complaint against the petitioner under Section 105(1) of Factories Act, 1948 alleging contravention of provisions of Section 38(1)(b) and Section 38 Rule 61(11)(a) and (e) of Factories Act, 1948 and Tamil Nadu Factories Rules, 1950.

5. He further submitted that on 11.07.2013 and 14.11.2013 when the Joint Director (Industrial Safety and Health-I) inspected the Carriage and Wagon Works, Ayanavaram, Chennai, he had noticed certain contraventions which was rectified. The Coach No.WSCZAC 92155 was brought from Villivakkam yard to Carriage and Wagon works for periodical overhauling. On receipt of coach, various POH activities like unloading and loading of AC, electrical equipments, carpentry work, painting etc were carried out and the coach was offered for Neutral Train Examiner's Inspection.

6. He further submitted that to attend the defects noticed by the Neutral Train Examiner, coach was moved from train lighting department to new repair shed on 02.09.2013 at about 8.30 hours. The coach was inspected by the inspection department and no abnormalities was noticed in the coach. For the purpose of electrical test to be done on 03.09.2013, the coach was moved from train lighting department to AC deluxe 15th line at about 19.45 hours on 02.09.2013. On 02.09.2013, at about 10.30 hours during night patrolling RPF constable noticed the smoke coming out from the coach and he informed to his supervisory officials who in turn raised an alarm and took steps

immediately, rushed to the fire incident spot to put off the fire. Further, assistance from Tamil Nadu Fire and Rescue Services was sought by the RPF staff. The fire tender of Tamil Nadu Fire and Rescue services arrived the spot by 11.30 hours and the fire was completely put off at 00.30 hours with the help of fire tenders of the railways and Tamil Nadu fire and Rescue services.

7. He further submits that after the said incident, the Railway Administration immediately set up a high level enquiry committee consisting of two JAG officers and one junior scale officer from security to find out the facts leading to the fire accident. The committee conducted a detailed enquiry and it was found there is no any system flaw and lapses in maintaining the procedures. The committee has opined that the fire accident is due to short circuit which is rare and unavoidable. Further, the work shop is an ISO 9001 and ISO 14000 certified industry and processing for Integrated Management System certification. In compliance with statutory provisions, fire fighting drills are conducted at frequent intervals and lastly it was conducted during November 2013. The Safety Committee meetings are conducted once in three months in compliance with the statutory provisions.

8. The learned counsel would further submit that the respondent issued a show cause notice dated 11.12.2013, for which the petitioner sent a detailed reply on 20.11.2013 offering his explanation about the incident. However, the reply sent by the petitioner was not properly considered by the respondent before filing the complaint. In the complaint there is no mention about the show cause notice and the reply given by the petitioner. The respondent lodged the present complaint for the alleged offence under Sections 38(1) (b), 38 Rules, 1950 alleging that there is no proper fire fighting facilities available in Carriage & Wagon Works and adequate provisions are not taken for water supply for fire fighting. The petitioner in his reply to the show cause notice has given details about the fire fighting equipment which was not considered by the respondent. The respondent brushing aside the facts on his own assumption filed a complaint.

9. Further submitted that alleged occurrence took place on 02.09.2013 and it was brought to the knowledge of the respondent immediately after the occurrence on 10.09.2013, the complaint as per Section 106 of the Factories Act, the limitation in initiating proceedings under the Act, is three months period from the date of knowledge of the Officer. Whereas, the present complaint is on 10.02.2014, which is beyond the limitation period after a delay of more than two months and there is no explanation given for the delay and the period of delay was also

not condoned. Further, the petitioner being a public servant, the sanction under Section 197 of Criminal Procedure Code was not obtained. In support of his contention, the learned counsel for the petitioner relied on the case of K.Masthan Roa Vs. State Rep. by Inspector of Factories, First Circle Vellore reported in (2014) 3 MLJ (Cr1) 523 and the case of P.Shanmuganathan Vs. State, represented by its Inspector of Factories, Chennai reported in (2015) 1 MLJ (Cr1) 75.

10. He further submitted that, this Court following these decisions had quashed the proceedings in several cases. Further, in the case of Shashi Bushan Vs. The Deputy Director, the Chief Works Manager and Wagon Works, Southern Railway, against whom the prosecution was launched for the same incident, for the same violations in C.C.No.904 of 2014. This Court in Cr1.OP.No.8754 of 2014 by order dated 06.03.2019 quashed the proceedings of C.C.No.904 of 2014.

11. The Additional Public Prosecutor submitted that for the incident which took place in the petitioner's work shop, the prosecution has been launched. The respondent had conducted an inspection and found certain violations of the Act. In the meanwhile, the respondent also sent a show cause notice dated 11.12.2013 and the reply was received which pertains to the corrective measures to be taken in future for the incident which had taken place on 02.09.2013. He further submitted that the points raised by the petitioner are to be raised during the trial and opposed the quash petition.

12. Considering the rival submissions and perusal of the materials it is seen that the alleged occurrence took place on 02.09.2013 and the same was informed by the petitioner on 04.09.2013, which was received by the respondent on 10.09.2013. Admittedly, in this case, the prosecution is launched on 10.02.2014. As per Section 106 of the Factories Act, the complaint ought to have been filed within three months from the date of respondent officer getting knowledge of commission of offence. In this case, the knowledge of offence came to the knowledge of the respondent on 10.09.2013 and the complaint was launched only on 10.02.2014, which is beyond the period of limitation. It is not in dispute that the petitioner is a public servant. Admittedly, in this case no sanction under Section 197 Cr.P.C is obtained to prosecute the petitioner.

13. Further, earlier this Court in the case of K.Masthan Roa Vs. State Rep. by Inspector of Factories, First Circle Vellore reported in (2014) 3 MLJ (Cr1) 523, held that the prosecution launched against a public servant without obtaining permission under Section 197 Cr.P.C., cannot be sustained. Further, in the case of P.Shanmuganathan Vs. State, represented by its Inspector

of Factories, Chennai reported in (2015) 1 MLJ (Cr1) 75, the Court had held that neither Section 105 nor any other provision in the Factories Act either expressly or impliedly exclude the operation of Section 197 of the Code of Criminal Procedure and further held that of the offence alleged to have been committed under the Factories Act is in discharge of the official duties, sanction is mandatory and in the absence of such sanction, no Court shall cognizance of the offence. This Court in Cr1.OP.No.8754 of 2014 by order dated 06.03.2019 had quashed the proceedings in C.C.No.904 of 2014 filed against the Chief Works Manager and Wagon Works, Sourthen Railway on the identical facts.

14. In view of the same, the proceedings in C.C.No.906 of 2014 on the file of the Chief Metropolitan Court, Egmore, Chennai is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.
2. The Deputy Director,
Industrial Safety and Health - I,
A-28, Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 600 032.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.32364

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AJS (CO)
RV(18/11/2020)