



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.03.2021

PRONOUNCE ON : 21.05.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.14979 of 2017

and

Crl.MP(MD)No.9972 of 2017

C.Rajendran

... Petitioners/Accused

Vs.

The State of Tamil Nadu,
Rep by S.Rajamuthu
Deputy Director,
Industry Safety & Health
(Factory Inspector)
Sivagangai (Incharge)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.1 of 2017, on the file of the learned Chief Judicial Magistrate, Ramanathapuram and quash the same.

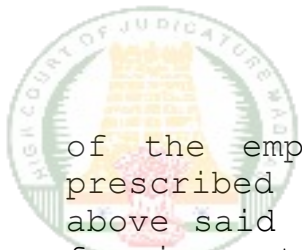
For Petitioner : Mr.B.Kumar Senior Advocate
for M.Rajan

For Respondent : Mr.M.Ganesan
Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.1 of 2017, on the file of the learned Chief Judicial Magistrate No. I, Ramanathapuram.

2. On 26.04.2016, the Industrial Security and the Health Joint Director, one S.Rajamuthu, inspected the premises called GRT Solar Power Plant Phase-I, which was located in S.No.137/1, 2A, 2B1 to 2B8, 138/10, 11/A, 11/B, 139/2,3,4,5A, 5B/6, 140/1A1, 1A2 & 2 B, Pambur Village, Paramakudi Taluk, Ramanathapuram District. It was found that it was an unregistered industry. One Rajendran was the owner cum Manager. On inspection various irregularities were found. The Solar Power Plant was found running with 13 employees and 7141.41 Horse Power was also utilized. No, approval was obtained from the Industrial Security and Health Department as prescribed under Section 6 (1) Rule 4 (1) (2) (3) and Rule 12 B (5). Attendance



of the employees was not marked in the Attendance Register as prescribed under Form-25. Attendance was not maintained for the above said 13 employees. In spite of request, it was not submitted for inspection. So, it is a violation under Section 112 r/w 103 of Factories Act. So, the accused has to be punished under Section 92 of Factories Act r/w Factories Rules. These are the violation of Section 6 (1) Rule 3 (1) (2) (3) of the Act 6 (1) r/w 4 (1) (2) (3) r/w 12 B (5) and Section 112 r/w 103 were found to be committed. So, with these allegations, the respondent filed a complaint before the learned Judicial Magistrate Court, Ramanathapuram.

3. Seeking quashment of the complaint, this petition is filed on the following grounds:-

The Chairman of the GRT Jewellers (India) Private Limited is having a registered office at Chennai. It is running the jewellery business and also running Educational Institutions and Solar Power Plant and the name of the Company is GRT Jewellers (India) Private Limited Ltd., which is registered under the Companies Act and also under the Trade Mark Act. The petitioner is running a Solar Power Plant in the said survey number in the said complaint in Pambur Village, Paramakudi in the name of GRT Jewellers (India) Private Limited. He applied for construction before the Joint Director (BOCW), Industrial Safety and Health Department, on 13.03.2015 in NO.B/370/2015(PC).

4. After that, contract for construction, operation and maintenance contract for 5 years was given to M/s.Larsen & Toubro Limited - Constructions Water & Renewable Energy IC, Mount Poonamallee Road, Chennai.

5. The plant was commissioned and started production of solar energy with 9 employees including the contract employees attached to L & T Company. There was no such plant running in the name of GRT Solar Power Plant Phase-I in the above said survey numbers. So, a show cause notice was issued by the respondent in the name of the above said Company was not known to the petitioner. The respondent has not served any notice to the GRT Jewellers (India) Private Limited. The Company had only one employee to supervise the plant and other 8 employee belong to L & T Company. So, it has not come under the Factories Act, 1948. Describing the petitioner as a Proprietor cum Manager is not correct. Only for the contract labourers permission was taken. There was no power used in the plant. Only sun light is a source for manufacturing of electrical energy. So, unless the employees are 10 or more persons, it will not come under the Factories Act. If any contravention under the Act, is noted only occupier is liable. The Director cannot be made vicariously liable and without the company made as a party, he is only the Chairman of the company and not taking any part in the affairs of the Act.



