



Crl.OP.No.11155 and 11156 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**Crl.O.P.Nos.11155 and 11156 of 2020
and
Crl.MP.No.4561 of 2020**

Rajiv Mittal

**... Petitioners
(in both Crl.OPs)**

Vs.

**The State
Represented by its Director(I/C)
Industrial Safety and Health (BOCW)
T.S.No.47/1, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-600 032.**

**.... Respondent
(in both Crl.OPs)**

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the complaint filed in CC.No.1375 and 1377 of 2020 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai respectively and quash the same.

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For Petitioner : Mr.C.Mani Sankar for Ms.H.Kalpana

**For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)**



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COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 482 of Cr.P.C seeking orders to call for the records pertaining to CC.Nos.1375 and 1377 of 2020 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

2. The case of the respondent is that the construction site was inspected by the respondent on 27.11.2019 by the virtue of powers vested under Section 43 of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996. During inspection, it was found that on 21.11.2019, One Moinul Haque /worker was engaged to remove the rain water collected in the drain near the Ultra Filtration Reverse Osmosis Shed using submersible pump. At around 4.20 p.m., while the worker was involved in dewatering work, suddenly the pump stopped working and since there was no supervision for the work, the unskilled worker tried to fix the problem by himself. He lifted the submersible pump from the water with his bare hands without disconnecting the power supply and in the process suffered



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severe electric shock and was immediately taken by his co-workers to Soorya Hospital, Vadapalani for treatment, but the Doctors have declared him brought dead. It is further alleged that based on the above said accident, show cause notice was issued to both Mr.Rajiv Mittal (employer), VA Tech Wabag Limited which is the lead partner in Wabag-IDE Consortium and the Company VA Tech Wabag Limited which is the lead partner in Wabag-IDE Consortium on 18.12.2019 for the following contraventions:

(i) Section 44 Rule 5(5) read with Section 53(1)

As per the above Section, the employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment to ensure compliance with the provisions of this Act and for taking all practical steps necessary to prevent accidents. It shall be the duty of every employer not to permit an employee to do anything not in accordance with the generally accepted principles of standard safe operating procedures connected with the building or other construction work; (ii) Section 39(1) Rule 210(1) (a)(b) and Rule 210(7) r/w Section 53(1) As per the above Section, notice of



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any accident (in form XIV) in the construction site which causes loss of life of the building worker shall forthwith be sent by telegram, telephone, fax or similar other means including special messenger within four hours to the Director, Industrial Safety and Health; and (iii) Section 40(1)(2) (n) Rule 47(1) read with Section 53(1) As per the above section, before commencement of any building or other construction work, the employer shall take adequate measures to prevent any worker from coming into physical contact with any electrical equipment or apparatus, machines or live electric circuit which may cause electrical hazard during the course of his employment at a building or other construction work.

3. The show cause notice was sent through registered post with acknowledgement card to the petitioner. The petitioner who received the show cause notice has sent reply dated 10.01.2020 on 27.01.2020, but, since the reply received was not satisfactory, further action letter was sent to him vide letter A/210-2/2019 dated 6.2.2020. Following that, a proposal vide letter A/210-2-2019 dated 06.02.2020 for prosecuting the petitioner was sent to the Director, Industrial Safety and Health and on



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receipt of the sanction order from the Director , Industrial Safety, Health
vide letter No.L1/28487/2019-2 dated 19.2.2020, a complaint before the
Chief Metropolitan Magistrate, Egmore was filed on 21.02.2020 which
was taken on file as CC137 of 2020.

4. The learned Senior counsel for the petitioner submitted that the complaint has not been filed against the company called Wabag-IDE Consortium, whereas, these petitions have been filed against the Managing Director of the said Company in his personal capacity which is unsustainable in law. It has been decided in catena of cases, that an individual cannot be arrayed as an accused when the alleged offence has been committed by the company and the company is not prosecuted. While dealing with the case prosecuted under NI Act which is pari materia of Section 53 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 (herein after referred to BOCW Act) and Tamil Nadu Rules 2006 Courts makes it clear that the company can be prosecuted and it is then the persons mentioned in other categories could be vicariously liable for



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the offence. He further submitted that the chargesheet is filed to show the prima facie case in the complaint when they are alleging that an offence alleged to have been committed by the company, they should place the specific applications or overt act has been as against the individual who is sought to be prosecuted if the persons in charge and responsible for the conduct of the business and day to day affairs of the company.

5. On perusal of the counter filed by the respondent, it is seen that the complaint was filed under Contraventions of Section 39(1) Rule 210 (1)(a)(b) and Rule 210(7) r/w Section 53(1) and accordingly notice of any accident (in form XIV) in the construction site which causes loss of life of the building worker shall forthwith be sent by telegram, telephone, fax or similar other means including special messenger within four hours to the Director, Industrial Safety and Health whereas it was not done by the petitioner and there is contravention of other provision under Section 44 Rules 5(5) r/w Section 53(1) and Section 40(1)(2) (n) Rule 47(1) read with Section 53(1) of BOCW Act 1996. The petitioner, aware of the



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above said Rules, applied for registration certificate for carrying out the construction activities through online and submitted the application Form No.XIV in the office of the Joint Directorate of BOCW, Chennai. Accordingly, the Registration Certificate has been issued by the Joint Directorate of BOCW, Chennai to the petitioner. It further reveals that the company namely Wabag-IDE Consortium has also been served show cause notice for the contravention notice to the company and on receipt of the explanation to the show cause notice and without satisfying the explanation, lodged the separate complaint as against the company in CC.No.1372 of 2020. It is also pending on the file of the Chief Metropolitan Magistrate Court, Egmore. The said company is represented by the present petitioner herein as one of the Directors of the Company. That apart, the company is the leading partner who is carrying out the entire construction activities and the petitioner who is in charge of the responsibilities for conducting all the business is responsible for providing constant and adequate supervision of any building or other construction workers in the establishment by ensuring compliance with the provisions of taking all possible steps necessary to prevent the accident.



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Therefore, the grounds raised by the petitioner cannot be construed to quash proceedings and the petition is liable to be dismissed.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in CC.Nos.1375 and 1377 of 2020 respectively pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. Since the cases are of the year 2019, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

7. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

17.06.2022

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Vv



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1. The the Judicial Magistrate Court-I,
Namakkal
2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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