



BAIL SLIP

The Petitioner/Accused viz., Rajesh Kumar, aged 28/2017 S/o.Panjabikesan was directed to be released on bail as per order of this Court dated 16.08.2018 in Crl.M.P.No.10260 of 2018 in Crl.R.C.No.901 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2022

Pronounced on : 15.06.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.901 of 2018

Rajesh Kumar, aged 28/2017,
S/o Panjabikesan,
Prop: & Manager of Gungan Fire Works,
Door No.70/13, Kulathur Main Road,
Thirumanur, Udayarpalayam Taluk,
Ariyalur District.

.. Petitioner/appellant/
Accused

/versus/

State of Tamil Nadu
Rep.by Deputy Director,
Industrial Safety & Health,
Ariyalur.

.. Respondent/Respondent/
Complainant

Prayer: Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., praying to call for the records pertaining to the judgment dated 20.07.2018 made in C.A.No.4/2017 on the file of the Principal District and Sessions Judge of Ariyalur as confirming the judgment dated 08.02.2017 made in C.C.No.5/2016 on the file of the Chief Judicial Magistrate Court, Ariyalur and set aside the same.

For Petitioner : Mr.A.Padmanaban

For Respondent : Mr.N.S.Suganthan
Govt.Advocate (crl.side)



O R D E R

The Revision Petitioner is the Proprietor-cum-Manager of Gungan Fire Works, engaged in manufacturing fire crackers. On 07/03/2016 at about 1.15 p.m., fire broke in the factory by which two persons employed under the petitioner died. On hearing the incident, the Deputy Director, Industrial Safety and Health, Ariyalur inspected the premises on 08/03/2016 and caused notice to the petitioner. On being not satisfied with the explanation, a complaint lodged for violation of the provisions of the Factories Act, 1948.

2.As per the complaint, on 07/03/2016, in violation of the Act and Rules, out of four male workers employed in the cracker manufacturing unit of the accused, two of them by name Ravi and Anbu were allowed to work in the uneven mud floor, instead of the room meant for manufacturing. While they were mixing and grinding the chemicals, fire broke and those two employees sustained severe injuries. They were admitted at Tanjore Medical College Hospital for treatment. However, they succumbed to the injuries and lost breath on 11/03/2016.

3.Prosecution was launched for three distinct violations of safety Rules under the Factories Act, 1948. They are:-

The accused being the Proprietor-cum-Manager of the factory failed to provide the necessary safety measures in his Factory. He did not send the employees to safety training. He failed to submit Report about the accident in the format prescribed within 12 hours from the time of accident and he failed to insure his employees. Hence, he committed offences punishable (i) under Sections 7A (1) (2) and 41 of Factories Act, 1948 (as amended in 1987) r/w 61 F of Tamil Nadu Factories Rules 1950. (ii) under Section 88 A of the Factories Act, 1948 (as amended in 1987) r/w Rule 96(1)(2) of Tamil Nadu Factories Rules 1950 and (iii) under Section 87 of the Factories Act, 1948 (As amended in 1987) r/w Rule 95 Schedule XXIV Article 12A of Tamil Nadu Factories Rules 1950.

4.Before the trial Court, the prosecution relied on the testimony of (PW-1)Complainant-Kavitha, Deputy Director, Industrial Safety and Health, Dindigul and 17 documents were marked as Ex.P-1 to Ex.P-17. The accused examined his two other surviving employees and also mounted the witness box. Two (2) receipts for paying compensation to the victim families were marked as Ex.D-1 and Ex.D-2.

