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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2021

PRONOUNCED ON : 27.10.2021

CORAM

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

Crl.O.P.Nos.2358 and 2359 of 2016
and Crl.M.P.Nos.1233 & 1235 of 2016

P.Ravichandran
S/o Thiru.Purushothaman,
Occupier,
Danfoss Industries Private Limited,
Plot No.A-19/2,
SIPCOT Industrial Growth Centre,
Iragadam Village,
Sriperumbudur Taluk,
Kancheepuram District.

.. Petitioner/Accused
(in both Crl.O.Ps)

Vs.

State Represented by
Deputy Director,
Industrial Safety and Health,
First Circle,
Sriperumbudur,
Kancheepuram District.

..Respondent/Complainant
(in both Crl.O.Ps)

Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.Nos.448 of 2014 and 450 of 2014 now pending on the file of the Chief Judicial Magistrate, Chengalpattu and quash the same.

For Petitioner	.. Mr.Anand Gopalan
(in both Crl.O.Ps)	For M/s.T.S.Gopalan & Co.
For Respondent	.. Mr.E.Raj Thilak,
(in both Crl.O.Ps)	Addl. Public Prosecutor

COMMON ORDER

Crl.O.P.No.2358 of 2016 had been filed under Section 482 Cr.P.C seeking to call for the records in C.C.No.448 of 2014 now pending on the file of the Chief Judicial Magistrate, Chengalpet and to quash the same.



2.Crl.O.P.No.2359 of 2016 had been filed under Section 482 of Cr.P.C seeking to call for the records in C.C.No.450 of 2014 now pending on the file of the Chief Judicial Magistrate, Chengalpet and to quash the same.

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3.The petitioner and the respondent in both the petitions are same. Arguments were advanced with respect to both the petitions. Issues were similar. Therefore, one common order is passed.

4.The petitioner is the occupier of Danfoss Industries Private Limited at SIPCOT Industrial Growth Centre in Sriperumbudur Taluk, Kancheepuram District. The respondent is the Deputy Director, Industrial Safety and Health, Sriperumbudur, Kancheepuram District. In C.C.No.448 of 2014, the respondent had given a complaint that the petitioner had violated Section 2(cb) Schedule 1 item 29 Section 7A, Section 41B and Rule 62B, Section 2(cb) Schedule I item 29 and Section 7A Section 41 B4, Section 2(cb) Schedule I item 29 and Section 7A Section 41B(1)(3) of the Factories Act, 1948. In C.C.No.450 of 2014, a complaint had been lodged that the petitioner had violated Section 41(A) Rule 61(M) of the Factories Act, 1948.

5.Danfoss Industries Private Limited has had a manufacturing process from 2007, manufacturing Pressure Control Switches, Filter dyers and Industrial Refrigeration Valves. All these three products are Electro-mechanical products. The company had an approved plan and licence had been granted for the factory. It was categorized as danger industry under Section 87 of the Factories Act, 1948 r/w Rule 9 of the Tamil Nadu Factory Rules.

6.In June 2014, the factory was shifted to SIPCOT Industrial Growth Centre, Oragadam. The Pollution Control Board given approval for manufacturing process on 08.09.2014. The respondent / Deputy Director, Industrial Safety and Health in Sriperumbudur, granted approval by proceedings dated 17.07.2014. The manufacturing activity can possibly commence only after 08.09.2014. For manufacturing Electro-mechanical products, the petitioner stores Helium Gas Cylinders which are used for heating of Filter Dyers. The Pollution Control Board had categorized the petitioner as Red Large Category. There was also a paint shop in the factory.

7.On 31.07.2014 even before manufacturing activities had commenced, the respondent inspected the premises. A show cause notice was issued on 14.08.2014. A reply was given to the show cause notice. Even before examining whether compliances had been made, the respondent filed a complaint before the Chief Judicial Magistrate, Chengalpet, which was taken cognizance as C.C.No.448



of 2014 for offences under Section 2(cb) Schedule 1 Item 29 Section 7A, Section 41B and Rule 62B, Section 2(cb) Schedule I item 29 and Section 7A Section 41 B4, Section 2(cb) Schedule I item 29 and Section 7A Section 41B(1)(3) of the Factories Act, 1948. A further complaint was also lodged, which was taken cognizance as C.C.No.450 of 2014 for offences under Section 41 (A) Rule 61(M) of the Factories Act, 1948.

8. Heard arguments advanced by Mr. Anand Gopalan, learned counsel for the petitioner and Mr. E. Raj Thilak, learned Additional Public Prosecutor for the respondent.

9. It is the contention of Mr. Anand Gopalan learned counsel for the petitioner that the respondent had alleged that the petitioner's factory falls under Section 2(cb) and under Schedule I of the Item 29 of the Factories Act, 1948. That particular provision relates to manufacture of Highly Flammable Liquids and Gases like Petroleum Industries. The petitioner on the other hand manufactures, Pressure Control Switches, Filter Driers and Industrial Refrigeration Valves. For that purpose, they use Helium Gas and the cylinders are stored in a separate room. There is also a paint shop. It is therefore contended that the very categorization of the petitioner's industries as coming under Section 2(cb) of Schedule I of Item 29 itself is wrong and the learned counsel urged that the entire prosecution must be quashed.

