



Crl.O.P.Nos.14298 & 14091 of 2021 and
Crl.M.P.Nos.7804, 7805, 7705 & 7706 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.10.2022
Pronounced on	15.11.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.14298 & 14091 of 2021 and
Crl.M.P.Nos.7804, 7805, 7705 & 7706 of 2021

1.Mr.V.M.Govindharajan

... Petitioner in Crl.O.P.No.14298 of 2021

2.Mr.C.M.Rao

...Petitioner in Crl.O.P.No.14091 of 2021

Vs.

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

... Respondent in both Crl.O.Ps

PRAYER in both Crl.O.Ps: These Criminal Original Petitions have been filed to call for the records in C.C.Nos.2704 & 2705 of 2021 now pending on the file of the Hon'ble Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.



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In both Crl.O.Ps

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For Petitioners : Mr.P.Thiruppathi Ramkumar
For Respondent : Mr.A.Damodaran, APP

COMMON ORDER

These Criminal Original Petitions have been preferred to call for the records in C.C.Nos.2704 & 2705 of 2021 now pending on the file of the Hon'ble Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

2. Heard Mr.P.Thiruppathi Ramkumar, learned counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondent and also perused the materials placed on record.

3. The petitioner in Crl.O.P.No.14298 of 2021 is the Deputy Chief Electrical Engineer of Furnishing Division, Integral Coach Factory, Chennai. He is a Group I Officer of Indian Railways appointed by the President of India. He is nominated as “Manager” of the premises of Integral Coach Factory as per the procedure under Factories Act.



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4. The petitioner in Crl.O.P.No.14091 of 2021 is the Chief Workshop Engineer of Furnishing Division, Integral Coach Factory, Chennai. He is a Group I Officer of Indian Railways appointed by the President of India. He is nominated as “Occupier” of the premises of Integral Coach Factory as per the procedure under Factories Act.

5. The Integral Coach Factory, Chennai is a premium and first coach manufacturing unit of India under the Ministry of Railways established in the year 1955. It involves in manufacturing passenger coaches to Indian Railways and for export to other countries as well. It is one of the largest coach manufacturing unit in the world.

6. The respondent has filed a complaint against the petitioners in their official capacity as Manager and Occupier respectively of the premises for the offence under Section 7A(1)(2), Section 41 r/w Rule 61 E & 61 F and Section 38(3) r/w.Rule 61(1)(d) & Section 13 of the Tamil Nadu Factories Act, 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950.



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7. The brief facts of the case as stated out in the complaint are as

under:

The building situated in the Factory measuring 100m x 50m is used as Godown to store electrical things. On 26.09.2020, at about 3 a.m., a fire accident occurred and items stored in the shed got damaged and caused huge loss. To put out the fire, fighting crew, ten fire tenders and metro water lorries were involved. The storage shed receives power supply of 440V from Main Distribution Board No.6. In this shed, a Moulded Case Circuit Breaker Panel (63A) is available and from this, supply is fed to three LED lamps, DMS Room and 5 Ton EOT Crane. Apart from the above, the power is directly taken from the main incoming line for 2 Nos. of Camera Server Cabinet. No ELCB or RCCB were provided and maintained to cut off power in case of emergencies due to short circuit. No proper earthing has been done and maintained. The power supply is disconnected only during night for all equipments / appliances except for Camera Server Cabinet.

7.1. On the day of occurrence, there was a heavy rain with thunder. Due to this, short circuit occurred in Server Cabinet and the Server Cabinet was burnt due to arc flash inside Server Cabinet. Due to voltage fluctuations in



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the room, it was found that fire prone materials, such as electrical cables, gunny bags and carton boxes near Server Cabinet accumulated there got burnt and it led to the fire accident. The complaint made on these grounds was taken on file in C.C.Nos.2704 & 2705 of 2021 and summons were issued to the petitioners herein.

