



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P. (MD) .No.6759 of 2017

and

Crl.M.P(MD) .No.4496 and 4497 of 2017

and

Crl.M.P. (MD) .No.2995 of 2018

S.Rex : Petitioner/Accused

Vs.

State through Deputy Director,
Industrial Protection and
Health Department
(Inspector of Factories)
Kovilpatti.

: Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in STC No.15/2017 on the file of the learned Chief Judicial Magistrate, Tuticorin and to quash the same.

For Petitioner : Mr.KA.Raamakrishnan

For Respondents : Mr.K.K.Ramakrishnan

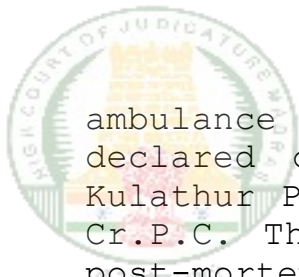
Additional Public Prosecutor

ORDER

This petition is filed by the Company as against the prosecution initiated by the Deputy Director Industrial Protection and Health Department, Inspector of Factories, Kovilpatti, in STC No.15 of 2017, on the file of the Chief Judicial Magistrate, Tuticorin.

2.The brief facts of the case is that,

The petitioner is running a factory of Readymix Concrete in the name and style of "SSSS Power Plast" at Kulathur, Thoothukudi. One Mathiyalagan of Namakkal District, was working as a Driver under one Dhanasekaran of Readymix lorries, were sent to the petitioner Company. While taking away the parked vehicle in the petitioner company, the said Mathiyalagan slipped down from the lorry cabin and succumbed to death on 27.11.2016. The another driver viz., Vignesh has informed about the incident to the Security Officer and the said Security Officer in turn called 108



ambulance and he was taken to the hospital wherein, he was declared dead. Immediately, a complaint was lodged before the Kulathur Police Station in Crime No.150 of 2016 under Section 174 Cr.P.C. The Kulathur Police has recovered the body and sent for post-mortem to the Thoothukudi Medical College Hospital and the Doctor, who conducted the post-mortem, has given a final opinion that the death is due to natural cause and there is no internal and external injuries noted in the body of the deceased. Therefore, based on the final opinion, a criminal case has been registered in Crime No.150 of 2016 before the Kulathur Police Station under Section 174 Cr.P.C., which was also closed as there is no suspicious death.

3.The respondent/Inspector of Factories has filed a complaint against the petitioner Company for the offence under Section 41 r/w 61F and Section 88 r/w 96(2) of the Factories Act, 1948. As against the said complaint, the petitioner Company through his representative filed this petition to quash the proceedings pending against him.

4.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5.Mr.KA.Raamakrishnan, learned counsel appearing for the petitioner submits that the deceased Mathiyalagan, was not an employee indulged in any manufacturing process in the petitioner Company and he is an employee of one Thanasekaran came to the petitioner Company for taking some materials and also parked the vehicle. While taking away the parked vehicle, he slipped down from the cabin of the lorry and succumbed to injuries. The Doctor, who conducted the post-mortem has given a final opinion that it is a natural death and it was also duly informed by the Manager of the Company along with Security Officer to the Kulathur Police Station and a case was registered in Crime No.150 of 2016, on the same day. The offence under Sections 88 r/w. 96(2) of the Factories Act will not be applicable in this case, for the reason that the deceased Mathiyalagan has not involved in any process of manufacturing in the petitioner Company. Section 88 r/w 96(2) of the Factories Act along with the provision under Sections 85 to 87 of the Factories Act, which also deals with the manufacturing process for sustaining any injury during the process of manufacturing and the Section 88 of the Factories Act, though there is a reference about the persons involving sustaining any injury during the manufacturing process, the Chapter IX of the Special provision deals with the injuries as well as the death taking place in the manufacturing process. Therefore, according to him, it is not an accident that took place during the manufacturing process and therefore, the offence under Section 88 of the Factories Act cannot be slapped against him.