6. A short point but heavily argued by both sides:-

Before we go into the disputed points, the admitted points if kept in mind, may give a clarity to the discussion. The petitioner herein is a registered Private Limited Company and running Solar Power Plant in the disputed place of occurrence, in Paramakudi Taluk, Ramanathapuram District. After obtaining necessary permission from the Joint Director (BOCW) Industrial Safety Health Department, it entered into a contract for construction, operation and maintenance with M/s.Larsen & Toubro Limited - Constructions Water & Renewable Energy IC, Mount Poonamallee Road, Manapakkam, Chennai. - 600 089.

7. On 26.04.2016, the respondent made a surprise visit and found the violation as set out in the complaint. In the complaint, the name of the proprietor is shown as Mr.G.Rajendran, Proprietor cum Manager, GRT Solar Power Plant, Phase-I. Notice was also issued to Mr.G.Rajendran before lodging the criminal proceedings, which was also received by him.

8. Now, according to the petitioner, only GRT Jewellers (India) Private Limited is running the Solar Power Plant and not GRT Solar Power Plant Phase-I as mentioned in the complaint. So, show cause notice issued to a wrong person and so that was not replied and the notice itself is not valid under law and so, the complaint itself is not maintainable.

9. Now, the question is arises for consideration is whether the respondent has shown a wrong person, as an accused.

10. It is not in dispute that Mr.G.Rajendran is the Chairman of the GRT Jewellers (India) Private Limited.

11. But, in whose name the Solar Power Plant was registered has not been clarified by the respondent herein either before giving the notice or before lodging of the private complaint. The investigation report shows that when they visited the place of occurrence, they found a name board displayed in front of the factory showing the name as GRT Solar Plant Phase-I. So, according to the respondent, he is deemed to be the occupier as defined under Section 2 (n) of Factories Act, 1948. Notice issued to Mr.G.Rajendran was also received and acknowledgement card dated 26.05.2016 is also enclosed.

12. So, when that is being so, it is the duty of Mr.G.Rajendran to give proper reply. But, he has not done so. This matter was reserved for judgment and later, re-opened for the purpose of clarification on that particular point as to see whether the notice issued by the respondent to Mr.G.Rajendran was received by him or not.



13. From the counter affidavit filed by the respondent, it is seen that Mr.G.Rajendran received the notice. But, he did not send proper reply. Even during the Court hearings, there is a specific observation by this Court, dated 29.11.2019, to the effect that, on the basis of rival submissions made by the learned counsel on either side, had the respondent has given proper notice to the petitioner, it would have been properly replied by the petitioner, if a proper reply is sent, it will be considered by the authorities. On that ground, to get the clarification from the petitioner, the matter was adjourned to various dates. But, there is no proper response from the petitioner. So, the matter was heard. When the petitioner failed to send reply notice to the authorities, it is too late, now, to say that a wrong nomenclature and wrong person has been proceeded against by the respondent. So, on the basis of the records available with the respondent, the respondent is at liberty to amend the complaint properly before the Trial Court by filing a petition or by invoking section 319 crpc. Simply because, a concern has been wrongly mentioned in the complaint, it is liable to be quashed cannot be accepted.

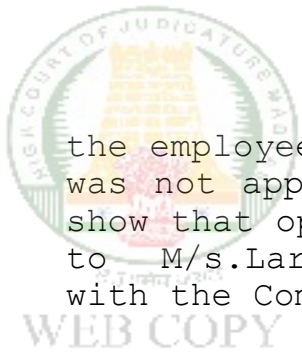
14. It appears that on both sides, there was a mistake. But, now, it has been accepted by the petitioner himself that GRT Jewellers (India) Private Limited, which a registered Company is engaged in running a Solar Power Plant in the premises, mentioned in the complaint.

15. The next point is whether the GRT Jewellers (India) Private Limited will come under the definition of 'Occupier' of the Solar Power Plant located in the said premises.

16. Now, according to the petitioner, work for construction, maintenance and operation was given to M/s.Larsen & Toubro Company Limited on contract basis, which has also engaged only 9 employees for running the plant. But, whether 9 employees were employed or 13 employees is a matter for consideration by the Trial Court. The disputed fact cannot be gone into at this stage.

