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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.9742 & 9743 of 2021
and
Crl.M.P.Nos.6029 & 6031 of 2021

1. Dr.Vinod Nowal,
S/o.Madanlal Nowal,
Occupier/Dy.Managing Director,
JSW Steel Ltd,
SF No.89,90,93,98,303,321 Pottaneri,
SF No.189,190,203,300 M.Kalipatti,
Mecheri (Via) Mettur Taluk,
Salem District - 636 453.
...Petitioner/Accused in Crl.O.P.No.9742 of 2021
 2. BNS Prakash Rao,
S/o.B.Srinivasa Rao,
Manager/Senior Vice President,
JSW Steel Ltd,
SF No.89,90,93,98,303,321 Pottaneri,
SF No.189,190,203,300 M.Kalipatti,
Mecheri (Via) Mettur Taluk,
Salem District - 636 453.
...Petitioner in Crl.O.P.No.9743 of 2021
- Vs.
- State of Tamil Nadu,
Rep. by the Deputy Director,
Industrial Safety and Health,
Salem.
...Respondent in both cases

COMMON PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records on the file of the Chief Judicial Magistrate Court, Salem in C.C.Nos.132 & 133 of 2021 respectively and quash the same.

For Petitioners in both cases :	Mr.M.Vijayan for M/s.King and Partridge
For Respondent in both cases :	Mr.A.Damodaran, Additional Public Prosecutor



COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.132 & 133 of 2021, on the file of the Chief Judicial Magistrate Court, Salem/trial Court.

2.Since the issue in the both the complaints filed before the trial Court are one and same, this Court decides to dispose both the cases by way of common order.

3.The gist of the case is that M/s.JSW Steel Limited, Pottaneri, Metur Taluk, Salem is a registered factory under the Factories Act, 1948. The 1st petitioner is the Occupier/Deputy Managing Director and the 2nd petitioner is the Manager/Senior Vice President as per the license renewal applications for the years 2019 to 2023 in the office of the Joint Director of Industrial Safety and Health, Salem. On 02.11.2020, at about 05.10 p.m., an accident happened to workman M.Sadhasivam and the report about the accident was received in Form-18 as per the Tamil Nadu Factories Rules, 1950 in the office of the Joint Director of the Industrial Safety and Health, Salem on 06.11.2020. Based on the report, the accident was investigated on 09.12.2020 by the Joint Director of Industrial Safety and Health, Salem. From the investigation, it is found that the petitioners, who are occupier/Deputy Managing Director and the Manager/Senior Vice President, are liable to be proceeded for offence under Sections 41 r/w Rule 61F of the Factories Act, 1948 and Tamil Nadu Factories Rules, 1950 since no factory should carry on the work causing risk of the body injury to any person.

4.On 02.11.2020, the said Sadhasivam, Technician was allowed to place his leg on the rail track of bunker car to see the level of raw material in shuttle conveyor-2, while doing so the iron wheel of bunker car moved over his left leg safety shoe and he sustained crush injury which resulted in amputation of large finger (first finger) and nearby finger (second finger). Based on the investigation, a show cause notice was sent to the petitioners on 01.02.2021 and a reply was received from the petitioners in the office of the Joint Director of the Industrial Safety and Health, Salem on 01.02.2021. Since the explanation was not acceptable as the offence is related to an accident which resulted in amputation of first and second fingers of left leg foot, which caused permanent disablement to the worker and also finding that there have been contravention of the Factories Acts and Rules, the complaints were filed against the petitioners before the trial Court and the same were taken on file as C.C.Nos.132 & 133 of 2021.

5.The learned counsel for the petitioners submitted that the complaints even if taken at face value, does not disclose any



offence as alleged by the respondent. Rule 61 of the Tamil Nadu Factories Rules, 1950 will not apply to the present case, since it deals only with the cases where any process or work is carried on in a factory in such a manner which could cause risk of bodily injury. The respondent ought to have seen that by keeping his legs on the track on which the shuttle conveyor moves, the workman has committed breach of his obligation of Section 111(1) (b) of the Factories Act, 1948 and therefore, no prosecution can be launched against the petitioners under Section 97 of the Factories Act, 1948.

6.The learned counsel for the petitioners further submitted that conveying materials through the shuttle conveyor is a permitted activity and if the worker had injured himself due to his negligence, no prosecution can be launched against the occupier and Manager of the Factory. Further, the sanctioning authority failed to apply his mind while granting sanction for prosecution. The respondent is not an Inspector declared under the provisions of the Factories Act, 1948 and he is not authorized to initiate and continue with the prosecution against the petitioners. In the complaints, there is nothing to show that the respondent is a nominated Inspector under the Factories Act, 1948. The cognizance was taken after the period of limitation under Section 106 of the Factories Act, 1948 and hence, it is barred by limitation.

7.In order to substantiate his submission, the learned counsel for the petitioners relied on the following decisions:-

(i)In the case of "K.Masthan Rao Versus State reported in 2014 (3) MWN (Cr.) 86", wherein it had held that 'where a reply has been given to a show cause notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing the complaint itself become unsustainable.'

(ii)Further, placed reliance on the decision in the case of "R.P.Kapur Versus State of Punjab reported in AIR 1960 SC 866", wherein the Apex Court laid down the principles having regard to the power of the High Court to quash the proceedings under Section 482 Cr.P.C.

