

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE M. NIRMAL KUMAR

Crl.O.P.Nos.30360 to 30362 of 2014
and
M.P.Nos.1,1,2 & 2 of 2014

Victor Surguna Santhakumar

... Petitioner in all Crl.O.Ps.

Vs

State by Deputy Director,
Industrial Safety and Welfare,
I Circle - Kancheepuram,
Sriperumbudur.

... Respondent in all Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.Nos.187 to 189 of 2014, now pending trial on the file of the Chief Judicial Magistrate, Chengalpattu and to quash the same.

For Petitioner : Mr.T.S.Gopalan
(in all Crl.O.Ps)

For Respondent : Mr.C.Iyyappa Raj
(in all Crl.O.Ps)

C O M M O N O R D E R

These Petitions have been filed to call for the records in C.C.Nos.187 to 189 of 2014 on the file of learned Chief Judicial Magistrate, Chengalpattu and to quash the same.

2. Crl.O.P.No.30360 of 2014 has been filed to call for the records in C.C.No.187 of 2014 and to quash the same which has been registered for an offence under Section 2 (cb) Schedule I Group (17) Section 112 Rule 62 (N) of the Factories Act for not conducting Medical Examination for all the workers by Qualified Factory Medical Officer, Section 41 Rule 61 E for not fixing Flame Proof Motor in the Mixer which is placed with chemical storage and Section 41 Rule 61 F for not providing Personal Protective Equipments to the workers.

3. Crl.O.P.No. 30361 of 2014 has been filed to call for the records in C.C.No.188 of 2014 and to quash the same which has been registered under Section 41 Rule 61 (M) (5) for not forming Safety Committee, under Section 46 Rule 70 for not forming Canteen Managing Committee and under Section 46 Rule 67 (A) for not conducting Medical Examination for the Canteen Workers.

4. CrI.O.P.No.30362 of 2014 has been filed to call for the records in C.C.No.189 of 2014 and to quash the same which has been registered under Section 112 Rule 103 (b) (1) (2) (3) for not providing Time Card and under Section 41 Rule 61 (12) (c) for not conducting Fire Fighting drill.

5. The case of the prosecution is that on 21.01.2014 at about 02.00 P.M., Thiru.R.Jeyakumar, Deputy Director, Industrial Safety and Welfare I Circle, Kancheepuram conducted inspection at NVH India Auto Parts Private Limited and found that various Rules and Regulations have not been duly followed as the factory was dealing with Dangerous process and chemicals namely Polyol and Iso Cyanate and it is found that Manager has not made medical examination of the workers by Qualified Factory Medical Officer, statutory records of the Canteen Committee and Safety committee were not available and personal protective equipments have not been provided to the workers. Because of those violations, show cause notice was issued. Since there was no acceptable explanation, the respondent had filed three cases against the petitioner.

6. The contention of the petitioner is that the petitioner joined the services of NVH India Auto Parts Private Limited as Manager on 17.06.2013. The petitioner was also nominated as Occupier of the said plant as per the provisions of the Factories Act. Subsequently, on 09.10.2013, the service of the petitioner was terminated with immediate effect and hence the respondent cannot maintain complaint against the petitioner in the capacity of Manager of NVH India Auto Parts Private Limited as he was not an employee on the alleged date of inspection on 21.01.2014.

7. The petitioner states that on reading of complaint, it appears that the respondent had inspected the factory namely NVH India Auto Parts Private Limited on 21.01.2014 and found certain irregularities committed by the said Company. On the basis of inspection, a show cause notice was issued to the company and since there is no acceptable explanation, complaint was being filed in the above case.

8. The petitioner submits that on the date of inspection, the petitioner had not worked as Manager or as the occupier of NVH India Auto Parts Private Limited. The petitioner was not served with any Show Cause Notice and he had no opportunity to make reply about his termination and he was no more an employee of NVH India Auto Parts Private Limited. He further submitted that the respondent had filed a complaint on 17.04.2014. Thereafter, summons were issued against the petitioner on 10.09.2014.

9. The petitioner's main contention is that on the date of inspection, he was not in service. In support of his contention, he had filed a document showing his termination

from NVH India Auto Parts Private Limited and the copy of the summons received by him.

10. The learned counsel for the petitioner further relied upon the order of this Court passed in Crl.O.P.No.32969 of 2014, dated 27.02.2020. This Court on the similar issue quashed the complaint against the petitioner in C.C.Nos.190 & 191 of 2014 that was pending on the file of the learned Chief Judicial Magistrate, Chengalpet. Therefore, he prayed for allowing these petitions also.

11. The learned Additional Public Prosecutor for the respondent submits that the termination of the service of the petitioner was prior to the date of inspection ie., on 09.10.2013. The date of inspection is 21.01.2014. However, the termination of the service of the petitioner has not been communicated. It is the duty of the company to inform if there is any change made in factories within 30 days of the change as per the Act. If the changes are not communicated it would not be known. Therefore, since the petitioner name was found on records as the Manager/Occupier, action has been initiated against him.

12. Considering the rival submissions and on perusal of the materials, it is found that the service of the petitioner was terminated from NVH India Auto Parts Private Limited on 09.03.2013. The Inspection was carried out on 21.01.2014, which is more than three months after the service was terminated. It is the duty of the Director of the Company to intimate the change made to the post of Manager/Occupier. The petitioner cannot be prosecuted for non-compliance of Factory provisions, during which time, the petitioner was not a Manager or Occupier. The Company ought to have informed the petitioner about the Show Cause Notice which would have enabled the petitioner to make his representation and inform the respondent about his status in the company. Therefore, no action can be initiated as against the petitioner.

13. In view of the same, this Court quashes the proceedings as against the petitioner and the respondent is given liberty to substitute the Manager/Occupier who was in charge and responsible of the factory on 21.01.2014 by ascertaining records and making enquiry.

14. With the above observations, these Criminal Original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

<https://hcservices.ecourts.gov.in/hcservices/> //True Copy//

Sub Assistant Registrar

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To

The State of Tamilnadu,
The Deputy Director,
Industrial Safety and Welfare,
I Circle - Kancheepuram,
Sriperumbudur.

2. The Public Prosecutor, High Court, Madras - 104.
Crl.O.P.Nos.30360 to 30362 of 2014
and
M.P.Nos.1,1,2 & 2 of 2014

A.SK(06/10/2020)