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CrI.O.P.No.7968 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

CRL.O.P.No.7968 of 2022
and CrI.M.P.Nos.4636 and 4637 of 2022

Samriddhi Mondal
S/o.Sunil Kumar Mondal
Manager, SHV Energy Private Limited
LPG Bottling Plant
Plot No.A11/2, Part A
Survey No.32 / 2 Part
SIPCOT Industrial Park
Thervoy Kandigai Village
Gummidipoondi Taluk
Tiruvallur District 601202

... Petitioner

Vs.

State of Tamil Nadu, Rep. by Deputy Director
of Industrial Safety and Health – II
(Inspector of Factories)
S.F.No.47/1, Block-6
Thiru Vi Ka Industrial Estate
(Near Metro Water Roundtana)
Guindy, Chennai - 32

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,
to call for the entire records in C.C.No.54 of 2022, pending on the file of
Learned Chief Judicial Magistrate, Tiruvallur and quash the same.



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For Petitioner : Mr.Rahul Balaji
Mr.Palaniandavan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition filed is under Section 482 of Cr.P.C., to call for the entire records in C.C.No.54 of 2022, for alleged contravention of Section 41 r/w R/61-K(1)(2)(3) of the Rules and Section 41 r/w. R. 61-E of the Rules and Section 41 r/w. R.61-R of the Rules, punishable under Section 92 of the Factories Act, pending on the file of Learned Chief Judicial Magistrate, Tiruvallur and quash the same.

2.It is the contention of the complainant that on 26.08.2020, when the factory inspector inspected the factory premises of the petitioner, found certain contravention, thereby, the prosecution has been launched. The entire complaint except stating that the factory premises was inspected on 26.08.2020, no other whisper whatsoever is made with regard to show cause notice and no order passed therein.

3.Learned counsel for the petitioner would submit that after the



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receipt of the show cause notice dated 26.09.2020, appropriate reply was sent on 06.10.2020 and the same was not considered by the respondent either in the complaint or before sanctioning the prosecution. Hence, submitted that the very complaint itself is not maintainable. The learned counsel also placed reliance on the judgment of this Court vide order dated 19.08.2019 in Crl.O.P.Nos.23034 and 23035 of 2015.

4.Learned Government Advocate (Crl. Side) appearing for the respondent would submit that after the issuance of show cause notice, they have again visited the factory premises on 20.11.2020 and found some contraventions, therefore, they have filed the complaint.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) for the respondent. Perused the complaint.

6.In the complaint, except stating that the Inspector of Factories visited the factory premises on 26.08.2020 and found certain violations,



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there is no whisper whatsoever with regard to the detailed reply given by the petitioner to the show cause notice dated 26.09.2020. Whether any order passed or not based on the reply is also silent in the complaint and further there is no whisper made with regard to any subsequent inspection.

7.As submitted by the learned Government Advocate (Crl. Side), it is not disputed that the show cause notice was issued and which was appropriately replied. Such being the position, there must be a proper order before filing a complaint. In this regard, this Court has held in Crl.O.P.No.23034 and 23035 of 2015 dated 19.08.2019 as follows:

18.The petitioners have given a detailed reply for the Show Cause Notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the Show Cause Notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind. Useful reference can be made to the



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*judgment of this Court in **K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore reported in 2014 (3) MWN (Cr.) 86. The relevant portions of the judgment is extracted hereunder:***

“27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as



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to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the propriety of the explanations offered.

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



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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 much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forth coming 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”.

8.Further, the learned Chief Judicial Magistrate, Tiruvallur has also mechanically took cognizance without applying his mind, which can be clearly seen from the endorsement affixed in the complaint. Such approach of the Courts was deprecated in many cases, despite the same, the trial Court is mechanically affixing a rubber stamp and taking cognizance, which fact has been deprecated by this Court vide its order



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dated 17.11.2021 *in Crl.O.P.No.7347 of 2017 in A.T.Kannan V. The*

State represented by P.Rajasekar, Food Safety Officer. Therefore, without any material about the show cause notice and reply given, a decision has arrived to proceed further taking cognizance in a mechanical manner is also nothing but an abuse of process of law.

9.Considering the above judgment and decision and also the fact that the reasons for the show cause notice has not been reflected in the complaint, taking cognizance of the same by the Court on the basis of the complaint which is bereft of details is nothing but abuse of process of law.

10.In the result, the Criminal Original Petition stands allowed. C.C.No.54 of 2022, for alleged contravention of Section 41 r/w R/61-K(1)(2)(3) of the Rules and Section 41 r/w. R. 61-E of the Rules and Section 41 r/w. R.61-R of the Rules, punishable under Section 92 of the Factories Act, pending on the file of Learned Chief Judicial Magistrate,

N.SATHISH KUMAR, J.



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kas

Tiruvallur is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

06.07.2022
(2/5)

kas

Index: Yes / No

Internet : Yes / No

Speaking / Non Speaking order

To

1.The Deputy Director of Industrial Safety and Health – II
(Inspector of Factories)
S.F.No.47/1, Block-6
Thiru Vi Ka Industrial Estate
(Near Metro Water Roundtana)
Guindy, Chennai - 32

2.The Public Prosecutor
High Court of Madras
Chennai 600 104.

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