



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2022

Pronounced on : 20.06.2022

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Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.20916 of 2019

1. S.Aswin Chandran (41 years),
S/o.D.Sharath Chandran,
Chairman and Management Director of
Precot Meridian Limited.,
S.F.No.185/1 to 2, 187/1 to 5, 189/1 to 3, 190/1,
2A, 2B, 2C, 195/1 to 3 & 196,
Najegoundenpudur, Achipatti Post, Pollachi Taluk,
Coimbatore District - 642 002.
2. Mr.V.Shanmugam, (49 years),
S/o.C.Vinayagasundaram,
No.67, First Floor,
Arumugam Nagar,
Pollachi - 642 002.
3. K.Suresh Kumar, (33 years)
S/o.Kandasamy,
No.2/80, Pattatharasi Amman Street,
Rangasamuthram,
Pollachi - 642 006. ... Petitioners/Accused 1 to 3

/versus/

1. The State Rep., by
Inspector of Police,
Pollachi Taluk Police Station,
Coimbatore District.
2. M.Selvakumar
S/o.Muruganantham,
No.31, Maduraiveeran Kovil Street,
Annaimalai,
Pollachi Taluk,
Coimbatore District. ... Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.546 of 2018 in Crime No.73 of 2018, pending on the file of Hon'ble Judicial Magistrate No.II, Pollachi and quash the same.



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For Petitioners: Ms.R.Radha Pandian

For R1 : Mr.N.S.Suganthan,
in both cases Government Advocate (Crl.Side)

For R2 : No appearance

O R D E R

The petitioners 1 to 3 are the Chairman-cum-Managing Director, General Manager and Electrical Engineer of M/s.Precot Meridian Limited. On 26/04/2018, being the day of power shut down, the 1st petitioner requested one V.J.Joseph, a labour contractor, to send his staff to carry out the general electrical maintenance work in his company. Accordingly, V.J.Joseph send three of his staff (Anandkumar, Ramesh Kumar and Shaji) to attend the maintenance work. These three staff went to the petitioner company and were working at the premise of the petitioner company from 9.00 a.m. At about 4.15 p.m., Anandkumar and Ramesh Kumar scaled upon the stool and were attending the machine wires in unit 2 and Shaji squatting on the floor was attending the Panel Board. Suddenly, Shaji became speechless and unconscious. He was taken to the hospital but dead on the way.

2. Anand Kumar gave complaint to the respondent police narrating the above facts and the respondent police registered F.I.R in Crime.No.73/2018 under Section 174 of Cr.P.C. Initially, it was suspected to be death due to cardiac problem. The respondent police from the post-mortem report suspecting the said Shaji might have died due to electrocution, altered the charge to Section 304(A) I.P.C and filed the final report stating that, due to the negligence of the petitioners herein, by not providing sufficient protecting gears, the deceased died due to electrocution. The Final Report was taken on file by the Judicial Magistrate II, Pollachi in C.C.No.546/2018 for offences under Section 287 and 304(A) I.P.C.

3. The criminal prosecution is impugned by the petitioners alleging, the respondent police has no authority to initiate criminal prosecution, while the Deputy Director, Factories Safety and Health Department, Pollachi, has launched criminal prosecution for the very same offence and got the accused convicted. Therefore, the Final Report by the Police violates Article 20(2) of the Constitution and hit by the principle of DOUBLE JEOPARDY. Further, the deceased Shaji was not under employment of the petitioner's company. He was working under the contractor V.J.Joseph. Any safety gears required, that ought to have been provided by the said Joseph and not by the petitioners. Prosecuting the petitioners, who



are not responsible to provide safety gears and who were not even present in the company at the time of occurrence, cannot be prosecuted for negligence. The prosecution being manifestly erroneous and unjust liable to be quashed.

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4. The Learned Counsel for the petitioners further submitted that, soon after the accident, the Inspector of Factories caused inspection of the Company premises and through the Deputy Director of Factories filed two private complaints before the Chief Judicial Magistrate, Coimbatore. C.C.No.255/2018 against the Manager of the Company Mr. Shanmugam alleging violation of Section 41 read with Rule 61 F and Section 88 read with Rule 96(1)(2) (2 counts) and C.C.No.256/2018 against Chandran, the Chairman-cum-Manager Director of the Company for violation of Section 7(A)(1)(2) and Section 41 read with Rule 61 F read with Section 92 of the Act. In both the complaints, the persons accused of the offence pleaded guilty and the Court convicted them and sentenced to pay a fine of Rs.25,000/- each in default 1 month Simple Imprisonment. While so, for the same offence there cannot be another prosecution under Sections 287 and 304(A) of I.P.C by the state police.