8. The learned counsel for the petitioners submitted that the fire accident had been reported to the respondent on the same day and inspection was conducted inside the Factory and show cause notice was issued on 02.11.2020 to the petitioners along with inspection report; after receiving the inspection report, a detailed reply was submitted on 20.11.2020 to the respondent by explaining the reasons for the fire accident that had taken place on 26.09.2020; without considering the explanation submitted by the petitioners, the respondent had filed the present complaint without application of mind.

8.1. The petitioners have been impleaded in their official capacity as “Occupier” and “Manager” and such roles are performed by the petitioners during the course of the discharge of their official duty; since the petitioners



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are entitled to immunity from the prosecution; since the petitioners are the public servants within the meaning of Section 21 of I.P.C, a valid sanction under Section 197 of Cr.P.C is mandatory for filing this complaint; the verbatim re-production of the show cause notice in the sanction order dated 24.12.2020 would show that the explanation submitted by the petitioners was not considered by the respondent; if sanction is given without application of mind, the complaint itself is unsustainable. In support of his contention, the learned counsel for the petitioners submitted the following judgments:

(i) the judgment of this Court rendered in the case of ***K.Masthan Rao S/o.K.Gengaiah Deputy Chief Engineer / Occupier, Engineering Workshop, Southern Railway, Arakkonam, Vellore Vs. State Rep. By Inspector of Factories, First Circle, Vellore, reported in (2014) 3 MLJ (Crl) 523;***

(ii) the judgment of this Court rendered in ***Crl.O.P.No.14675 and 14677 of 2022 dated 20.07.2022;***

(iii) the judgment of this Court rendered in ***Crl.O.P.No.6640 of 2020 dated 21.06.2022;***

(iv) the judgment of this Court rendered in the case of ***L.Ganesh Vs.***



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State of Tamil Nadu reported in 2020 (2) CTC 666.

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9. The learned Additional Public Prosecutor appearing for the respondent submitted that the occurrence had occurred only due to the carelessness of the petitioners; even if the prosecution has filed a case without any sanction, that alone cannot be a ground to quash the proceedings and the authorities should only be directed to take sanction and proceed with the case. In this regard, the learned Additional Public Prosecutor cited a judgment of the Delhi High Court held in the case of ***Vinod Kumar Asthana Vs. Central Bureau of Investigation in W.P.(CRL) No.643 of 2019 and Crl. M.A.Nos.4589 of 2019, 11013 of 2022 & 16410 of 2022.***

10. The factum of accident is not denied by the petitioners. The allegation of the complainant is that the accident had occurred only due to the negligence of the petitioners who failed to take adequate safety measures to avoid accidents of this nature. From the inspection report dated 26.09.2020, it is stated that no persons have got injured or killed in the said accident. The second and subsequent report was also prepared by the authority concerned, wherein, it is stated that some of the safety equipments were not provided in the premises. After completing the inspection, a show cause notice was issued



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to the petitioners on 02.11.2020 along with the details of the violations. After receiving the said show cause notice, the petitioners have sent a detailed reply.

Among several facts stated in the explanation, the following facts stated by the petitioners are very important:

“Even though heavy rain and thunder storms was there during the day but due to sufficient protection against short circuit through 16A MCB inline and spike protector with 5A glass fuse, RC filter surge protection and 2A MCB for individual circuit. With these three layer protection against short circuit, the fire due to short circuit could not have occurred in CCTV rack. Hence the fire on account of short circuit, in the server rack is the rare possibility and can't be conclusive.”

11. The above explanation would state that the accident is something rare and different as safety measures have been provided in the Company. Taking into consideration of the serious business undertaken therein, the petitioners have further stated that the Integral Coach Factory is known for his safety work environment and it has been given with the following certifications:

(i) ICF is certified under OHSAS18001 management system standard



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for its best management practices towards safety.

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(ii) ICF was awarded with ISO 9001, ISO 14001, ISO 50001, Green CO GOLD rating by CII, System 5S methodology and BEE 5 star for its best practices in relevant fields.

(iii) ICF Furnishing factory was decorated with Best Production Unit shield for 2014 and 2015 by Directorate of Industrial Safety and Health – Tamil Nadu.

