



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.08.2021

PRONOUNCED ON: 27.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NOS.18250 & 18251 OF 2015

AND

M.P.NOS. 1, 1, 2 & 2 OF 2015

M.M.Venkatasalam

... Petitioner/Accused in
Cr1.O.P.No. 18250/2015

Murali Padikkal

... Petitioner/Accused in
Cr1.O.P.No. 18251/2015

Vs.

State rep. by
The Deputy Director
Industrial Safety and Health
Udhagamandalam
The Nilgiris

...Respondent/Complainant in
both Cr1.O.Ps.

PRAYER IN BOTH CRL.O.Ps: Criminal Original PetitionS filed under Section 482 Cr.P.C., against the proceedings in S.T.C.Nos. 1 & 2 of 2015 on the file of Chief Judicial Magistrate, Udhagamandalam.



WEB COPY

For Petitioner in
both CrI.O.Ps. : Mr. K.V.Sridharan

For Respondent in
both CrI.O.Ps. : Mr. Suganthan
Public Prosecutor

COMMON ORDER

CrI.O.P.No. 18250 of 2015 has been filed by the accused questioning continuation of S.T.C.No. 1 of 2015 on the file of Chief Judicial Magistrate, Uthagamandalam.

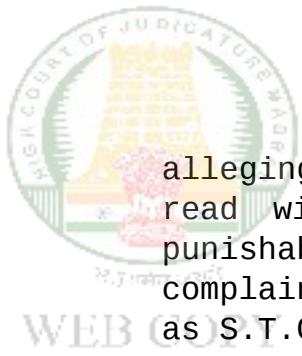
2. CrI.O.P.No. 18251 of 2015 has been filed by the accused questioning continuation of S.T.C.No. 2 of 2015 on the file of Chief Judicial Magistrate, Uthagamandalam.

3. Since both S.T.C.Nos. 1 & 2 of 2015 arise out of the same facts and since arguments were advanced raising similar issues, common order is passed in both the petitions.

4. The petitioner in CrI.O.P.No. 18250 of 2015 was the Occupier of Parry Agro Industries Ltd., Carolyn Tea Factory. The petitioner in CrI.O.P.No. 18251 of 2015 was the Manager of the same Factory. The respondent in both the Original Petitions, the Deputy Director, Industrial Safety and Health, Udhagamandalam, Nilgiris, had filed two separate private complaints against the petitioners herein.

5. The petitioner in CrI.O.P.No. 18250 of 2015 was charged with contravention of Section 7A2(a)(c) and Section 41 of the Factories Act, 1948 read with Rule 61F of the Tamil Nadu Factories Rules 1950 punishable under Section 92 of the Factories Act 1948. This complaint was taken cognizance as S.T.C.No. 1 of 2015 by the Chief Judicial Magistrate, Udhagamandalam.

6. The same respondent/Deputy Director, Industrial Safety and Health, Udhagamandalam, Nilgiris, had filed private complaint against the petitioner in CrI.O.P.No. 18251 of 2015



alleging contravention of Section 41 of the Factories Act, 1948 read with Rule 61F of the Tamil Nadu Factories Rules 1950 punishable under Section 92 of the Factories Act 1948. This complaint was taken cognizance by the Chief Judicial Magistrate as S.T.C.No. 2 of 2015.

The facts in brief are as follows:-

7. On 08.01.2015, one of the Roller Machines of the Factory where the petitioners were Occupier and Manager respectively, stopped running. A worker informed this to the Mechanic, R.Vasudevan. The Mechanic apparently found that a 3 m.m. Bolt nut had been caught between the conveyor Roller and the Belt. He took a pipe wrench and tried to remove the Bolt nut. He inserted his right hand index finger to remove the Bolt nut. At that time, the Conveyor Roller Machine started rotating and his right hand index finger got crushed. He suffered serious injury to his right hand index finger when he tried to pull out his finger.

8. It had been alleged by the complainant that the Mechanic R.Vasudevan should not have been allowed to use his right hand finger to remove the Bolt nut. He should have used an iron rod.

9. It is the further case of the complainant that the Mechanic was not given proper training in safety measures. The work was also not done under the supervision of supervisors. Thereafter, an Inspector of Factories visited the Factory on 24.03.2015 and conducted an enquiry. Complaints were filed on 17.06.2015 before the Chief Judicial Magistrate as against the two petitioners herein.

10. These petitions have been filed to quash S.T.C.Nos. 1 & 2 of 2015 now pending on the file of the Chief Judicial Magistrate, who had taken cognizance of the two separate private complaints.

11. Heard arguments advanced by Mr. K.V.Sridharan, learned counsel for the petitioners and Mr. Suganthan, learned Public Prosecutor, for the respondent.



