



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.9191 of 2016

WEB COPY

Sumathi

... Petitioner / Sole Accused

Vs.

1.The State, rep.by
The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.
(Crime No.375 of 2013)

...1st Respondent/
Complainant

2.Sakthivel
Village Administrative Officer,
Kinnimangalam Village,
Thirumangalam Taluk,
Madurai District.

... 2nd Respondent /
Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Charge Sheet in S.C No.313 of 2015 on the file of the 4th Additional District Court, Madurai and quash the same as illegal.

For petitioner : Mr.Mahaboob Athiff
for M/s.Ajmal Associates
For Respondent No.1 : Mr.A.Robinson,
Government Advocate (crl.side)

ORDER

This criminal original petition has been filed to quash the proceedings in S.C No.313 of 2015 on the file of the 4th Additional District Judge, Madurai. The petitioner is facing trial for the offences under Sections 286, 337, 338, 304 (A) IPC and Section 9(B) (1)(a) of the Explosives Act, 1884. She is the sole accused.

2.On 24.09.2013 at about 05.10 P.M, the second respondent who is the Village Administrative Officer, Kinnimangalam Village, Thirumangalam Taluk heard a loud explosion. He came to know that a major accident had occurred in the factory premises of Anandham Fire Works. Two persons had died and 20 others had suffered grievous injuries. The defacto complainant was informed that due to non adherence to the safety standards and mishandling of fire works, the



occurrence had taken place. He lodged information before the Inspector of Police, Chekkanoorani Police Station. Crime No.375 of 2013 was registered. The matter was investigated and final report was filed before the Judicial Magistrate No.2, Usilampatti. Cognizance of the offences was taken and the case was committed to the Sessions Court. It was taken on file in S.C No.313 of 2015 and made over to the 4th Additional District Judge, Madurai. To quash the same, this criminal original petition has been filed.

3.The case was taken up for admission on 16.06.2016 and interim stay was granted by this Court. The interim order reads as follows :

"The Criminal Original Petition has been filed to quash the proceedings in S.C.No.313 of 2015.

2.The learned counsel for the petitioner submitted that it is a case of double jeopardy and already the accused has been prosecuted by the Inspector of Labour and punished in STC Nos.83 and 84 of 2014 and a copy of the Judgment dated 16.04.2014 is produced before this Court.

3.Taking note of double prosecution in similar set of circumstances, this Court in CrI.O.P.No.3749 of 2007, has held that subsequent prosecution is not maintainable and the Criminal Original Petition is liable to be allowed. This Judgment has been followed by the High Court of Madhya Pradesh and in support of the same, the Judgment of the High Court of Madhya Pradesh in M.Cr.C.No.3222 of 2015 has also been produced.

4.Mr.A.P.Balasubramani, learned Government Advocate (CrI.side) has taken notice for the respondents.

5.Stay of further proceedings in S.C.No.313 of 2015 until further orders. Personal appearance of the petitioner is dispensed with until further orders."

4.When the matter was taken up for final disposal, the learned counsel appearing for the petitioner reiterated the contentions set out in the order granting interim stay. He also pointed out that the same ratio has been laid down in the decision reported in **2012 (2) MWN (Cr.) 335 (Manoharan vs. State of Tamil Nadu)**. The relevant portion of the judgment reads as under :

"9.At this juncture, it is appropriate to consider the decision in *Ashwini Kumkar Singh and another Vs. State of Jharkhand*, 2007 LLR 866, wherein, in Paragraph No.7, it has been held as follows :

"Para 7: The law is settled in the various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. I find that when the complaint case has been instituted vide C/2 No.5211/05 under



Special law (Factories Act, 1948), the continuation of the criminal prosecution against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable. In both the statutes viz., under Section 304 (A), Indian Penal Code (general law) and under Section 92 of the Factories Act, 1948 the sentence prescribed to the convict is similar but with additional fine to the extent of Rupees One Lakh in the Special Act to the Occupier and in this manner the extent of find is more severe in special law and both cannot proceed at a time. The criminal prosecution of the petitioners, therefore, under Indian Penal Code is unsustainable.