17. Next argument is that as per the provision of Factories Act, only the occupier is liable and the petitioner cannot be considered as an 'Occupier'. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **J.K. Industries Ltd., and Others Vs. Chief Inspector of Factories and Boilers and Others (1996) 6 SCC 665.**

18. On the basis of the judgment, the contention on the part of the petitioner is that the petitioner being the Chairman of the 'GRT Jewellers (India) Private Limited', cannot be held vicariously liable. Some of the observation in the above said judgment is quite against the case of the petitioner. Escape route found by the



the employee or certain set of persons as 'occupiers' by the Company was not approved. Even though the petitioner is having document to show that operation, construction and maintenance contract was given to M/s.Larsen & Toubro Company Limited, the ultimate control is with the Company called GRT (India) Private Limited.

19. So, the escape route found by the GRT (India) Private Limited that only the L & Private Limited must be considered to be the occupier and not the GRT (India) Private Limited cannot be accepted, at this stage.

20. Moreover, these documents are not the admitted by the respondent. This is also the private contract between the GRT (India) Private Limited with the M/s.Larsen & Toubro Company Limited. It is a settled law that while considering the petition under Section 482 Cr.P.C, only the documents which are of sterling quality can be taken into account. But, here, these documents are not the admitted documents. So, that cannot be taken into account at this stage.

21. Even if, we consider that the document is of the sterling quality the operator was duty bound to notify the Owner in writing in respect of " i) any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services to be performed hereunder, ii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any Government Authorization relating to the Project or the Services; iii) all penalties or notices of violation issued by any Governmental Authority concerning the Project; and iv) any dispute with any Government Authority relating to the Project ". It is also mentioned as a condition 6.4.1.4 in the agreement. So, it is an agreement between the owner and alleged occupier.

22. But, in the document also we find a duty is cast upon the operator to comply with the government orders, which are applicable for operation and maintenance of the project So, as mentioned earlier, it is a private arrangement between the owner of the operator. So, on this ground alone, the complaint cannot be quashed.

23. The next argument is the bar of limitation. According to the petitioner, complaint must be filed within three months from the date of notice of violation. As mentioned earlier, the date of inspection is 26.04.2016. Complaint alleged to have been presented only on 01.04.2017, which means that it is beyond the period of limitation prescribed under the Factories Act.

24. Perusal of the complaint shows that it was presented on 19.07.2016 before the Trial Court. (01.11.2017 is the date of making copy by the concerned office namely, office of the CJM, Ramanathapuram. So, it is seen that by mistake it is stated in this



petition that it was presented on 01.11.2017). On the date itself, the Joint Director, addressed a letter to the Trial Court to receive the complaint. On 25.07.2016, it was returned with a direction to get the approval of the Public Prosecutor. After obtaining the approval, it was again represented on 05.12.2018, which was taken cognizance of by the Trial Court on 03.01.2017.

25. As mentioned earlier, the question which arises for consideration is whether it is hit by bar of limitation.

26. The petitioner would rely upon the judgment of the Hon'ble Supreme Court reported in **J.J. Irani and Another Vs. State of Jharkhand (2014) 15 SCC 813** for the purpose of argument that the complaint must be filed within a period of three months from the commission of the alleged offence. According to him, the complaint filed much after the prescribed period of limitation and the same is liable to be quashed. But, it is a settled law that only the date of presentation of a complaint and not the date of taking cognizance matters while considering the point of limitation. It was presented in time before the Court. Latter, it was returned, because of some defects. So, on this point, the prosecution is not liable to be quashed.

27. (*) **Considering the age of the petitioner, taking into consideration the request of the learned counsel for the petitioner, the personal appearance of the petitioner before the trial court is dispensed with, on condition that he may appear before the trial Court within 15 days from the date of resumption of normal work in the Subordinate Courts and file an affidavit undertaking to appear as and when required by affixing attested photo. In the result, the petition fails and the same is dismissed. Consequently, the connected miscellaneous petition is closed.**

Sd/-

Assistant Registrar(CS-III)

**(*)incorporated as per order of this Court dated 17.06.2021
in CRL OP.14979 of 2017**

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 Chief Judicial Magistrate,
Ramanathapuram.

2.The Deputy Director,
Industry Safety & Health
(Factory Inspector)
Sivagangai (Incharge)

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-18605[F] dated
25/05/2021)

+1 CC to M/s.M.RAJAN.KRAJESWARAN, Advocate (SR-19464[F] dated
17/06/2021)

Crl.O.P.(MD)No.14979 of 2017
and

Crl.MP(MD)No.9972 of 2017
21.05.2021

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