

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.33712 & 33715 of 2019
Crl.MP.Nos.18597, 18598 & 18599 & 18600 of 2019

Sandipan Chakravorthy,
S/o. Late Mr.Sudhir Ch. Chakravorthy,
Occupier,
Tata Steel Processing and Distribution Ltd.,
No.156, MTH Road,
Thiruninravur,
Chennai - 602 024. ... Petitioner in both Crl.O.P

Vs.

The Tamil Nadu State,
Rep by
The Deputy Director of
Industrial Safety and Health
6, Lalbhadrur Sasthri Street,
Periyakuppam,
Thiruvallur - 602 001. ... Respondent in both Crl.O.P.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records in S.T.C.Nos.127 & 126 of 2017 on the file of the Chief Judicial Magistrate Court, Tiruvallur, quash the proceedings.

For Petitioner
in both Crl.O.P.s: Mr.S.Haroon
For M/s.T.S.Gopalan & Co.
For Respondent
in both Crl.O.P.s: Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

COMMON ORDER

These petitions have been filed to quash the proceedings in S.T.C.Nos.127 & 126 of 2017 on the file of the Chief Judicial Magistrate Court, Tiruvallur, thereby taken cognizance for the offences under Section 41 & Rule 112 Rule 61R (2)(d) of Factories Act 1948 & Tamil Nadu Factories Rules 1950 and under Section 29(1)(a)(iii) rule 55A(4), 31 rule 56(7) & (a) & (b) & Section 41 & Rule 112 Rule 61 R(2)(d) of Factories Act

1948 & Tamil Nadu Factories Rules 1950, respectively, as against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the petitioner was one of the Director in Tata Steel Processing and Distribution Limited. He was nominated as an Occupier under the Factories Act in respect of his factory situated at No.156, CTH Road, Thiruninravur. As per the terms of employment in the above said company, the age of retirement is 60 years. He was born on 23.09.1949 and he attained superannuation on 30.09.2009. However he had been given extension and he was retired from the service of the company on 30.09.2014. Accordingly, Form DIR-12 (earlier known as Form 32) under the Companies Act, was filed before the Registrar of Company and he was relieved from service on 30.09.2014. Thereafter he did not continue as Occupier of the company under the Factories Act.

2.1. While being so, the respondent inspected the factory of the company on 20.12.2014, and found some irregularities and issued show cause notice dated 26.12.2014 to the petitioner herein as in the capacity of Occupier of the company. Since the petitioner ceased to be the Occupier of the company from 01.10.2014, the show cause notice was not served to the petitioner. Thereafter as per the provisions of the Factories Act, Forms-2 was filed on 13.03.2015 with the respondent communicating about the change of Occupier. Even then, based on the show cause notice dated 26.12.2014, the respondent initiated proceedings in S.T.C.Nos.126 & 127 of 2017 of the file of the Judicial Magistrate Court, Tiruvallur. Therefore, the petitioner is not at all responsible for any deviation found by the respondent on his inspection dated 20.12.2014 and prayed for quashment of the proceedings.

3. The learned Additional Public Prosecutor submitted that all the points raised by the petitioner herein cannot be considered under Section 482 of Cr.P.C., and all are to be considered only during the trial before the trial Court. Therefore he prayed for dismissal of the quash petition.

4. Heard Mr.S.Haroon, learned counsel appearing for the petitioner, and Mr.M.Mohammed Riyaz, learned Additional Public Prosecutor appearing for the respondent in both petitions.

5. The petitioner has been prosecuted in S.T.C.Nos. 127 & 126 of 2017 for the violation of Section 41 & Rule 112 Rule 61R (2)(d) of Factories Act 1948 & Tamil Nadu Factories Rules 1950 and under Section 29(1)(a)(iii) rule 55A(4), 31 rule 56(7) & (a) & (b) & Section 41 & Rule 112 Rule 61 R(2)(d) of Factories Act 1948 & Tamil Nadu Factories Rules 1950, respectively, alleging

that the occupier has acted in contravention of the above said provisions of the Factories Act and Rules and has rendered him liable for the punishment under Section 92 of the Factories Act.

6. Admittedly, there may not be more than one occupier for the company. Section 2(n) of the Factories Act 1948 defines 'Occupier' as follows:-

"(n) "Occupier" of a factory means the person who has ultimate control over the affairs of the factory.

[Provided that-

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier."

Therefore the petitioner was one of the contractors of Tata Steel Processing and Distribution Limited and in the capacity as a Director of the company he was nominated as Occupier under the Factories Act. Thereafter, he retired from service of the company on 30.09.2014 and Form 32 under the Companies Act was filed before the Registrar of Company and it was duly registered. Accordingly, the petitioner has no connection with the company due to his retirement.

7. While being so, the respondent inspected the factory premises on 20.12.2014 and on inspection report, the respondent sent show case notice on 26.12.2014. Since the petitioner was not an Occupier of the company he did not receive the same and no reply has been sent for the show cause notice issued by the respondent herein. Therefore the respondent initiated the impugned proceeding for the offences punishable under Section 92 of the Factories Act against the petitioner. Section 92 of the Factories Act is the charging Section and reads as follows:-

"6. General penalty for offences- Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any

of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued:

[Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or u/s.87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty-five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury].

Explanation:- In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

Accordingly, the Occupier/Managing Director of the company can be charged for the offences under Section 2(n)(ii) of the Factories Act makes clear that only any one of the Directors can hold the position of Occupier, it is only such person can be prosecuted against in such capacity.

8. In the case on hand, the records revealed that this petitioner was not the Occupier of the company on 20.12.2014, as such he could not be prosecuted by the impugned complaint. As stated above the petitioner was resigned from directorship as well as the Occupier of the company from 01.10.2014 and he was neither Occupier nor Director of the company. Therefore the entire proceedings are vitiated against the petitioner and it cannot be sustained any further.

9. In view of the above discussion, both the Criminal Original Petitions are allowed and the proceedings in S.T.C.Nos.127 & 126 of 2017 on the file of the Chief Judicial Magistrate Court, Tiruvallur, are hereby set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Chief Judicial Magistrate,
Tiruvallur,
2. The Deputy Director of
Industrial Safety and Health
Tamil Nadu State,
6, Lalbhadur Sasthri Street,
Periyakuppam,
Thiruvallur - 602 001.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1 cc to M/s.T.S.Gopalan & Co, Advocate Sr.No. 22949

CrI.O.P.Nos.33712 & 33715 of 2019
CrI.MP.Nos.18597, 18598 & 18599 of 2019

SVI (CO)
RMP (22/07/2020)

WEB COPY