10. Considering the above said decision, two proceedings will not be sustainable for the same cause of action/same incident. In the present case, since to 15 to 2009 filed under the Factories Act have been disposed of and the first petitioner herein and one Narasimha Rao were convicted and they paid the find amount, the continuation of the criminal proceedings against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable."

5. The learned counsel would further point out that it was followed by the another learned Judge of this Court vide order dated 23.10.2018 in Crl OP(MD)No.4612 of 2014. After referring to Manoharan Judgment, the learned Judge held as follows :

"8. The above said judgment is squarely applicable to the case on hand. The two proceedings will not be sustainable for the same cause of action/same occurrence. In the present case, under the Factories Act, the petitioner has found guilty and punished in S.T.C.Nos.13 and 14 of 2012 by the Chief Judicial Magistrate and paid penalty. Therefore, the continuation of the criminal proceedings as against the petitioner for the offence prescribed in general law of Indian Penal Code is unsustainable."

6. The thrust of the argument of the petitioner's counsel is that when atleast three learned Judges of this Court over a period of 10 years have adopted a particular reasoning, this Court ought to follow the same and quash the impugned proceedings. The learned counsel for the petitioner also brought to my notice an unreported decision of the Madhya Pradesh High Court in M.Cr.C No.3222 of 2015 dated 30.09.2015.

7. I am afraid that I have to respectfully differ. It is true that in respect of the occurrence in question, the petitioner was prosecuted by the Inspector of Factories, Madurai in STC No.83 & 84 of 2014. The orders in both the cases would read as follows :

"ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT
MADURAI

STC No.83 /2014

Inspector of Factories,



Madurai.

Complainant

Vs.

Sumathi

Accused

ORDER

"Accused present. Admitting the offence guilty U/s.7A and Sec 41 Rule 61F & Sec 41 Rule 61 F of Factories Act fine of each Rs.50,000/- in default 3 months each single imprisonment 50,000/=1,50,000/-.

"ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT

MADURAI

STC No.84 /2014

Inspector of Factories,
Madurai.

Complainant

Vs.

Sumathi

Accused

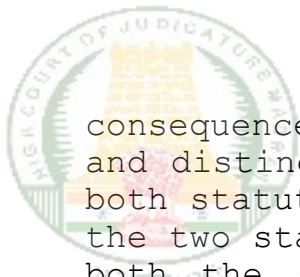
ORDER

"Accused present. Admitting the offence guilty U/s.41 Rule 61 D & Sec 38(3) rule 61(9) (f) (i) (s) Sec 87 rule 95 schedule XXIV item 3(f) of Factories Act fine of Rs.50,000/- in default 3 months for single imprisonment Rs.3000/- in default 1 week each, 50000+51000=1,01,000/-."

The petitioner's claim is that since she has already paid the fine amount of Rs.2.50 lakhs pursuant to the prosecution under the Factories Act, she must be exempted from facing the impugned criminal prosecution under the Indian Penal Code.

7.As rightly pointed out by the learned Government Counsel as early as in the year 1960, the Hon'ble Supreme Court in **State of Bombay vs. S.L.Apte (AIR 1961 SC 578)** held that to attract the ban imposed by either Art.20(2) of the Constitution or Section 26 of the General Clauses Act on a second punishment, it is sufficient that the allegations in the two complaints are substantially the same or whether it is necessary further that the ingredients which constitute the two offences should be identical. If the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially the same, the benefit of the ban cannot be invoked.

8.This position has been reiterated recently by the Hon'ble Supreme Court in the decision reported in **(2019) 10 SCC 75 (The State of Arunachal Pradesh and Ors. Vs. Ramchandra Rabidas and Ors.)** The question that arose in the said case was whether the Gauhati High Court was justified in issuing directions that road traffic offences shall be dealt with only under the provisions of the Motor Vehicles Act, 1988 and that prosecution under the provisions of Indian Penal Code, 1860 is without sanction of law. The Hon'ble Supreme Court held that there is no conflict between the provisions of the Indian Penal Code and the MV Act. Both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The penal



consequences provided under both the statutes are also independent and distinct from each other. The ingredients of offences under the both statutes are different. Even if some of the provisions between the two statutes overlap, it cannot be said that the offences under both the statutes are incompatible. An act or an omission can constitute an offence under the Indian Penal Code and at the same time, be an offence under any other law. Under Section 26 of the General Clauses Act, there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence.

