

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2020

Pronounced on : 11.03.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6886 of 2015 and
Crl.M.P.No.1 of 2015

S.Muthukumar, (45 years),
Manager,
Carriage & Wagon Works,
Southern Railway,
Ayanavaram, Chennai-600 023. Petitioner/Accused

Vs.

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

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.366 of 2015 now pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.P.T.Ramkumar

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

सत्यमेव जयते

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.366 of 2015 for offence under Sections 41 Rule 61-F of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules 1950 for contravention of provisions of Factory Act, 1948 and Tamil Nadu Factories Rules, 1950 punishable under Section 92 of the Factories Act, 1948.

2.The brief facts is that on 30.10.2014 at about 07.45 a.m., one Shaniraj (TNC No-2242) son of Sanjaykumar Sanjeev, an

apprentice along with other apprentices were proceeding to paint shop after the regular outturn meeting at Coach Repair Complex. The said Shaniraj along with Manjesh Praveen (TAC No-2254) Trade Fitter was walking towards the paint shop. They went opposite to air brake section for drinking water and after that they proceeded towards the paint shop and Shaniraj was walking ahead amongst others. When they reached the paint shop, the north entrance was blocked by the traverser. So they moved towards the right side and entered the paint shop from the right side through the 9th line. The 9th line was occupied by SR CN-95206, SC VPH-04844 and SRACCN 01113 coaches for painting work. The coaches were moved by the traverser, Shaniraj attempted to cross the 9th line through the gap in between the coaches SR CN-95206 and SC VPH-04844. At that time SR VPH-09826 coach was moved ahead by the traverse in the 9th line and he was caught in between the buffer gap and sustained internal injury and he was taken by the railway ambulance to the railway hospital for treatment where he succumbed to injuries and died on 01.11.2014.

3.The Carriage and Wagon Works, Southern Railway while placement of coaches in the line by the traverse, either side of the line should be cordoned off temporarily by barricades, so that no person shall cross the line in between the coaches and proper supervision should be made to ensure that no person passes in between the coaches. Further, no process or work shall be carried on in the factory in such a manner as to cause risk of bodily injury. The accident intimation was given to the respondent, who visited the accident place on 03.11.2014 along with officials and after inspection issued show cause notice was sent to the petitioner. On receipt of the same, the petitioner sent a reply dated 18.12.2014 based on the inspection report the above case came to be filed.

4.The learned counsel for the petitioner submitted that the petitioner has been prosecuted as since he happened to be a Manager of the Factory. The Railway administration is fully aware of the responsibilities for the safety of employees and all the safety precautions were taken and followed scrupulously. Counseling the employees and apprentices regarding the risk and hazard involved in the various processes have been conducted. Immediately after the accident, intimation was given to the respondent, who visited the accident place on 03.11.2014 and conducted an inspection and thereafter, show cause notice was issued and a detailed reply was sent and the same was not considered in its proper perspective. Further, there was no reference to the reply submitted by the petitioner and for what reason the same was not being considered are not available in the complaint. He further submitted that the offence is said to have been committed by him while acting in discharge of his

official duty. The accident had happened due to the negligence of the said Shaniraj in proceeding to the work place.

5.The learned counsel further submitted that the petitioner is a public servant appointed by Central Government and the complaint has been filed against the petitioner without obtaining sanction under Section 197 of Cr.P.C. The petitioner is officiating as Manager of Carriage and Wagon Works, Southern Railway and he is entitled to the immunity provided for the prosecution of public servant before any criminal proceedings are initiated.

6.Further, the learned counsel for the petitioner relied upon the following citation K.Masthan Ras Versus State rep., by Inspector of Police, First Circle, Vellore reported in (2014) 3 MLJ (Cr1) 523, wherein this Court held that the prosecution launched against a public servant without obtaining permission plated under Section 197 Cr.P.C., cannot be sustained.

7.Further, he relied on citation P.Shanmuganathan Versus State, represented by its Inspector of Factories, Chennai reported in (2015) 1 MLJ (Cr1) 75, wherein 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 if 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 take cognizance of the offence.

8.The learned counsel further submitted that this Court in similar circumstances had quashed the proceedings in Cr1.O.P.Nos.8754, 8755 & 10038 of 2014 dated 06.03.2019 and the same endures to the petitioner.

9.The learned Additional Public Prosecutor appearing for the respondent submitted that in this case no sanction has been obtained under Section 197 of Cr.P.C. An accident had taken place in the factory premises of the petitioner, violating the Factories Act and thereafter, inspection was conducted and show cause notice was issued and reply from the petitioner was received. Since the reply was not satisfactory finding violation in following the safety procedures, the petitioner being the Manager held responsible for the accident and a case came to be filed.

10.He relied upon the decision of the Hon'ble Apex Court in the case of State House Officer, CBI/ACB/BANGALORE Versus B.A.Srinivasan and another reported in (2020) 2 Supreme Court Cases 153, wherein it is stated that as regards sanction under

Section 197 of the Code, for an action to come within the purview of Section 197 of the Code, it must be integrally connected with the official duties or functions of a public servant concerned and it cannot be used as a cloak to indulge in activities. He further submitted that the public servant "while acting or purporting to act in discharge of their official duty" would get crystallized only after evidence. Hence, he opposed the quash petition.

11. This Court while considering the submissions on either side and perusal of the materials finds that in the complaint there is no reference to the reply to the show cause notice and for what reason the same has not been considered. Further expect narrating the incident of the accident taken place on 30.10.2014, there is no other averment or material to show that there was no proper supervision, no cordoning by temporary barricades in the place of occurrence. Further, the Hon'ble Apex Court in the case of State of Maharashtra vs. Dr. Budhikota Subbarao, reported in (1993) 3 SCC 339 as held as follows:-

"5.....So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The Section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred.....

..... A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty....

.....Use of the expression, 'official duty' implies that act or omission must have been done by the public servant in course of his service and

that it should have been in discharge of his duty.....

.....Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed, strictly while determining, its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant....."

12. Further, referring to plethora of Judgments in para 42 in K.Masthan Rao Versus State Rep., by Inspector of Factories, First Circle, Vellore, this Court had held that the prosecution launched against a public servant without obtaining permission contemplated under Section 197 Cr.P.C., cannot be sustained. Neither Section 105 nor any other provisions in the Factory Act either expressly or impliedly exclude the operation of Section 197 of the Code of Criminal Procedure.

13. In The citation referred by the learned Additional Public Prosecutor it is a case where public servant is said to have fabricated false records and misappropriate the public funds and further it is a case of conspiracy and the facts are integrally connected or inseparably interlinked with the crime committed in the course of the transaction and the public servant therein had acted and performed using the office as a mere cloak for unlawful gains, such acts are not protected and for seeking protection under 197 of Cr.P.C, in such cases it is held that the same can be examined during the course of trial.

14. In this case, there is reasonable connection between the act and the discharge of official duty and the same cannot be separated from the discharge of official duty. It is well settled principle that question of sanction under Section 197 of

the Code can be raised any time after taking cognizance. In this case, the act or omission are in close proximity to the official act. Therefore, this Court has no hesitation to hold that omission by a public servant, if it constitutes an offence, would fall under Section 197 of Cr.P.C. Admittedly in the instant case, the prosecution has been launched in respect of an act done by the accused while discharging his official duty and no sanction has been obtained.

15. In the result, this petition succeeds and the case in C.C.No.366 of 2015 on the file of the Chief Judicial Magistrate Court, Egmore, Chennai is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial 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.Ram Kumar, Advocate, Sr.No.21904

Cr1.O.P.No.6886 of 2015

AK(CO)
GS(05/06/2020)