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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.11243 & 11244 of 2018
and
Crl.M.P.Nos.5819 to 5822 of 2018

Sivagnanamoothy
Manager,
Integral Coach Factory,
Furnishing Division,
Chennai - 600 038.

...Petitioner/Accused
in Crl.O.P.No.11243 of 2018

Manish Pradhan
Occupier,
Integral Coach Factory,
Furnishing Division,
Chennai - 600 038.

...Petitioner
in Crl.O.P.No.11244 of 2018

Vs.

Deputy Director-I,
Industrial Safety and Health,
T.S.No.47/1, Block No.6,
Thiru-V-Kaa Industries Estate,
Near Metro Water Tank Rountana,
Guindy, Chennai - 600 032.

...Respondent
in both petitions

Prayer : Criminal Original Petitions in Crl.O.P.Nos.11243 and 11244 of 2018 filed under Section 482 Cr.P.C., to call for the records in C.C.Nos.9130 and 9131 of 2017 respectively, now pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, and quash the same.

For Petitioner : Mr.P.T.Ram Kumar
in both petitions

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)
in both petitions



COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings initiated by the respondent, namely, the Deputy Director-I, Industrial Safety and Health, in C.C.Nos.9130 and 9131 of 2017 before the Chief Metropolitan Magistrate Court, Egmore, Chennai, against the petitioners herein, for the offences under Section 41 and Section 112 r/w. 61(E) & 61(F) & 7A(1)(2) of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950.

2.The allegations in the complaint are that, on 06.06.2017, in the Furnishing Division of the Integral Coach Factory, when the Diesel Power Car 78 was planned to be placed in the power car shed, there was an accident and one Kalaiselvan sustained grievous injuries and thereafter, he succumbed to the injuries. Hence, the respondent has found that the petitioners, being the Manager and Occupier of the Furnishing Division of the Integral Coach Factory, have not properly taken the safety measures to prevent the accident and thereby, they have violated the provisions of Section 41 and Section 112 r/w. 61(E) & 61(F) & 7A(1)(2) of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950, and hence, initiated the prosecution against them.

3.The Manager and the Occupier of the Furnishing Division of the Integral Coach Factory are before this Court to quash the proceedings initiated against them.

4.The learned counsel for the petitioners would submit that the contract was originally given to M/s.Cummins India Limited for the respective works in the Integral Coach Factory and they, in turn, entered into a sub-contract with M/s.Powerica Limited, Chennai, dated 20.03.2017. Therefore, the learned counsel submitted that the entire work took place on the basis of the contract and the sub-contract and the accident occurred while the sub-contractor, namely, M/s.Powerica was engaged in the work. He further submitted that it is the duty of the contractor and sub-contractor to ensure the safety measures, whereas, merely because the accident took place in the Integral Coach Factory, the petitioners, being the officials of the Railways, cannot be prosecuted. The learned counsel further submitted that the compensation was also paid to the deceased's family by the sub-contractor, viz., M/s.Powerica. The learned counsel further submitted that, no sanction whatsoever has been obtained under Section 197 Cr.P.C. to prosecute the present petitioners. The accident had occurred while the contractor and the sub-contractor were looking after the work and the present petitioners are no way in-charge of the above work at the relevant point of time. While such being the position, the



prosecution launched by the respondent as against the present petitioners, even without considering their explanation to the Show Cause Notice, is not proper in the eye of law and is liable to be quashed.

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5. Heard the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the entire materials available on record.

6. It is not disputed by the respondent that the sub-contractor, namely, M/s. Powerica Limited, Chennai, was in-charge of the work carried out in the Furnishing Division of the Integral Coach Factory at the relevant point of time and one of the employee of the sub-contractor had died due to an accident at the workplace. On a perusal of the contract placed before this Court, it is seen that the original contract was entered into between the Railways and M/s. Cummins India Limited, who in turn, entered into a sub-contract with M/s. Powerica Limited, which was engaged in the work at the relevant point of time, particularly, furnishing the coaches. The accident appears to have occurred due to the moving of Diesel Power Car, which is also a part of the job of the sub-contractor at the relevant point of time. It is also not disputed that the compensation was paid to the deceased's family by M/s. Powerica. Further, no sanction, whatsoever, has been obtained by the prosecution to initiate proceedings as against the present petitioners. Merely because the present petitioners are the Manager and Occupier of the Furnishing Division of the Integral Coach Factory at the relevant point of time, criminal prosecution cannot be initiated against them without there being proper sanction obtained as per the mandate under law. In the following judgments referred to by the learned counsel for the petitioner, it has been repeatedly held that, in the absence of sanction under Section 197 Cr.P.C., there cannot be any prosecution.

- i. State of Maharashtra v. Dr. Budhikota Subbarao [(1993) 3 SCC 339]
- ii. P. Kalai Kathiravan v. Ramaiah [Madras High Court Crl.O.P. (MD) No.4756 of 2016]
- iii. K. Masthan Rao v. State, represented by Inspector of Factories [(2014) 3 MLJ (Crl.) 523]
- iv. N. Shashi Bushan v. Deputy Director, Industrial Safety and Health [Madras High Court Crl.O.P.No.8755 of 2014]
- v. P. Shanmuganathan v. State represented by its Inspector of Factories [(2015) 1 MLJ (Crl) 75]
- vi. S. Padmanabhan v. The Deputy Director, Industrial Safety and Health [Madras High Court Crl.O.P.No.10038 of 2014]
- vii. P. Ravindra Babu v. The Deputy Director, Industrial Safety and Health [Madras High Court Crl.O.P.No.2738 of 2015]
- viii. L. Ganesh v. State of Tamil Nadu [2020 (2) CTC 666]



ix.P.Ravindra Babu v. Deputy Director, Industrial Safety and Health [Madras High Court Crl.O.P.No.6885 of 2015]

It is not the case of anyone that the accident was on account of direct or negligent action on the part of the present petitioners. Therefore, when accident had taken place while the sub-contractor was in-charge of the work, the present petitioners, being the officers of the Railways, cannot be prosecuted, that too, without any proper sanction being obtained, in view of the judgments cited supra. In the light of the above, this Court is of the opinion that the proceedings are liable to be quashed.

7. Accordingly, these Criminal Original Petitions are allowed and as a sequel, the proceedings in C.C.Nos.9130 and 9131 of 2017, now pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.

2. The Deputy Director-I,
Industrial Safety and Health,
T.S.No.47/1, Block No.6,
Thiru-V-Kaa Industries Estate,
Near Metro Water Tank Rountana,
Guindy, Chennai - 600 032.

+2ccs to Mr.P.T.Ram Kumar, Advocate SR. No.2395 & 2394

Crl.O.P.Nos.11243 & 11244 of 2018

AKII (CO)
PR (31/01/2022)