5.The trial Court on weighing the evidence held the accused guilty of the offences under Section 7 A (1)(2), 41, 88A and 87 of the Factories Act 1948 (as amended in 1987) r/w Rule 61F, 96



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(1) (2) and 95 Sch. XXIV Art. 12 A of Tamil Nadu Factories Act 1950 and sentenced the accused to undergo two years Simple Imprisonment and to pay fine of Rs.1,00,000/- (Rupees one lakh only) for the offence under Sections 7A(1)(2) and 41 of Factories Act, 1948 (as amended in 1987) r/w 61 F of Tamil Nadu Factories Rules 1950; to pay a fine of Rs.25,000/- for the offence under Section 88 A of the Factories Act 1948 (as amended in 1987) r/w Rule 96(1)(2) of Tamil Nadu Factories Rules 1950; and to pay a fine of Rs.25,000/- for the offence under Section 87 of the Factories Act, 1948 (As amended in 1987) r/w Rule 95 Sch XXIV Art. 12A of Tamil Nadu Factories Rules 1950. The total fine amount of Rs.1,50,000/- directed to be paid as compensation to the Legal heirs of the deceased Anbu and Ravi equally. In default of payment of fine, Six months of Simple imprisonment for each counts.

6. On appeal, the appellate Court confirmed the trial Court judgment of conviction and sentence. Hence, the present Revision petition is filed challenging the concurrent findings of Courts below.

7. The learned counsel for the revision petitioner submitted that, the Court below erred in holding the petitioner guilty of violation of Factories Act, despite the fact that the petitioner is holding valid license to manufacture fire crackers and the Factory premises was subjected to periodical inspection by the Officers. The testimony of PW-1, who admittedly inspected the factory premises, after hearing about the accident and recorded the statements of the eye witness is contrary to the testimony of DW-1 and DW-2, who were the eye witnesses to the occurrence.

8. The learned counsel appearing for the petitioner further submitted that the Courts below ought to have appreciated the fact that the victims were hospitalised for 5 days. No statement from the victims was recorded. The accident was immediately reported to the police and the office of Factories Inspector. The petitioner was attending the victims who were admitted in the hospital. On 10/03/2016, he went to the office of the complainant at Tiruchy and gave his statement. The statement of the petitioner was recorded by the defacto complainant (PW-1) on 10/03/2016 and the same was also marked as Ex.P-6. However, to cover up his own lapse, conveniently, PW-1 had deposed that she came to know about the accident only on seeing the news in the paper and when she went to the hospital to record the statements of the victim, they were not physically fit to give statements. She did not receive report about the accident in the prescribed format within 12 hours.

9. Intimation in Form 18 is only a procedure. When the petitioner has duly informed the accident within the time, delay



in intimating in the form prescribed within time cannot be termed as serious offence. The petitioner has not suppressed the accident or intent to suppress the accident. Mere delay in forwarding the Form 18 is erroneously viewed as serious offence by the Courts below.

10.The learned counsel for the petitioner further contended that, the Court below ought to have given due consideration to Ex.P-6, which is the statement of the accused recorded by the complainant on 10/03/2016 and Ex.P-10- the reply to the show cause notice. The accused though not insured his employees, they were adequately compensated and the same is proved through Ex.D-1 and Ex.D-2. While so, the imposition of Fine of Rs.1,50,000/- and the same to be paid as compensation will amount to double payment and unjust enrichment.

11.The learned counsel appearing for the petitioner also submitted that the petitioner did not fail in providing safety measures. At the time of accident, the petitioner was not present. The victims on their own left the manufacturing room and had sat on the mud floor in the open space for mixing the chemicals. They have voluntarily left the room against the instruction. This has been spoken by DW-1 and DW-2, who are the eye witnesses to the occurrence. However, the Courts below has ignored the testimony of Sathiyamoorthy (DW-1) and Vijayakanth (DW-2) and rendered judgment of conviction relying the previous statement of DW-1 and DW-2 marked as Ex.P-1 and Ex.P-2, which is not a substantive evidence.

12.The learned counsel for the petitioner further submitted that even if there was any minor violation of the license conditions or Factories Act, imprisonment for the term of two years and fine of Rs.1,50,000/- for each victim is an excessive punishment and perverse, which needs interference.

