



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

WEB COPY

Crl.O.P.(MD)Nos.19663 & 19940 of 2016

and

CRL.MP(MD).Nos.9941, 9942, 10017 & 10018 of 2016

M.Sampath Kumar

... Petitioner/Accused
(in both petitions)

Vs.

State Rep by
P.N.Sankar, M.E.,
Deputy Director (BOCW)
Industrial Safety and Health,
(In-charge construction legal Inspector)
23, Old Agraharam Street,
Chinnachokkikulam,
Madurai District.

... Respondent/Complainant
(in both petitions)

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the entire records in C.C.Nos.15 & 16 of 2015 on the file of the learned Chief Judicial Magistrate, Ramanathapuram and quash the same.

(in both petitions)

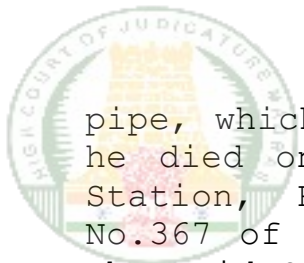
For Petitioner : Mr.V.Illanchezian

For Respondent : Mr.D.Muruganantham

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.15 & 16 of 2015 on the file of the learned Chief Judicial Magistrate, Ramanathapuram.

2. The case of the prosecution is that the petitioner was working as Chief Engineer in the Tamilnadu Civil Supplies Corporation and he representing the Corporation, entered into an agreement with on M/s.Iswarya Constructions, who is the Contractor for the purpose of constructing "Construction of Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District". As per the agreement on 29.08.2014, during constructions of the above said work by one T.Tamilarasan, construction Engineer, on behalf of the Contractor namely Iswarya Constructions, the accident occurred. One employee namely Santhosh Chandravancy, electrocuted by lifting a steel



pipe, which touching with the high tension power line and thereby, he died on the spot. The Inspector of Police, Kenikarai Police Station, Ramanathapuram District, registered a case in Crime No.367 of 2014 for the offence under Section 304 of IPC, against the said Contractor, on the complaint given by one Surendaran, who is the co-worker of the Contractor, namely, Iswarya Construction. In the mean time, the Assistant Director of Building and Other Constructions Workers (Regulation of Employment and Conditions of Service), lodged a private complaint against the petitioner before the Chief Judicial Magistrate, Ramanathapuram, for the violation of Act and Rules, relating to the Building and Other Constructions Workers (Regulation of Employment and Conditions of Service). The complaint has been given for the following violations :-

1. The petitioner failed to maintain First Aid Box at the place of work and as such, it is the violation of provision under Section 36(a) and Section 62(1) (2) (x) of the Act and Rule 231 of the Rules and the punishing Section 51 of the Act.

2. After the accident within a four hours, the petitioner has to inform to the Chief Engineer [Employer to the Chief Inspector (Building and Construction Inspections)] and thereby, he violated the provision under Section 39(1) and Section 62(1)(2) (2b) r/w 210 (1)(a)(b) and Rule 210(7) of the Rules and the punishing Section 50(1) of the act.

3. The petitioner failed to provide safety measures to avoid accident at the work place. As such, he violated the provision under Section 40(1)(2)(u) of the Act Rules 54(2) and Section 62(1)(2)(2c) and of the Rules and the punishing Section 47(1).

3. The learned counsel for the petitioner would submit that while the petitioner was working as Chief Engineer in the defacto complainant's Corporation namely, the Tamilnadu Civil Supplies Corporation, entered into an agreement with one M/s.Iswarya Constructions, for the purpose of constructing "Construction of Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District" dated 04.03.2014. As per the agreement, during construction of Scientific Storage Godown, the employee of the contractor namely, Santhosh Chandravancy, electrocuted by lifting a steel pipe, which touching with the high tension power line and thereby, he died on the spot. The Inspector of Police, Kenikarai Police Station, Ramanathapuram District, registered a case in Crime No.367 of 2014, for the offence under Section 304 of IPC, against the said Contractor and its Engineer, on the complaint lodged by the



relative of the deceased. Undoubtedly, the respondent lodged a private complaint, as if, the work engaged directly by the petitioner herein and during the construction work, the accident took place and one of the worker was died, due to electrocution.

4. He further submitted that the mandatory requirements for the offence under the Building and other Construction of Employee and Conditions of Services Act, 1996, is that the construction work shall be done directly without any contractor. In the case on hand, admittedly, the entire construction work was entrusted to M/s.Iswarya construction under the construction agreement, dated 04.03.2014. Therefore, the entire allegations are not at all, as against the petitioner and sought for quashment of the entire proceedings.

