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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.6640 OF 2020

AND

CRL.M.P.NO.3653 OF 2020

S.V.Raja

...Petitioner

Vs.

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

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.1226 of 2020 now pending on the file of the Hon'ble Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner	:	Mr.P.T.Ramkumar
For Respondent	:	Mr.A.Gopinath Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.1226 of 2020, on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, based on the complaint by the Deputy Director-I, Industrial Safety and Health for the offences punishable under Sections 41 r/w. Rule 61 E and 61 F of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950, against the petitioner.

2. Heard both sides and perused the materials available on record.

3. The respondent filed a private complaint against the petitioner for the alleged offences under Sections 41 r/w. Rule 61 E and 61 F of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950.

4.1. On a perusal of the complaint lodged by the respondent, it revealed that on 18.07.2018, when the Joint Director-I,



Industrial Safety and Health inspected Carriage and Wagon Works (Southern Railway), it was noticed that the Manager has contravened the provisions of Section 41 r/w. Rule 61 E and 61 F of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950. On 28.05.2018, one Jayaprakash, Supervisor/IInd line in-charge has deputed the employees, namely Mohan, Saravanan, Ravikumarmeeena, Parameshwaran and Umashankar for floor assembly work to repair Wagon No.WR10089814726. At 8.00 a.m, they first cleaned the wagon and started the work. Five workers have fitted flooring sheet on the top and welder one Parameshwaran had done welding work under the wagon till 10.15 a.m. and they had fitted five flooring sheets. Thereafter, six workers had gone for tea and returned in 10 minutes and commenced the work again.

4.2. On noticing, tack welding was not done and the workers who were on top had given voices, and since there was no response, one of the worker namely Ravikumarmeeena had come down to verify, where one welder Parameshwaran was lying unconscious in sitting posture. After seeing that, the co-workers had taken him to Perambur Railway Hospital in an ambulance. On examining, the Doctors declared him as dead. Later Post-Mortem was done in the Government Hospital, Kilpauk and the Post-Mortem report stated that it as a death due to Electrocution. The alleged occurrence happened on 25.08.2018, on which day the deceased employee was deputed to work.

5. The learned counsel for the petitioner submitted that the Railway Administration is fully aware of its responsibilities and accountabilities for the safety of employees and all the safety precautions were taken and followed scrupulously. After the incident, a show cause notice was issued to the petitioner on 09.08.2018 and on receipt of the same, the petitioner had sent a reply explanation dated 27.08.2018 and stated that, safety measures and proper steps have been taken to protect the employees in the premises of carriage and wagon work. The deceased employee was also provided with safety equipments, such as Shoe, Leg Guard, Leather Gloves, Gas Masks and Shield for Welding. However, without considering the explanation submitted by the petitioner, the respondent had prepared an inspection report in a mechanical manner. Consequent to the death of the employee, all welfare measures have already been taken in accordance with Rules and Regulations of the Railway Administration to assist his family.

6. Ex-gratia amount of Rs.25 lakhs had been paid to compensate the family of deceased employee. Apart from that, as per the Workmen Compensation Act, Rs.5,56,620/- (Rupees Five Lakhs Fifty Six Thousand Six Hundred and Twenty only), PF Settlement of Rs.4,63,744/- (Rupees Four Lakhs Sixty Three



Thousand Seven Hundred and Forty Four only), Gratuity Rs.13,19,310/- (Rupees Thirteen Lakhs Nineteen Thousand Three Hundred and Ten only), Leave Salary Rs.3,52,916/- (Three Lakhs Fifty Two Thousand Nine Hundred and Sixteen only), Group Insurance Scheme Rs.52,459/- (Fifty Two Thousand Four Hundred and Fifty Nine only), were sanctioned and for Premature Death, Rs.50,000/- (Rupees Fifty Thousand only) and for Funeral Advance, Rs.15,000/- (Rupees Fifteen Thousand only) had also been sanctioned.