13.The learned Government Advocate (Crl.Side) representing the respondent/complainant submitted that, Ex.P-1 and Ex.P-2 are the statements of Sathiyamoorthy (DW-1) and Vijayakanth (DW-2) respectively recorded in the course of enquiry. Ex.P-6 is the statement of the petitioner/accused. Ex.P-10 is the reply given by the accused to the show cause notice admitting the violation. The Courts below had rightly appreciated these evidence which proves that the petitioner had not taken adequate safety measures and had given an undertaking to rectify the violations. These documents namely Ex.P-1, Ex.P-2, Ex.P-6 and Ex.P-10 proved the case of the prosecution beyond any reasonable doubt. The trial Court has rightly declined to disbelieve the testimony of defence witnesses, who are interested witnesses made contrary to their previous statements. Their testimony does not inspire confidence, Ex.P1, Ex.P2 and Ex.P6 are previous statement of DW-



1 to DW-3 respectively duly recorded by PW-1. When these documents were marked through PW-1, who subjected herself for cross examination, no questions challenging its veracity of the said statements was put to disbelieve its content. Hence, prayed for dismissal of the revision petition.

14. Heard the submission made by the learned counsel for the Revision petitioner and the learned Government Advocate (Crl.Side) for State.

15. The case of the prosecution fall into three folds. Firstly, the accused / revision petitioner failed to ensure health, safety and welfare of the workers while they are at work in the factory. By allowing the deceased employees Ravi and Anbu to work outside, the safety room in violation of law is an act punishable under Section 7 A (1) (2) and 41 of the Factories Act r/w Rule 61 F.

16. To hold the accused guilty for the said offence, the Courts below has relied on Ex.P1, Ex.P2 and Ex.P6, which are the statements given by the co-employees of the victim and the accused during the course of enquiry. Sathiyamoorthy and Vijayakanth, the makers of the statements Ex.P-1 and Ex.P-2 are the independent eye witnesses to the occurrence. They are the natural witnesses. The prosecution had not examined them as the prosecution witnesses. They were summoned by the defence and they have mounted the witness box on behalf of the defence and examined as DW-1 and DW-2. Their testimony does not support the case of the prosecution. DW-1 and DW-2 on oath had deposed that when the revision petitioner was not in the factory premises, the victims, despite the warning, left the safety manufacturing room and sat on the mud floor for mixing chemicals. Because PW-1 was not questioned in the cross examination about the veracity of the previous statements recorded by her, the trial Court has ignored the testimony given on oath and given weightage to the previous statements, which is not a substantial piece of evidence. Previous statement of the witnesses can be used only for contraction or corroboration. Rule of evidence for the private complaint lodged by the Government Authorities under Factories Act is not different from other offences. Thus, it is evident that the Courts below had failed to apply the correct principle of law, while appreciation of the previous statements contrary to the depositions on oath which is contradictory .

17. The accused/revision petitioner has proved through DW-1 and DW-2 that he was not present at the time of accident. The accident occurred when the victims voluntarily violated the instructions, in the absence of the owner of the premises. In spite of the said undisputed fact, the trial Court has observed that the owner of the factory ought to have engaged a separate



manager or fit person to control the employees during his absence. As a matter of fact, on inspection purported to have been done by PW-1 a week before the incident. The report being a truncated and many columns found un-filled, it has rendered itself an inadmissible document, though it has pointed certain violations of safety measures. That apart, the said report is not relevant to the accident which occurred a week later, outside the safety manufacturing room during the absence of the accused/petitioner in violation of his instruction, not within the knowledge or by consent of the accused/petitioner. Therefore, it is clear that the respondent has not proved the charge under Section 7 A (1)(2) and 41 of the Factories Act in the manner known to law.

18.The Courts below erroneously held the accused/petitioner guilty of the said charge ignoring the testimony of DW-1 to DW-3 and erroneously relying the previous statements of the witnesses and the accused given to the complainant (PW-1), which is not a substantial piece of evidence.

19.Therefore, for the aforesaid reasons, being a perverse finding contrary to law, the conviction and sentence for the offences under Section 7 A (1)(2) and Section 41 of the Factories Act are liable to be set aside.

