



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.14788 of 2021
and
Crl.M.P.(MD)No.7860 of 2021

R.Janani Soundarya ...Petitioner

Vs.

The Deputy Director,
Industrial Safety and Health-I,
Madurai. ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the charge sheet in S.T.C.No.654 of 2021 on the file of the learned Additional Chief Judicial Magistrate, Madurai.

For Petitioner : Mr.G.Karnan
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.654 of 2021 on the file of the Additional Chief Judicial Magistrate, Madurai.

2. The respondent herein filed a private complaint against the petitioner herein and the trial court took cognizance of the offences under Sections 7A(1) read with Section 32(a) and Section 7A (1), Section 41 Rule 61(o) of Factories Act, 1948 (Amendment Act 1987) and Section 92 of Factories Act, 1948.

3. The case of the prosecution is that on 07.10.2020, one Venkadachalam, Senior Factory Assistant, while pushing the trolley, fell down and suffered hip fracture and that the petitioner as the occupier of the factory premises will have to answer the charge.

4. The petitioner is a Group-I officer in the rank of District Revenue Officer. She had been sent on deputation to the Madurai District Co-operative Milk Producers Union Limited (Aavin).

5. The question that arises for consideration is whether there was any statutory bar against taking cognizance.



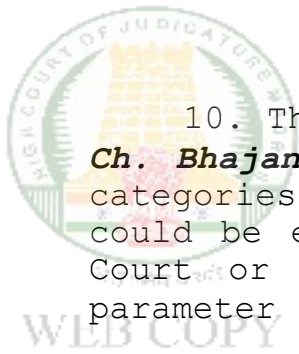
6. The primary contention of the petitioner's counsel is that sanction under Section 197 of Cr.P.C was not obtained and therefore, cognizance could not have been taken.

7. Per contra, the learned Additional Public Prosecutor would rely on the decision reported in **(1981) SCC 3 431 (S.S.Dhanoa vs. Municipal Corporation, Delhi and others)** for the proposition that a public servant sent on deputation to the co-operative society is not entitled to protection under Section 197 of Cr.P.C.

8. The 97th Constitutional Amendment introduced Part IXB dealing with the co-operative societies. As per Section 2(c) of the Prevention of Corruption Act, 1988, 'public servant' means any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956.

9. The issue on hand is *no longer res integra*. A learned Judge of this Court in the decision reported in **(2014) 3 MLJ (Crl) 523 (K.Masthan Rao Vs. State rep. by Inspector of Factories, First Circle Vellore)** held as follows:-

"42. The High Court of Karnataka in the case of D. Ghosh Roy, Chief Workshop Manager, Carriage Repair Shop, South Western Railway & Anr., (supra), while dealing with a case arising out of a prosecution launched against the carriage repair shop of south western Railway held that in order to prosecute the Manager of the factory under the Factories Act, the prosecuting agency ought to have obtained sanction. Following the decision of the Hon'ble Supreme Court in the case of State of Maharashtra, (supra), the Hon'ble High Court of Karnataka in the case of General Manager, Wheel and Axle Plant, Bangalore & Anr., (supra), has held that sanction under 197 Cr.P.C., is required and in the absence of sanction, prosecution cannot be lodged. Similar view was taken by the High Court of Madhya Pradesh, Jabalpur Bench, in the case of S.K. Prasad & Anr., (supra), which also related to the Manager of a Coach Rehabilitation Workshop at Bhopal. Thus, by following the above decisions, it is held that the prosecution launched against the petitioners, who are public servant without obtaining permission as contemplated under Section 197 Cr.P.C., cannot be sustained and accordingly, has to be quashed."



10. The Hon'ble Supreme Court in **State of Haryana and Ors. vs. Ch. Bhajan Lal (1992 Supp(1) SCC 335)** laid down seven illustrative categories wherein the power to quash under Section 482 of Cr.P.C could be exercised either to prevent the abuse of process of any Court or otherwise to secure the ends of justice. The sixth parameter is as follows:-

"6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings."

11. Sanction under Section 197 of Cr.P.C is to be obtained in the case of public servant removable by Government. The petitioner would fall under such class. Respectfully following the decision of the Madras High Court in **K.Masthan Rao Vs. State** and applying the aforesaid parameter set out in **Bhajan Lal**, I hold that cognizance of the impugned private complaint without obtaining sanction under Section 197 of Cr.P.C is clearly barred. The impugned proceedings stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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10/05/2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional Chief Judicial Magistrate,
Madurai.
- 2.The Deputy Director,
Industrial Safety and Health-I,
Madurai.



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

CrI.O.P. (MD) No.14788 of 2021

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