5. Per contra, the learned counsel for the respondent submitted that the petitioner was being the Chief Engineer of the Tamilnadu Civil Services Corporation, entrusted the work to construct the Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Tamilnadu Civil Supplies Corporation, Ramanathapuram. While, the work was in progress, on 01.09.2014, the accident took place, in which, one of the labour was died, due to electrocution. The petitioner failed to provide and maintain sufficient First Aid Box by the Chief Engineer / Employer at the work spot and also did not take any safety measure to prevent the accident at the work spot and also failed to protect the worker. Further, alleged that the petitioner failed to inform the accident to the Chief Engineer (The Building and Other Constructions Workers) within a period of four hours. The petitioner committed the above said offences and the same are liable to be prosecuted. Therefore, the respondent lodged a complaint as against the petitioner and prayed for dismissal of the quash petition.

6. Heard Mr.V.Illanchezian, learned counsel for the petitioner and Mr.D.Muruganantham, learned counsel for the respondent.

7. It is seen that the petitioner is a sole accused in both the complaints lodged by the respondent herein. The respondent lodged the complaints as against the petitioner, for the violation of provisions under Sections (cited supra) failed to provide and maintain first aid box for the labours at the work place and also failed to provide safety measures to avoid accident at the work place. Further, alleged that the petitioner has failed to inform the accident to the Chief Engineer (The Building and Other Constructions Workers) within 4 hours from the accident. Insofar as the another complaint C.C.No.15 of 2015 is concerned, the petitioner has failed to furnish the information relating to the construction work by the employer by submitting the form 14 to the



concerned officer and also failed to monitor the work. Thereby, he committed offence under Section 36(a) and Section 62(1) (2) (x) of the Act and Rule 231 of the Rules and the punishing Section 51 of the Act; Section 39(1) and Section 62(1) (2) (2b) r/w 210 (1) (a) (b) and Rule 210(7) of the Rules and the punishing Section 50(1) of the act; Section 40(1) (2) (u) of the Act Rules 54(2) and Section 62 (1) (2) (2c) and of the Rules and the punishing Section 47(1). One ground raised by the petitioner is that while the petitioner was working as Chief Engineer and the defacto complainant Civil Supply Corporation entered into an agreement for construction of Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District, vide construction agreement dated 04.07.2014. Accordingly, the petitioner engaged the contractor to contract the said construction of Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District. It is relevant to extract the provision under Section 2 (i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996), which was under follows:-

" i) In relation to a building or other construction work carried on by or under the Authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

iii) in relation to a building or to her construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor; "

8. Accordingly, In relation to a building or other construction work carried on by or under the Authority of any department of the Government, directly without any contractor, the authority is liable to be punished for these offences. In the case on hand, admittedly, the petitioner entered into on construction agreement, while he was working as Chief Engineer in the Tamilnadu Civil Supply for the construction Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District by M/s.Iswarya Constructions. Undoubtedly, on 29/08/2014, while the construction work was under progress, one of its employee namely, Santhosh Chandravancy was engaged in the industrial work of the building. He lifted the iron rod with the length of 16 feet, touched the high tension line and as such, he was electrocuted and died on the spot. For the said occurrence,



relative of the deceased lodged a complaint and the same was registered in Crime No.367/2014 for the offence under Section 304 of IPC as against the site Engineer Mr.Tamildhasan, who was engaged by the M/s.Iswarya Constructions. While being so, the present impugned complaint were lodged by the respondent for the above said offences. Admittedly, the entire work was entrusted by the M/s.Iswarya Constructions, and it is also evident First Information Report as against its Engineer Mr.Tamildhasan under Section 304 of IPC. Therefore, the petitioner was being the authority concerned to entrust needed work to construct the construction of entire Scientific Storage Godown of 1500 M.J capacity in TNCSC Godown campus at Ramanathapuram in Ramanathapuram District, it is not liable to be prosecuted for the offence under Section 36(a) and Section 62(1) (2) (x) of the Act; and Rule 231 of the Rules and the punishing Section 51 of the Act; Section 39(1) and Section 62(1)(2)(2b) r/w 210 (1)(a)(b) and Rule 210(7) of the Rules and the punishing Section 50(1) of the act; Section 40(1)(2)(u) of the Act Rules 54(2) and Section 62(1)(2) (2c) and of the Rules and the punishing Section 47(1) under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996).

9. Therefore, both the complaints are vitiated and cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitioner are closed.

Sd/-

Assistant Registrar(Writs)

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/ /2021

Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Chief Judicial Magistrate,
Ramanathapuram

2. The Deputy Director (BOCW)
Industrial Safety and Health,
(In-charge construction legal Inspector)
23, Old Agraharam Street,
Chinnachokkikulam,
Madurai District.

+1 CC to Mr.V.ILLANCHEZIAN, Advocate SR.No. 23059

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MJ(CO)

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