12. Mr. K.V.Sridharan, learned counsel for the petitioners first took up CrI.O.P.No. 18250 of 2015 wherein the petitioner was the Occupier of the Factory and the learned counsel stated that one of the primary requirements is that the complaint should be filed within three months from the date when the Inspector got knowledge of the commission of the offence. The learned counsel pointed out that Form -18, namely report of the accident as prescribed under Rule 9 of the Tamil Nadu Factories Rules 1950 had been sent on 09.01.2015 and received by the respondent on 12.01.2015. The learned counsel pointed out that the complaint had been filed on 17.06.2015 beyond the period of limitation of three months as prescribed under Section 106 of the Factories Act 1948. The learned counsel further pointed out that Section 7A29(a)(c) of the Act related to the general duties of an Occupier and the said Section stipulated that an Occupier should provide information, instruction, training and supervision as required to ensure the safety of the workers. The learned counsel pointed out that R.Vasudevan, the Mechanic was a skilled worker with experience to attend repair works and was also properly trained. He was aware that he should have used an iron rod to pull out the Bolt nut. He was negligent to use his right hand index finger. He had failed to adhere to safety instructions.

13. The learned counsel also pointed out a statement was given by R.Vasudevan that the accident occurred due to his urgency and in not following the safety rules. Further, a supervisor was also present. The work was carried out without switching off the Machine which is contrary to the instructions given. The learned counsel then pointed out Rule 61 F of the Tamil Nadu Factories Rule 1950 which related to methods of work and stipulated that no work shall be carried on in a Factory in a manner to cause risk of bodily injury. The learned counsel stated that it was only a rule and not a penal provision.

14. Mr. K.V.Sridharan, then took up CrI.O.P.No. 18251 of 2015 where the petitioner was the Manager and again pointed out that the complaint had been filed beyond the period of limitation as stipulated under Section 106 of the Factories Act 1948. The petitioner had been charged with violation of Section 41 read with Rule 61 F and the learned counsel pointed out Section 41 which was only a rule making provision and further



pointed out that Rule 61 F is a rule which, as aforesaid, stipulated that no work shall be carried on in a manner to cause risk of bodily injury.

WEB COPY

15. The learned counsel further pointed out that R.Vasudevan, the Mechanic was paid compensation as directed by the Deputy Commissioner of Labour, Nilgiris. Subsequently, the injury had also healed and he joined back work and had also subsequently thereafter joined another company. The learned counsel therefore pointed out that no mens rea can be imputed on the petitioners herein and therefore stated that S.T.C.Nos. 1 & 2 of 2015 on the file of Chief Judicial Magistrate, Uthagamandalam, should be quashed.

16. Mr. Suganthan, learned Public Prosecutor (CrI. Side) however pointed out that though the accident took place on 08.01.2015 and intimation under Form -18 had been sent on 09.01.2015 and received by the Officials on 12.01.2015, the inspection of the Factory was conducted by the Inspector of Factories on 24.03.2015 and thereafter, within a period of three months, the complaint had been lodged on 17.06.2015. The learned counsel pointed out that the petitioners being Occupier and Manager had failed in their duties to provide necessary safety instructions and training and to provide a work place which was not a danger to the workmen. It was pointed out by the learned Public Prosecutor that all the issues can be agitated during the course of trial and therefore, it was urged that these petitions should be dismissed.

17. I have given careful thought to the arguments advanced. I have perused the materials available on records.

18. The facts are not in dispute. On 08.01.2015 the Conveyor Roller Machine stopped running in Carolyn Tea Factory where the Mechanic R.Vasudevan was working. He was called to repair the machine. He found that a Bolt nut had been caught between the Conveyor Roller and the Belt. He took a pipe wrench to remove the Bolt nut. He then inserted his right hand index finger to remove the Bolt nut. At that time, the Conveyor machine started running. His right finger was crushed. A report of this injury was forwarded to the Inspector of Factories on 09.01.2015 and it was received on 12.01.2015. The Inspector of Factories conducted an inspection on 24.03.2015 and



thereafter, a complaint was lodged against the petitioners herein on 17.06.2015.

19. It is the contention of Mr.K.V.Sridharan, learned counsel for the petitioners that the period of limitation was three months from the date of knowledge of the incident by their concerned officials.

20. Section 106 of the Factories Act is as follows:-

"106. Limitation of prosecution.- No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation.- For the purposes of this section,--

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired. "

21. In this connection, Mr.Suganthan, learned Public Prosecutor (Cr1.Side) relied on a Judgment of a learned Single Judge of this Court reported in CDJ 2017 MHC 6520, the State, rep. by the Public Prosecutor, High Court, Madras Vs. Tr.K.Kandavadivel, Managing Director/Occupier, M/s. Swamy and Swamy Plantations Pvt. Ltd., and another.



22. In that case, an accident was reported to the Inspector of Factories in Form No. 18 on 10.02.2012. Thereafter, an inspection was done on 08.06.2012. A complaint had been lodged only on the basis of a contravention which had come to the notice when the Factory was inspected on 08.06.2012. It was therefore held that the complaint which was presented on 30.08.2012 was within a period of limitation.

23. In the instant case, a reading of the complaint shows that the respondent had stated that they came to know on 24.03.2015 when they conducted inspection that R.Vasudevan, Mechanic had suffered permanent disability. But a reading of the complaint does not disclose that during the inspection on 24.03.2015, contraventions to the prescribed safety regulations were found out.