9. Applying the ratio laid down in **AIR 1961 SC 578** and **(2019) 10 SCC 75**, I hold that the prosecution and punishment of the petitioner under the Factories Act will not be an impediment for the impugned prosecution under the Indian Penal Code, 1860. The offences under the Factories Act and the offences under the IPC are not mutually incompatible. In fact, a similar issue arose before the Hon'ble Division Bench of the Allahabad High Court reported in **1993 3 LLJ 581 (Y.P.Mehrotra vs. State of U.P)**. The facts in the said case in brief ran thus : an employee was found dead in the factory premises. Case was registered and final report was submitted under Section 304(A) IPC. Cognizance of the offence was taken and summons were issued. Petition was filed before the High Court for quashing the proceedings. It was contended that there can be prosecution only under the provisions of the Factories Act and that there cannot be launching of criminal prosecution under any other law including the Indian Penal Code. After making an elaborate reference to the statutory provisions set out in the Factories Act and the Rules framed thereunder, the Hon'ble Division Bench of the Allahabad High Court held that an offence under Section 304(A) of IPC and an offence under the Factories Act operate in different fields. They flow in different channels. The writ petition was dismissed as devoid of substance.

10. The learned counsel appearing for the petitioner drew my attention to a decision of the Hon'ble Supreme Court reported in **(2011) 2 SCC 703 (Kolla Veera Raghav Rao vs. Gorantla Venkateshwara Rao)**. That was a case where the appellant who was convicted under Section 138 of the Negotiable Instruments Act was sought to be prosecuted for the offence under Section 420 of IPC on the same facts. The Hon'ble Supreme Court after referring to Article 20(2) of the Constitution of India and Section 300(1) of Cr.Pc, noted that there is a difference in language between the two provisions. The Supreme Court held as follows :

5. Thus, it can be seen that Section 300(1) Cr.Pc is wider than Article 20(2) of the Constitution. While Article 20(2) of the Constitution only states that "no person shall be prosecuted and punished for the same offence more than once", Section 300(1) Cr.Pc states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.



6. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) Cr.Pc applies. Consequently, the prosecution under Section 420 IPC was barred by Section 300(1) Cr.PC."

Though this decision favours the stand taken by the learned counsel appearing for the petitioner herein, I must again express my inability to follow the same for two reasons. This decision is not in consonance with the other judgments of the Hon'ble Supreme Court including that of larger Benches. Secondly, while it refers to Section 300(1) of Cr.PC, it omits to take note of Section 300(6) of Cr.PC, which reads as follows :

"300. Person once convicted or acquitted not to be tried for same offence :

(1)....

(2)...

(3)...

(4)...

(5)...

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code."

11. This Court has to take judicial notice of the recurring accidents in factories manufacturing crackers and fire works. Unless penal responsibility is fastened on the persons in charge of the establishments, there will not be any deterrence and we will continue to be lax in the matter of adhering to safety norms.

12. For all the foregoing reasons, I am unable to agree with the contentions urged by the learned counsel for the petitioner. Therefore, this criminal original petition stands dismissed. I make it clear that I have not gone into the merits of the matter. All the other contentions and defences of the petitioner are left open. The petitioner is a woman. Therefore, her personal appearance before the court below is dispensed with. Of course, she has to appear on those occasions when her presence is directed by the learned Trial Judge.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

1. The IV th Additional District Court, Madurai.

2. The Inspector of Police, Chekkanoorani Police Station,

Madurai District.



3.The Additional Public Prosecutor,
Madurai Bench of the Madras High Court, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-8717[F] dated
27/02/2020)

Cr1 OP(MD)No.9191 of 2016
26.02.2020

KK(06.07.2020) 7P 5C