10. This argument was very seriously disputed by Mr. E. Raj Thilak, learned Additional Public Prosecutor, who asserted that it is the process of manufacturing which has to be examined and in this connection, the petitioner uses Helium Gas stored in cylinder and therefore, it is a factory coming under the aforesaid provision.

11. I have given my careful consideration to the arguments advanced and perused the materials on record.

12. Section 2 (cb) of the Factories Act, 1948 is as follows:-

"(cb) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would -

(i) cause material impairment to the health of the persons engaged in or connected therewith, or



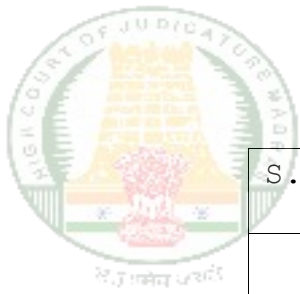
obligatory to insist that before manufacturing processes commence, the petitioner must inform and sensitize workers regarding the safety measures and the hazards involved in the manufacturing process. Thereafter, manufacturing commenced.

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19. The petitioner has licence to manufacture the products as on date. My learned predecessor had therefore with much wisdom, had, by order dated 29.07.2021, directed the respondent to inspect the factory premises and find out the present status and file a status report.

20. A status report has been filed by the Deputy Director of Industrial Safety and Health, Kancheepuram at Sriperumbudur, who stated that in accordance with the said directions, he had made an inspection on 27.08.2021 along with the Joint Director of Industrial Safety and Health, Kancheepuram at Sriperumbudur and the Certifying Surgeon, Office of the Joint Director of Industrial Safety and Health, Kancheepuram. He stated that the licence of the factory had been renewed for the year 2021. There are about 1000 workers. After giving in detail the manufacturing process, he had finally stated as follows:

S.No.	Contraventions as mentioned in the Show Cause Notice	Present Status
1	Section 2(cb) Section I Item 29 read with Section 7A, Section 41B & Section 112 Rule 62B - Non-submission of Health and Safety Policy.	Rectified Health and Safety Policy has been submitted to the Director of Industrial Safety and Health.
2	Section 2(cb) Schedule I Item 29 read with Section 7A and Section 41B (4) - Non-submission of Onsite Emergency Plan.	Rectified Onsite Emergency Plan has been submitted to the Director of Industrial Safety and Health.
3	Section 2(cb) Schedule I Item 29 read with Section 7A and Section 41B (1)(3) Non-disclosure of hazards to the workers, Director of Industrial Safety and Health and the General Public.	Not-rectified Hazards involved in the manufacturing processes have not been disclosed to the workers, Director of Industrial Safety and Health and the General Public.



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S.No.	Contraventions as mentioned in the Show Cause Notice	Present Status
4	Section 41(A) Rule 61M Non-constitution of Safety Committee	Rectified Safety Committee has been constituted
5	Section 41(A) Rule 61-Q(3) Non-submission of application to the Site Appraisal Committee	Non-rectified Application has not been submitted till date to the Site Appraisal Committee.

21.It is thus seen that as on date, there has been no compliance of Sections 7A and 41B(1)(3) and Section 41(A) Rule 61Q(3).

22.The issue whether the factory comes under the provision of 2(cb) is not examined by me now. But I would rather take a pragmatic view and direct the petitioner to comply with the said requirements, which relate to disclosure of hazards to the workers and submission of application to the Site Appraisal Committee. The factory has about 1000 workers and there is an obligation on the petitioner herein to explain the safety hazards to every worker. There is an obligation to submit application to the Site Appraisal Committee. It would only be in the interest of both the parties that these are complied with by the petitioner herein and continuation of prosecution which had been launched, nearly about eight years ago would only be an exercise in futility.

23.I would therefore quash both the Calender Cases in C.C.No.448 of 2014 and C.C.No.450 of 2014, but reserve a right of the respondent, to file a fresh complaint, on further inspection of the petitioner's site and if there is again a violation to institute necessary proceedings in accordance with law. I am not examining whether the petitioner's factory comes under Section 2(cb) of the Act or not. Materials in hand are not sufficient to come to that particular conclusion. Therefore, I refrain from entering into a discussion on that particular aspect. I would rather focus attention on the safety measures to be adopted and health hazards to be sensitized to the workers.

24.Therefore, even though both the Criminal Original Petitions are allowed and C.C.No.448 of 2014 and C.C.No.450 of 2014 both on the file of the Chief Judicial Magistrate,



Chengalpet are quashed, a liberty is given to the respondent herein to make further inspections and if again the aforesaid two contraventions have not been rectified by the petitioner, launch further prosecution in accordance with law.

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25. With the above observations, both the Criminal Original Petitions are allowed and C.C.Nos.448 & 450 of 2014 now pending on the file of the Chief Judicial Magistrate, Chengalpet are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VII)

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Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Chengalpet.
2. Deputy Director,
Industrial Safety and Health,
First Circle,
Sriperumbudur,
Kancheepuram District.
3. The Public Prosecutor
High Court of Madras.

+2CCs to M/s.T.S.Gopalan & Co., Advocate, Sr.No.55736

CrI.O.P.Nos.2358 & 2359 of 2016

AJS (CO)
K.RK. (17.11.2021)