24. In P.D.Jambekar Vs. State of Gujarat [(1973) 3 SCC 524], while dealing with Section 106, the Hon'ble Supreme Court held as follows:-

“One cannot equate the “date” on which the alleged offence came to the knowledge of the Inspector” with the date on which the alleged offence ought to have come to his knowledge.”

25. In J.J.Irani Vs. State of jharkhand [(2014) 15 SCC 813], the Hon'ble Supreme Court held that when the Inspector of Factories was a member of the team which conducted preliminary enquiry into an accident in a factory, then he was deemed to have knowledge, and he need not have waited for the final report of the Government, and held that the complaint filed after receiving report from the government was barred by limitation.

26. In the instant case, the accident took place on 08.01.2015. It was intimated on 09.01.2015. The intimation was received on 12.01.2015. The inspection was done on 24.03.2015. Even though new materials did not surface on 24.03.2015, still, as pointed out by the Hon'ble Supreme Court in P.D.Jambekar (referred supra), the date on which the alleged offence ought to have come to the knowledge of the Inspector can never be ascertained. I would hold that the complaint had been lodged



only states that no work can be carried out in a Factory to cause risk of bodily injury.

32. It is the case of the respondent that the petitioner in CrI.O.P.No. 18250 of 2015 / Occupier had not maintained the machinery and not provided such training to the Mechanic R.Vasudevan. It must be pointed out that the incident which occurred was a stand alone incident. The machinery, namely, Conveyor Roller Machine stopped running. A Bolt nut was found to be caught between the Conveyor Roller and the belt. That had to be removed. The mechanic put his right hand index finger to remove the Bolt nut. This act was voluntarily done by him. He was not and it is not the case of the respondent that he was forced to put his finger to pull out the Bolt nut. He had tried to use a pipe wrench. But as a mechanic, particularly when this machine had not been switched off, he must have been aware that if the machine restarts, his finger will get caught between the Conveyor Roller and the Belt. He should have by ordinary prudent knowledge used an iron rod to pull out the Bolt nut. This accident could have occurred even if all the supervisors were present at that particular place. When the mechanic had put his finger to pull out the Bolt nut, the machine started. The machine should have been switched off. That was the first act of negligence. When the electric switch was on, no prudent person whether trained or untrained, whether skilled or unskilled would put any part of his body in contact with the machine.

33. As a mechanic, R.Vasudevan should have had that knowledge. He however put his right index finger and it got crushed. This is an accident which was unforeseen and could not be predicted. It happened all of a sudden. Nobody, however trained would have expected the machine to suddenly restart. Therefore, the petitioner in CrI.O.P.No. 18250 of 2015 and the petitioner in CrI.O.P.No. 18251 of 2015 cannot be held to be directly responsible for the accident which R.Vasudevan suffered.

34. It has been placed on record that adequate compensation as directed by the Deputy Commissioner of Labour, Nilgiris District, had been paid to R.Vasudevan. He had also joined duty once again after the injury was healed. I hold that forcing the petitioners herein to face a criminal trial with



respect to an incident which was not at all under their direct or even remotely under their indirect control would be a traversity of justice.

WEB COPY

35. This is a case where compensation should be given to the workman. That has been paid. I would however exercise the inherent power of the High Court to secure the ends of justice and therefore direct the petitioners herein to pay an additional sum of Rs.30,000/- (Rupees Thirty Thousand only) to the Mechanic R.Vasudevan. This would ensure that any scar either physical or mental suffered by him would be healed. This is quite apart from the compensation already paid to him under the orders of the Deputy Commissioner of Labour, Nilgiris District. But continuing with the prosecution would not give any succour to R.Vasudevan. Rather this unexpected compensation would alleviate any grievances which he had against the petitioners herein owing to the incident which occur on 08.01.2015.

36. In view of the above reasoning, I hold that it would not serve the ends of justice by proceeding further with S.T.C.Nos. 1 & 2 of 2015 now pending on the file of Chief Judicial Magistrate, Udhagamandalam and therefore, the proceedings thereunder are quashed. However, I would direct the petitioners herein to either individually or jointly pay to R.Vasudevan, former mechanic, a total sum of Rs.30,000/- (Rupees Thirty Thousand only). The execution and implementation of the compensation part of this order is left to the conscience of the petitioners alone.

37. With the above observations, these Criminal Original Petitions are allowed and the further proceedings in S.T.C.Nos. 1 & 2 of 2015 pending on the file of Chief Judicial Magistrate, Udhagamandalam, are quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

vsg



1. The Deputy Director,
Industrial Safety and Health,
Udhagamandalam,
The Nilgiris.

2. The Chief Judicial Magistrate,
Udhagamandalam.

+2ccs to Mr.K.V.Sridharan, Advocate, S.R.No.43810, 43811

Cr1.O.P.Nos. 18250 & 18251 of 2015

And

M.P.Nos. 1, 1, 2 & 2 of 2015

AD(CO)
RLP(14/09/2021)