5. In support of his argument, the Learned Counsel for the petitioners relies upon the following judgments:-

(i). B.P.Ram -vs- State of M.P reported in (1991) 0 ACJ 931.

(ii). Dr.Jeppiar and Another -vs- State of Tamil Nadu reported in 2012 0 Supreme (Mad) 4774.

(iii). P.Dinesh -vs- The State Rep. by the Inspector of Police, Tambaram, Chennai, in Crl.O.P.No.13924 of 2017 unreported judgment dated 11/11/2011 by Madras High Court.

6. Per contra, the Learned Government Advocate (Crl.Side) representing the state submitted that the violation of the safety and welfare directions mandated under the Factories Act and the provisions of penal code are distinct. The principle of double jeopardy is not applicable to the case in hand, in C.C.No.546 of 2019 the petitioners are charged for distinct offence of causing death by negligence. The prosecution under the Factories Act is for the omission to take necessary safety measures required for the welfare of the employees. Though, the death of Shaji in the course of his employment is the common factor in both the prosecutions, the prosecution under Factories Act is not for the causing death by negligence but for not providing the safety measures as mandated under the Factories Act, which resulted in the death of Shaji. Whereas, the prosecution under I.P.C is for causing death by negligence. However, he would fairly concede that, there is divergent views between the High Courts and placed before this Court the



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following judgments for proper decision.

(i). Neeraj Varma -vs- State of Madhya Pradesh reported in 2015 SCC Online MP 7544.

(ii). Firoz Alam -vs- State of Chhattisgarh reported in 2009 SCC Online Chh 33.

(iii). V.Ananthakumar and others -vs- State of Karnataka reported in MANU/KA/3431/2019.

7. The prosecution attributed electrocution for the death of Shaji and the electrocution was due to negligence on the part of the petitioners by not providing necessary safety gears to Shaji. Therefore, the petitioners are charged for offences under Section 287 and 304(A) I.P.C. Thus, according to the prosecution negligence is the cause and death of Shaji is the effect.

8. The prosecution, by way of private complaint initiated by the Deputy Director, Factories Safety and Welfare Department in C.C.No.255/2018, is against the sole accused V.Shanmugam (2nd petitioner/2nd accused in C.C.No.73/2018) for offences under Factories Act, 1948 and Tamil Nadu Factories Rules, 1950 alleging violation of Section 41 read with Rule 61 F and Section 88 r/w Rule 96(1)(2) (2 counts) and the private complaint in C.C.No.256/2018 against sole accused S.Chandran (the 1st petitioner/1st accused in Crime No.73/2018) for the alleged violation of Section 7(A) (1) (2) and Section 41 r/w Rule 61 F punishable under Section 92 of the Act. It is to be noted that, the Statute under which the private complaints filed and the substance of the charge in the private complaint are not the same that of the charges in the prosecution under the Penal code.

9. In the private complaint C.C.No.255/2018, the 2nd petitioner/V.Shanmugam herein was convicted for the offences under Factories Act, 1948 (amended act 1987) and Tamil Nadu Factories Rules, 1950 alleging violation of Section 41 read with Rule 61 F and Section 88 read with Rule 96(1)(2) (2 counts). The relevant provisions are extracted below for easy reference:

Section 41 of Factories Act, 1948:-

Power to make rules to supplement this Chapter:-

The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further [devices and measures] for



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securing the safety of persons employed therein as it may deem necessary.

Rules 61 F of Tamil Nadu Factories Rules, 1950:-

61 F. Methods of Work:-

No process of work shall be carried on in any factory in such a manner as to cause risk of bodily injury.

Section 88 of Factories Act, 1948:-

Notice of certain accidents.-

(1) Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) Where a notice given under subsection (1) relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or, if such authority is not the Inspector, cause the Inspector to make an inquiry within the said period.

(3) The State Government may make rules for regulating the procedure at inquiries under this section.