20.The second fold of the prosecution case is that, the accused failed to intimate the accident within 12 hours to the Inspector of Factories in Form 18. The case of the accused is that he orally intimated the accident and gave statement on 10/03/2016 to the complainant. However, it is implicitly admitted by the accused that he did not intimate the accident in the prescribed form. The reason for the delay in intimating the accident is found in Ex.P-10, which is the explanation letter of the accused in response to the show cause notice. For the said violation, the trial Court has imposed fine of Rs.25,000/- and the same is confirmed by the lower appellate Court. This Court on revision does not find any perversity or unreasonableness in the said finding. Hence, the sentence imposed for the offence under Section 88A of the Factories Act 1948 (as amended in 1987) r/w Rule 61F, 96(1)(2) is confirmed.

21.The third fold of the prosecution case is that, the accused failed to insure the employees for Rs.50,000/- each as mandated under Sections 87 and 95 Schedule XXIV, Article 12 A of Tamil Nadu Factories Rules 1950. The accused/petitioner relied upon Ex.D-1 and Ex.D-2 which are receipts given to the legal



heirs of Ravi and Anbu acknowledging the receipt of Rs.4,00,000/- and Rs.2,00,000/- respectively. According to the learned counsel for the petitioner, by paying the legal heirs of the deceased compensation of Rs.4,00,000/- and Rs 2,00,000/- respectively, the spirit of the provisions to insure the employees to take care of any unforeseen incident is substantially satisfied and therefore, the accused/ petitioner cannot be prosecuted.

22.The Courts below declined to accept this plea, since the accused has not examined the beneficiaries of the compensation. Further, it has observed that even if the payment of compensation is proved, it will not absolve the accused for the violation of the statutory obligation. This Court concur the said view of the Courts below.

23.Payment of compensation subsequent to the accident may at the most mitigate the punishment, but will not absolve the offence of violating the Rules meant for safety and welfare of the employees engaged in hazardous factories. Therefore, this Court is not inclined to interfere with the finding of guilt or sentence imposed for the offence under Sections 87 and 95 Schedule XXIV Article 12 A of Tamil Nadu Factories Act 1950.

24.For the reasons stated above, the judgment of the appellate Court confirming the trial Court judgment is set aside partly and confirmed partly as below:-

The conviction and sentence for offence under Section 7 A (1)(2) and 41 of the Factories Act 1948 (as amended in 1987) and Section r/w Rules 61 F of Rules is set aside.

25.The conviction and sentence for offences under Section 88A of the Factories Act 1948 (as amended in 1987) r/w Rule 96 (1)(2) of Tamil Nadu Factories Rules 1950 and the conviction and sentence for offences under Section 87 of the Factories Act 1948 (as amended in 1987) r/w Rule 95 Schedule XXIV, Article 12 A of Tamil Nadu Factories Rules 1950 are confirmed.

26.The petitioner/ accused shall pay a fine of Rs.25,000/- for the offence under Section 88 A of the Factories Act 1948 (as amended in 1987) r/w Rule 96(1)(2) of Tamil Nadu Factories Rules 1950 and shall pay a fine of Rs.25,000/- for the offence under Section 87 of the Factories Act, 1948 (as amended in 1987) r/w Rule 95 Schedule XXIV Article 12A of Tamil Nadu Factories Rules 1950. Total fine amount Rs.50,000/-. In default of payment of



fine amount, he shall undergo one month of Simple Imprisonment. On deposit of the fine amount, the same shall be paid as compensation to the family of the victims equally.

27. In the result, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
The Principal District and Sessions Court,
Ariyalur.
2. The Chief Judicial Magistrate,
Ariyalur.
3. The Deputy Director, Industrial Safety & Health,
Ariyalur.
4. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.Padmanaban, Advocate, S.R.No.35447

Cr1.R.C.No.901 of 2018

PL(CO)
UMA(07/07/2022)