6.He relied upon the unreported judgment of this Court in Crl.O.P.No.16644 of 2010, dated 24th January 2019, wherein, a similar stand was taken by this Court. It is relevant to extract Paragraph No.7 of the said judgment hereunder:

"7.It is seen that the jurisdictional police has registered the case, for the death of a contract worker viz., Shivana and on investigation, it is found that the death had occurred due to negligence and rash action of the concerned individual. Further, no manufacturing process is being carried on with or without power and the contract labour was not employed for any manufacturing process or any work incidental or connected with the manufacturing process. The reasonably practicable, the health, safety and welfare of workers are in place. The contract worker was there to remove the temporary green house structure in the process he has carried galvanized iron Pipe of 5 meters length vertically in the most unconventional way and caused the accident. I view of the above finding, the continuation of the above proceedings would amount to abuse to process of law."

7.Per contra, the learned Additional Public Prosecutor submits that the vehicle in which the said Mathiyalagan died was parked inside the premises of the petitioner Company and therefore, whatever the consequences which took place inside the premises of the petitioner Company, it is the duty of the petitioner to intimate the same to the Inspector of Factories and therefore, such protection has been provided to the employees by a factory under the Factories Act and Rules, but in this case, deliberately the petitioner has failed to inform the death of Mathiyalagan to the respondent/Inspector of Factory and therefore, he has committed the offence as contemplated under Section 88 r/w Rule 96 (2) of the Factories Act.

8.This Court has paid its anxious consideration and best attention to the rival submissions and also perused the available records.

9.Admittedly, the deceased Mathiyalagan, succumbed to death while he was getting down from his lorry, which was parked in the premises of the petitioner Company. The said Mathiyalagan was not an employee of the petitioner Company and he was an employee of one Thanasekaran of Namakkal, who parked his vehicle in the petitioner premises on 06.11.2016 and while taking away his vehicle from the factory, he slipped down from the lorry cabin and succumbed to death. It was informed by the another driver viz., Vignesh to the Security Officer of the petitioner Company and due steps have been taken by the Security Officer by informing to 108



ambulance and immediately, a complaint was lodged before the Kulathur Police Station by the Security Officer and the Manager of the Petitioner Company and on the same day, the case was registered in Crime No.150 of 2016. The Kulathur Police has also secured the body and also sent the same for post-mortem and the Doctor, who conducted the post-mortem gave his final opinion that the death is a natural death and there is no internal and external injuries noted on his body. Even before that, the Kulathur Police has also closed the case registered in Crime No.150 of 2016 that there is no suspicious death. However, the prosecution has been initiated by the respondent/Inspector of Factories that the incident has taken place in the premises of the petitioner Company. The petitioner has not intimated the same to the competent authority empowered under Section 41 r/w Rule 61F and Section 88 r/w Rule 96(2) of the Factories Act, 1948, which read as follows:

"41.Power to make rules to supplement this Chapter. The (State) Government may make rules requiring the provision in any factory or in any class or description of factories of such further (devices and measures) for securing the safety of persons employed therein as it may deem necessary."

"61F.Methods of work.-No process of work shall be carried on in any factory in such a manner as to cause risk of bodily injury."

"88.Notice of certain accidents.-(1) Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2)Where a notice given under sub-Section (1) relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or, if such authority is not the Inspector, cause the Inspector to make an inquiry within the said period.

(3)The State Government may make rules for regulating the procedure at inquiries under this Section."

"96(2)The notice so given under Sub-rule (1) in respect of an accident shall be confirmed by the manager of the factory by sending to the above-mentioned authorities within 12 hours of the accident, a separate



written report in respect of each person killed or injured in the prescribed Form No.18."

10. Section 88 has dealt with under Chapter IX of the Factories Act. On a careful reading of Sections 85 to 88 of the Factories Act, it appears that this provision is made as a protection for the employee, who are indulging in manufacturing process of any factories. As rightly pointed out by the learned counsel for the petitioner that the deceased Mathiyalagan has not involved in any manufacturing process of the petitioner Company. In a similar case, this Court in Crl.O.P.No.16644 of 2010 has also quashed the similar case.

11. In view of the above, this Criminal Original Petition is allowed and the order of the Chief Judicial Magistrate, Tuticorin, made in STC No.15 of 2017 is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1. The Chief Judicial Magistrate,
Tuticorin.

2. The Deputy Director,
Industrial Protection and
Health Department
(Inspector of Factories), Kovilpatti.

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

+1 CC to Mr.KA.RAMAKRISHNAN, Advocate (SR-4500[F] dated
03/02/2020)

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Crl.M.P (MD) .No.4496 and 4497 of 2017 and
Crl.M.P. (MD) .No.2995 of 2018**

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