Section 96 of Factories Act, 1948:-

96. Notification of accidents:-

(1) When any accident or dangerous occurrence specified in the Schedule occurs in a factory the manager of factory shall forthwith send notice thereof by telephone, special messenger or telegram to the Inspector and the Chief Inspector :

Provided that in respect of any accident or dangerous occurrence specified in sub-item(a) of item 1 and item 2 of the Schedule, notice as aforesaid shall also be sent to:

(a) The District Magistrate or Sub-



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Divisional Officer ; and

(b) The Officer-in-charge of the Police Station having jurisdiction over the area:

Provided further that in respect of any accident specified in item 1 of the Schedule, notice as aforesaid shall also be sent to the next of kin of the injured or deceased person.

(2) The notice so given under sub-rule (1) in respect of an accident shall be confirmed by the manager of the factory by sending to the above-mentioned authorities within 12 hours of the accident, a separate written report in respect of each person killed or injured in the prescribed Form No. 18.

10. In the private complaint in C.C.No.256/2018, the 1st petitioner herein was convicted for the offences under Factories Act, 1948 (amended act 1987) and Tamil Nadu Factories Rules, 1950 alleging violation of Section 7(A)(1)(2) and Section 41 read with Rule 61 F read with Section 92. The relevant provisions are extracted below for easy reference:

"7A. General duties of the occupier.—

(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include—

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all



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places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work."

"Section 41 of Factories Act, 1948:-

Power to make rules to supplement this Chapter:-

The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further [devices and measures] for securing the safety of persons employed therein as it may deem necessary."

"Rules 61 F of Tamil Nadu Factories Rule, 1950:-

No process of work shall be carried on in any factory in such a manner as to cause risk of bodily injury."

"Section 92 of Factories Act, 1948:-

92. General penalty for offences.-

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93 , if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 [two years] or with fine which may extend to 3 [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to 4 [one thousand rupees] for each day on which the contravention is so continued:



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[Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than 6 [twenty-five thousand rupees] in the case of an accident causing death, and 7 [five thousand rupees] in the case of an accident causing serious bodily injury.

Explanation.—In this section and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.]”

11. In the prosecution by the State, which is subject matter of Crime No.73/2018 and the present quash petition, the petitioners three in numbers charged for offences under Sections 287 and 304 (A) I.P.C, which reads as below:-

“Section 287 of Indian Penal Code, 1860:-
Negligent conduct with respect to machinery:-

Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

“Section 304 A of Indian Penal Code, 1860:-
Causing death by negligence.—

Whoever causes the death of any person by doing any rash or negligent act not



amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

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12. By reading of the above provisions under which the prosecution launched i.e., under the Factories Act, 1948 by way of private complaint and under I.P.C by way of Final report will go to show that, they are for distinct offences and not for the same offences. To put it in simple terms, the private complaint launched by the Deputy Director of Factories Safety and Health Department is for the cause, whereas the prosecution initiated by the respondent police is for the effect.

13. Omission to provide safety measure and conditions itself sufficient to prosecute under Factories Act, 1948, but to prosecute under I.P.C., apart from omission or commission, it is necessary to prove such omission or commission was due to negligence and that negligence has caused the death/injury.

14. Therefore, in the opinion of this Court, neither Article 20(2) of the Indian Constitution nor Section 300 of Cr.P.C which envisage, no person shall be tried/punished twice for the same offence is applicable to the facts of the case in hand.

15. To add, even in cases evidence collected show that the provisions of two different statute occupies same field and the punishment also identical, then both cases to be tried together as opined by Indore Bench of Madhya Pradesh High Court in Neeraj Verma -vs- State of Madhya Pradesh reported in 2015 SCC Online MP 7544. The relevant portion of the judgment is extracted below:-

"10. After taking into consideration all the views taken by different High Courts, in my considered opinion, there can be certain occasions when provisions of Factories Act under Section 92 do not apply, e.g. death may occur or grievous hurt may be caused to a person who came in the premises of a factory authorised by the management for some other works like repair of machinery, inspection etc. Another occasion may be that a worker, who is under employment of the management may suffer such bodily injury or death when he was performing the act, which was not part of his obligations under the employment - e.g. on being requested by his fellow-worker, he



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may be helping them in performance of an act, which was not assigned to him. Under these circumstances, may be, provisions of Section 304-A of IPC may apply, otherwise, when act and bodily injury is caused to a workman while discharging his obligation under the terms of employment, the provisions of IPC, which are general law cannot be applied. When such situation arises, two cases should be trial (sic : tried) together by the same Court and one being a case of police report filed under Section 173 of Cr.P.C. another being a complaint filed under Section 92 of the Act, both the cases should be heard together under the provisions of Section 210 of Cr.P.C. and when it is found that bodily injury or the death is caused to a person, who is not covered by provisions of Factories Act, due to negligent act or omission on the part of the factory management then the provisions of Section 304-A of IPC may be applied, otherwise, proceedings and punishment should be under Section 92 of the Act."

