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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/11/2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL. O.P. NO.13924 OF 2017

AND

CRL.M.P.NOS.8923 & 8924 OF 2017

1.P.Dinesh

2.Gopalakrishnan

... Petitioners

Vs.

The State

Rep. by the Inspector of Police

Tambaram

Chennai-600 045

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records in C.C.No.76 of 2017 on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioners : Mr.S.Patrick

For Respondent : Mr.S.Vinoth Kumar
for Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.76 of 2017, pending on the file of the learned Judicial Magistrate, Tambaram.

2. Brief facts which are necessary for the disposal of this Criminal Original Petition is as follows:-

Petitioners 1 and 2 are the Director and Supervisor, respectively of Pradeep Stainless India Pvt Ltd. One of the employees of the Company viz., R.Narmatha, on 30/6/2015, after



completion of her work, at about 7.00 p.m., tried to open the door, as if it was a normal door, but it was a sliding door. She fell into the hot water kept in the nearby stainless steel drum and sustained burn injuries, below the abdomen, around the waist and legs and succumbed to injuries, on 3/7/2017. A criminal case was filed before the Chief Judicial Magistrate, Chengalpet, against the Company by the Factory Inspector, for violating various provisions of the Tamil Nadu Factories Rules, punishable under Section 92 of the Factories Act. The Inspector of Police, Tambaram, filed charge sheet against the petitioners, under Section 304 A of the Indian Penal Code, in C.C.No.76 of 2017.

3. Heard Mr.S.Patrick, learned counsel appearing for the petitioners and Mr.S.Vinoth Kumar, learned Government Advocate (Criminal Side) for the respondent.

4. The learned counsel appearing for the petitioners submitted that the accused are is no way connected with the charges. The charge sheet issued under various Sections punishable under Section 92 of the Factories Act and under Section 304 A of the Indian Penal Code are on the same set of facts. Hence both the cases cannot be proceeded simultaneously for the same occurrence and it suffers from the vice of double jeopardy. Dying declaration given by the deceased before the Investigating Officer also clearly indicate that she fell accidentally and nobody was responsible for the same.

5. The learned counsel appearing for the petitioners further submitted that once the Company was already charge sheeted under Factories Act and the case was already disposed of on 7th July 2017 by imposing fine and penalty of Rs.70,000/- under various Sections of the Factories Act, proceeding against the petitioners under IPC is untenable. Hence prays for quashing C.C.No.76 of 2017.

6. The learned Government Advocate (Criminal Side) appearing for the respondent did not dispute the launching of the prosecution under Factories Act against the petitioners and also fairly submitted that there is dying declaration before the Investigating Officer by the deceased to the effect that no one was responsible for the injuries caused to her.

7. Perused the materials available on record.



8. The admitted facts are that these petitioners are arrayed as accused in C.C.No.76 of 2017, which is pending on the file of the learned Judicial Magistrate, Tambaram. The petitioners are the Director and Supervisor, respectively of Pradeep Stainless India Pvt Ltd. On 30/6/2015, at about 7.00 p.m., R.Narmatha, while trying to open the door, fell into the hot water kept in the nearby stainless steel drum and succumbed to injuries, on 3/7/2017. As per the provisions of Special Act, information was given to Factory Inspector. Pursuant to which show cause notice, dated 4/7/2015, was issued by the Joint Director, Industrial Safety and Health, a detailed reply, dated 3rd August 2015, was sent. A criminal case was filed before the Chief Judicial Magistrate, Chengalpet. Father of the deceased filed a Police complaint to Tambaram Police Station and case was taken on file in C.C.No.76 of 2017 on the file of the learned Judicial Magistrate, Tambaram. As the occurrence is one and the same, proceeding with the second criminal case for the same occurrence amounts to double jeopardy.

9. The law is settled in various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. At this juncture, it is appropriate to consider the decision in ASHWINI KUMAR SINGH AND ANOTHER Vs. STATE OF JHARKHAND, 2007 LLR 866, wherein it is held that when 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 of the Indian Penal Code and 92 of the Factories Act, 1948, the sentence prescribed to the convict is similar. Therefore, criminal prosecution of the petitioners, under Indian Penal Code is unsustainable.

10. In the instant case, since the petitioners company was already charge sheeted under Factories Act and the case was already disposed of, by imposing fine and penalty of Rs.70,000/- under the Factories Act, continuation of the criminal proceedings against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable.

11. Considering the abovesaid decision, two proceeding will not be sustainable for the same cause of action or same incident and therefore, in the interest of justice, this Court is of the view to quash C.C.No.76 of 2017.

12. In the result, this Criminal Original Petition is allowed and the proceedings pending in C.C.No.76 of 2017, pending on the file of the learned Judicial Magistrate,



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Tambaram, is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nr/mvs.

To

1. The Inspector of Police,
Tambaram,
Chennai-600 045.
2. The Judicial Magistrate,
Tambaram.
3. The Public Prosecutor,
High Court, Madras - 104.

+1cc to Mr.M.R.Gokul Krishnan, Advocate, S.R.No.58473

Crl. O.P. No.13924 of 2017
and
Crl.M.P.No.8923 & 8924 of 2017

NRL(CO)
RLP(02/12/2021)