7. In fact, the Family Pension of Rs.21,715/- (Rupees Twenty One Thousand Seven Hundred and Fifteen only) has also been sanctioned and it is duly received by the wife of the deceased employee. Further, the elder daughter of the deceased employee has also been appointed as Train Ticket Examiner in the Southern Railway under compassionate grounds appointment. Though the petitioner submitted his detailed explanation to the show cause notice issued by the respondent, the same was not considered by the respondent and complaint was filed mechanically without any discussion with regard to the explanation submitted by the petitioner. After the explanation submitted by the petitioner, since the respondent has no satisfaction with the said explanation, a complaint was lodged, wherein, the respondent did not even whisper about the explanation submitted by the petitioner on the complaint. Therefore, the petitioner cannot be held the responsible for the offences under Sections 41 r/w. Rule 61 E and 61 F of the Factories Act, 1948 and Amended Factories Act, 1987 and Tamil Nadu Factories Rules, 1950.

8. That apart, the petitioner is a public servant who was appointed by the Central Government and the present complaint has been filed against the petitioner without obtaining valid sanction under Section 197 of Cr.P.C.

9. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Dr.Budhikota Subbarao, reported in (1993) 3 SCC 399 wherein it has been held as follows:-

.....6. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary means pertaining to an office. And official act or official duty means an act or duty done by an officer in his official capacity. In S.B. Saha v. M.S. Kochar MANU/SC/0075/1979 : 1979CriLJ1367 , it was held,



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The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, 'It is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

Use of the expression, 'official duty' implies that act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. In *P.Arulswami v. State of Madras* MANU/SC/0092/1966 : 1967CriL J665 this Court after reviewing the authorities right from the days of Federal Court any Privy Council held, It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if



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it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected-with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed, strictly while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction, so far its official nature is concerned: For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary.

But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Baijnath v. State of Madhya Pradesh* MANU/SC/0081/1965 : 1966CriLJ179 thus, the offence alleged to have been committed by the accused must have something to do, or must be related in some manner with the discharge



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of official duty...there must be a reasonable connection between the act and the discharge of official duty the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

7. On the law, thus, settled two questions arise for consideration one if the offence for which the accused was charged and of which cognizance was taken was committed by him during the period he was in Naval service and if it be so then whether the violations were in discharge of official duty or they were beyond it. For this purpose it may be mentioned that five charges were framed against the accused. First two related to Section 3(1) and 3(1)(c) of the O.S. Act. Third and fifth related to Sections 6(2)(a) and 5 of the O.S. Act and fourth related to violation of Section 18(2) and 19 of A.E. Act. In the very first charge after narrating the period when the accused was employed and when he opted for voluntary retirement it is stated that it was during the course of this period that he was in communication with foreign agents, within or without India and for purpose prejudicial to the safety or interest of the State he obtained and collected top secret and secret official documents. The High court and the Trial Judge, both, found that it was clear that the documents which were seized from possession of the accused and were subject matters of indictment were obtained by him when he was in service prior to his retirement in 1987. Even the reference to the documents in the charge because of which the Government was of opinion that the accused had violated provisions of O.S. Act are mentioned to have been procured by the accused during course of his employment In view of these averments, in the charge itself, it is very difficult to say that the offence for which the accused had been charge-sheeted were not committed when he was in service. In respect of charge 2, the High Court found and in our opinion rightly that the use of words, 'during the said time and place' related back to what was stated in charge No. 1, namely, to the period when the accused was in service. The High Court further



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found and again in our opinion rightly, that ambiguity, if any, in charges 1 to 4 stood completely removed by charge No. 5 which left no doubt that the intention and purpose of framing the charge against the accused was to indict him for whatever he had done during the period when he was employed in the Navy as the alternative charge clearly states that during his deputation between 1976 and 1987 with B.A.R.C. he had access to secret documents which he communicated to the persons other than those who were authorised to receive such information. Charge No. 3 relied to retention of Identity Card during service and charge No. 4 is in respect of taking out information in form of books pertaining to atomic energy the information of which had been obtained illegally, obviously, when the accused was in service. Therefore, the act or omission which furnished foundation for indicating the accused either under Q.S. Act or A.E. Act were related to the period when he was in service. The narrow or the stricter test to determine if the sanction for prosecuting the accused was necessary was thus satisfied.....

10. Further, as per Sections 41 r/w., Rule 61 E and 61 F of the Factories Act, 1948, the Act is applicable for all the factories, which belongs to the Central Government or any State Government and it does not have any specific provision providing any sanction to be secured for initiation of the proceedings against a public servant under the Factories Act, 1948. It is also confirmed by the Hon'ble Supreme Court of India in the above case.

11. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that, now the issue has been clarified by the Hon'ble Supreme Court of India in the case of Noorulla Khan Vs. Karnataka State Pollution Control Board & Another, in Crl.A.No.599 of 2021, by judgment dated 13.07.2021 arising under the provisions of Sections 43 and 44 of the Water (Prevention and Control of Pollution), Act, 1974. (in short "the water act"). The relevant portion of the said judgment reads as follows;-

..... What emerges from these decisions of this Court is:

a. If the violation of the provisions of the Water Act was at the hands of a Department, subject to the satisfaction of the requirements under Section 48 of the Water Act, "the Head of the Department" would be deemed to be guilty. This would of



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course be subject to the defences which are available to him to establish whether the offence in question was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

b. By virtue of the decision of this Court in V.C. Chinnappa Goudar (Supra), because of deeming fiction under Section 48 of the Water Act, the protection under Section 197 of the Code would not be available and the matter ought to be considered de hors such protection.

c. If the concerned public servant happens to be a Chief Officer or Commissioner of a Municipal Council or Town Panchayat, he cannot strictly be called "the Head of the Department of the Government". Therefore, in terms of decision of this Court in B. Heera Naik (Supra), the matter would not come under Section 48 of the Water Act. But the matter would come directly under Section 47 of the Water Act. According to said decision, even in such cases, the deeming fiction available under Section 47 of the Water Act would dis-entitle the public servant from the protection under Section 197 of the Code.

d. If the offenders are other than public servants or where the principal offenders are corporate entities in private sectors, the question of protection under Section 197 would not arise.....

12. In view of the above, the question of sanction as required under Section 197 of Cr.P.C does not arise in this case.

13. Insofar as the explanation submitted by the petitioner to the show cause notice issued by the respondent is concerned. The respondent, though annexed the explanation by way of reply submitted by the petitioner as Document No.9, there is no whisper about the explanation submitted by the petitioner, and whether it is satisfactory or not and if satisfactory, to prosecute the petitioner. However, in the counter affidavit, the respondent stated that the show cause notice was issued to the petitioner on 09.08.2018 after getting sanction from the Deputy Director-I, Industrial Safety and Health, Chennai-600 032. Since



the reply/explanation received from the petitioner, was not satisfactory, the prosecution proposal was sent to the Director of Industrial Safety and Health, Chennai-32.

14. Therefore, admittedly there are no reasons stated to prosecute the petitioner for being not satisfied with the explanation submitted by the petitioner herein. In this regard, this Court held in the case of K.Mastan Rao, Deputy Chief Engineer, Engineering Workshop, Southern Railway, Arakkonam, Vellore Vs. The State Rep. by its Inspector of Factories, First Circle, Vellore, reported in (2014) 3 MLJ (Cr1.) 523. and the relevant portion of the aforesaid judgement is extracted hereunder;-

.....28. In terms of Rule 102 of the Tamil Nadu Factory Rules, 1950, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply.

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted



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much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forthcoming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind.

15. In the case on hand also, as stated supra, there are no reasons in the explanation submitted by the petitioner. Hence, this Court has no hesitation to hold that the complaint lodged by the respondent is vitiated, on account of non-application of mind. In view of the above, the impugned complaint is nothing but clear abuse of process of law and no useful purpose would be served by directing the petitioner to undergo the ordeal trial before the trial Court.

16. That apart, as already discussed supra the deceased employee's family was properly compensated and all the terminal benefits were duly paid to them. In fact, the elder daughter of the deceased employee was given employment as Train Ticket Examiner in Southern Railway under the compassionate ground appointment.

17. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in C.C.No.1226 of 2020, on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

ata/nti

To

1. The Chief Metropolitan Magistrate Court,
Egmore, Chennai.

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



3.The Public Prosecutor
Madras High Court,
Chennai.

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+1cc to M/s.P.T.Ramkumar, Advocate Sr.No.38021

CRL.O.P.No.6640 of 2020
and
Crl.M.P.No.3653 of 2020

RP (CO)
RVM(01/07/2022)