16. The next limb of the submission made by the Learned Counsel for the petitioner is that the evidence relied by the prosecution even if happen to be proved, the petitioners cannot be convicted for the offences under Section 287 & 304 (A) of I.P.C., which requires proof for negligence either by omission or commission committed by the accused persons, which has caused death due to said negligence.

17. As far as the material collected by the Investigating Officer and as per the informant, on the date of event, it was the day of general shut-down of power. Three employees of under V.J.Josph were asked to attend the maintenance work at the petitioners' company premises. At about 4.15 p.m, one of them by name Shaji went speechless and unconscious. In the post-mortem, the Doctor has noticed a injury near the knee and therefore, suspected the death could have been caused due to electrocution. The post-mortem doctor, Dr.Manjula (LW.17) had sent the intestines to chemical analysis. On receipt of the chemical analysis report, the Doctor has ascertained, the death was due to electrocution and given opinion accordingly.

18. Dr.Kavipriya in her statement recorded under Section 161(3) of Cr.P.C., has stated that, Shaji was brought to



the Pollachi Arun Hospital at about 5.00 p.m. The person accompanied him reported that, at around 4.15 p.m., the said Shaji become unconscious and speechless. On examining Shaji, Dr.Kavipriya (L.W.16) found him dead.

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19. In his 161(3) of Cr.P.C., statement, V.Rajasekar (L.W.14), Assistant Executive Engineer, Coimbatore, TANGEDCO had stated that, on 26.04.2018, there was general shut down of power in the area where the petitioners' company located. The shut down was between 9.00 hours to 16.53 hours and after completion of the maintenance work, the power was restored at 16.53 hours. So, it is very obvious that, at 04.15 p.m., i.e., 16.15 hours, when Shaji went speechless there was no power supply in the Company premises.

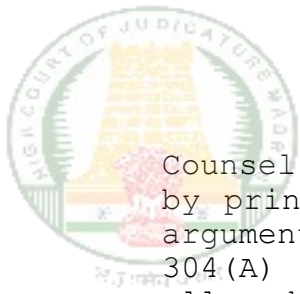
20. In the present case, it is alleged that the said Shaji died after passing current and that was due to negligence of the petitioners. The prosecution relies upon 161(3) of Cr.P.C. statement of R.Vimala, (L.W.15) Deputy Director, Factories Safety and Health Department who had stated that the persons in-charge of the company, while carrying on the maintenance work of their unit ought to have been ensured, there is no residual current in the feeders before Shaji was allowed to carry out the maintenance work. Necessary safety measure have not been taken by the petitioners' company.

21. From the above statements, it appears that, Shaji died presumably by electrocution and the electrocution occurred due to residual current in the machine and cable. For the said occurrence, the petitioners are prosecuted holding them vicariously liable.

22. The possibility of residual current in the machine and cable in spite of power cut is a technical factor which a persons expertise ought to know. It is nothing to do with omission or commission in providing safety kit. If the person has not anticipated the residual current in the electrical gear which he was handling, the said omission to take care amounts to negligence on the part of the person and not on the part of the incharge who has engaged him. Particularly, in this case, the said Shaji was handling the panel board mending bolts and nuts. He was not even handling cable or machineries.

23. In the said circumstances, in the absence of any evidence to show negligence by either omission or commission on the part of the petitioner on the presumption of negligence the prosecution cannot be launched.

24. As a result of the above discussion, this Court reject the first limb of the argument made by the Learned



Counsel for the petitioner stating that the prosecution is hit by principles of double jeopardy but accept the 2nd limb of the argument that no ingredient for offences under Section 287 and 304(A) is accepted. In fine, CrI.O.P.No.20916 of 2019 is allowed. The C.C.No.546 of 2018, pending on the file of Judicial Magistrate No.II, Pollachi, is quashed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

bsm

To

- 1.The Judicial Magistrate No.II, Pollachi
- 2.The Inspector of Police,
Pollachi Taluk Police Station, Coimbatore District.
3. The Public Prosecutor, High Court, Madras.

+1cc to M/s.R.Radha Pandian, Advocate, S.R.No.37965

CrI.O.P.No.20916 of 2019

RR(CO)
SB(29/06/2022)