12. The Integral Coach Factory (ICF) is one of the largest factory in the world and has been running successfully for several years. If safety is not given priority, the Coach Factory cannot function as a leading manufacturing Unit of Indian Railways.

13. It is seen from the explanation submitted by the petitioners that the Factory has also provided Earth Leakage and Electrical Shock Protection to the personnel coming into contact with the Electrical equipment and machinery and protective measures have also been taken inside the Storage Shed by providing Spike Protector with 5A glass fuse, RC filter surge protection etc. The petitioners have stated in the explanation that in spite of three layer



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protection, the accident had occurred and it is one of the rarest possibility. But these facts were not considered by the respondent complainant before according sanction.

14. In a similar complaint filed by the Inspector of Factories without making any reference to the reply submitted by the petitioners, this Court has chosen to hold that the complaint is vitiated on account of non-application of mind. In this regard, it is appropriate to cite the judgment of this Court in the case of ***K.Masthan Rao S/o.K.Gengaiyah Deputy Chief Engineer / Occupier, Engineering Workshop, Southern Railway, Arakkonam, Vellore Vs. State Rep. By Inspector of Factories, First Circle, Vellore, reported in (2014) 3 MLJ (Crl) 523***. In paragraph Nos. 27, 28 and 29 of the said judgment, it is held as under:

“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



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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 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.



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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*



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intergnum, 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 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. The facts and circumstances of the above case is squarely applicable to the facts of the present case. The above judgment relates to a case where the accident had occurred in a Engineering Workshop of Southern Railway, Arakkonam, Vellore, wherein, the case has been filed against the “Manager” and “Occupier” of the premises. In the said judgment, it is observed that the complaint has been filed with the verbatim re-production of show cause notice without considering the explanation offered by the petitioners in their explanation.

16. The petitioners being public servants, they were given a show cause



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notice to offer their explanation. Even the explanation was obtained from them.

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Then it ought to have been considered by the authority concerned before initiating any criminal action. It is not the case where sanction is not accorded but, sanction is accorded without application of mind. The verbatim reproduction of the show cause notice in the complaint itself would show that the explanation of the petitioner was not considered and hence there is no application of mind.

17. The case of the judgment cited by the learned Additional Public Prosecutor falls under prevention of Corruption Act where due sanction was not accorded under Section 197 of Cr.P.C. Taking into consideration of the seriousness of the offence, it is held by the High Court of Delhi that instead of quashing the proceedings, the appropriate authority may be directed to obtain sanction. But, here is a case where sanction is accorded, but no reason is stated as to why the petitioners' explanation are found to be unfit for acceptance. That would only show that the sanction has been given without application of mind. The complaint is bereft of any material particulars that have been considered to fasten a criminal liability against the petitioners.



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18. The sanction and the consequential criminal proceedings will get vitiated due to non application of mind by the respondent and failure to consider the explanation offered by the petitioners. The petitioners are public servants and they cannot be prosecuted without getting due sanction under Section 197 of Cr.P.C. The said sanction cannot be mechanical and without application of mind. On the same line of the arguments, this Court has quashed the proceedings in similar such cases and the said judgments have been listed supra. Since the facts and law connected to this case has already been covered by several judgments of this Court, I feel it is appropriate to extend the same benefit to the petitioners also. In the said circumstances, it is unnecessary to subject the petitioners under the process of trial and that can be of no consequence. In view of the above stated reasons, I feel the ends of justice can be met by quashing the proceedings against the petitioners.

19. In the result, these Criminal Original Petitions are allowed and the proceedings in C.C.Nos.2704 & 2705 of 2021 pending on the file of the Hon'ble Chief Metropolitan Magistrate Court, Egmore, Chennai, is quashed against the petitioners herein. Consequently, connected miscellaneous petitions are closed.



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Index: Yes/No

Speaking / Non Speaking Order
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R.N.MANJULA, J

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To

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

2. The Public Prosecutor,
High Court, Madras.

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