(iii)Relied on the case of "State of Karnataka Versus L.Muniswamy & Ors., reported in AIR 1977 SC 1489", wherein the Hon'ble Apex Court held that the High Court on coming to the conclusion that the continuation of the proceedings would amount to abuse of process of law, the same can be quashed, which is reiterated in the cases of "Madhavrao Jiwaji Rao Scindia & Anr., Versus Sambhajirao Chandrojirao Angre & Ors., AIR 1988 SC 709 and Shakson Belthissor Versus State of Kerala & Anr., reported in (2009) 14 SCC 466". In the case of "Anneta Hada Versus God Father Travels and Tours Private Limtied reported in (2012) 5 SCC



(iv) Placed reliance on the case of "Pepsi Foods Limited Versus Special Judicial Magistrate reported in 1998 SCC (Cri.) 1400", wherein the Hon'ble Apex Court held that the learned Magistrate ought to have scrutinized the evidence brought on record and thereafter, issue summons to the accused.

9. The learned Additional Public Prosecutor appearing on behalf of the respondent filed counter and submitted that the petitioners are the Occupier/Deputy Managing Director and Manager/Senior Vice President Manager of M/s.JSW Steel Private Limited, Salem. The petitioners ought to have followed and complied with the Factories Act and Rules. In this case, on 02.11.2020, without proper supervision, the worker Sadhasivam, Technician was allowed to place his leg on the rail track of bunker car to see the level of raw material in shuttle conveyor-2, while doing so the iron wheel of bunker car moved over his left leg safety shoe and caused crush injury resulted in amputation of first two fingers of Sadhasivam. This is in contravention to 'No process or work shall be carried out in any factory in such a manner as to cause risk of bodily injury'. He further submitted that the factories authority visited the factory, conducted inspection and thereafter, issued show cause notice to the petitioners. The petitioners sent reply for the same, which was not acceptable. Hence, the sanction for prosecution was obtained. The accident is not denied. Likewise, the injuries sustained and amputation of two fingers of Sadhasivam is also not denied. The defence taken by the petitioners that there have been no lack of supervision and no process of work was carried out in factory in such a manner, have to be decided during trial. In this case, the point of limitation



would not arise. The computation of the period of limitation is not from the date of submission of the Form-18. It is only from the date of inspection by the factories authority. Hence, the period from 15.03.2020 till 14.03.2021 stands excluded. The trial Court on perusal of the complaints filed by the respondents, found prima facie case is made out and also found there is no bar of limitation and issued notice to the petitioners.

10. In support of his submissions, the learned Additional Public Prosecutor placed reliance on the decisions of the Hon'ble Apex Court in the cases of "PD Jambekar Versus the State of Gujarat in Crl.A.No.91 of 1970, dated 25.10.1972 and State of Tamil Nadu (Deputy Director, Industrial Safety and Health, Udhagamandalam Versus K.Kandavadivel in Crl.A.Nos.432 & 433 of 2016."

11. Thus, the complaints proceeding against the petitioners is proper and the points raised by the petitioners are to be decided only during trial by the trial Court and not in these petitions.

12. This Court considered the rival submissions and perused the materials available on record.

13. It is seen that at the time of occurrence, the injured Sadhasivam was wearing personal protective equipment, such as steel toed safety shoes, FRP helmet, cotton gloves, denim coat and safety goggles. Before the occurrence, the petitioner had undergone safety standards and procedures for safety, training programmes and he was instructed to follow the Standard Operating Procedure. M/s.JSW Steel Limited, Salem is a company which is following the regular safety observation audits, safety inspection, safety line walk audit, contractor safety filed audit and vehicle safety inspection by safety officers and the protocols required. The operation of the factory needs movement of conveyor through which the raw materials are moved. Further, the process of operation is approved by the Inspector of Factories.

14. In this case, the said Sadhasivam entered into the restricted conveyor movement area without informing the person designated for operating/starting/stopping the conveyor and stepped on to the rail. While he was standing on the rail, the conveyor moved and the foot got trapped under the wheels, leading to severe crush injury. This is in violation of the Standard Operating Procedure. While being so, the petitioners cannot be found fault with. The negligent act of Sadhasivam is the reason for the accident.



15. It is not the case of the respondent that the safety procedures have been followed by the said Sadhasivam and movement of the conveyor with raw materials was without following safety procedures. From the Form-18 report, it is seen that the accident happened due to the negligence of the said Sadhasivam, for which the petitioners cannot be proceeded accruing them that they have not followed the safety procedures. The reply to the show cause notice was not considered and no reason given for the same. Further, the sanction order does not reflect consideration and application of mind. The accident occurred in the factory has been informed through Form-18 and hence, the authorities had come to knowledge about the same. Despite the same, the complaints did not file within stipulated time. Thus, the criminal proceedings against the petitioners would amount to the abuse of process of process of Court and quashing the impugned proceedings would secure the ends of justice.

16. In view of the same, the proceedings in C.C.Nos.132 & 133 of 2021, on the file of the Chief Judicial Magistrate, Salem are hereby quashed and these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court, Salem
Salem.
2. The Deputy Director,
Industrial Safety and Health,
Salem.
3. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.King & Patridge, Advocate, S.R.No.49115&49116

Cr1.O.P.Nos.9742 & 9743 of 2021

NMI (CO)
RGA(17/11/2021)