



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No.25565 of 2018 and
CrI.M.P.Nos.14595 & 14596 of 2018

M.Padmanabhan
Occupier
EMU Work Shop
Southern Railway
Avadi, Chennai. Petitioner/Accused

Versus

State
Represented by
Deputy Director of Industrial Safety and Health
No.6, Lalbahadur Sasthri Street
Periyakuppam,
Thiruvallur - 602 001 Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C. No.60 of 2018 now pending on the file of the learned Chief Judicial Magistrate, Thiruvallur and quash the same.

For Petitioner : Mr.P.T.Ramkumar
For Respondents: Mr.R.Kishore Kumar
Government Advocate (CrI Side)

ORDER

This Criminal Original Petition is heard through Video-Conferencing, on account of the COVID-19 pandemic situation.

2. This is an application filed under Section 482 of Cr.P.C. to quash the private complaint in C.C. No.60 of 2018 on the file of learned Chief Judicial Magistrate, Thiruvallur, for offences under Section 7A(1)(2)(d) and Section 41 r/w Rule 61A & 61C and Section 7(1) Rule 12B(3)(4) of Tamil Nadu Factories Rules, 1950.



3. The crux of the allegation in the private complaint is that, on 19.01.2017 at about 3.00 p.m, in the factory workshop while changing the asbestos sheets, an employee known as Yuvaraj, fell down and sustained injuries and thereafter succumbed to the injuries. Similarly, the forms have not been properly submitted, as required under Law.

4. The learned counsel for the petitioner mainly submitted that originally the said contract work to replace the asbestos sheet was given to M/s.Sri Lakshmi Industries, who has engaged its employees. When one of its employees, while speaking in his mobile phone, accidentally fell down and succumbed to the injuries and the show-cause notice was properly replied by the petitioner narrating the circumstances under which the accident took place. The contract was given to a third party. Without even considering the reply, the complaint has been mechanically filed. Therefore, the learned counsel submitted that when the person is not in-charge of the factory workshop and the sub contractor has to ensure the safety measures, the criminal liability has been fastened on the present petitioner, who is Senior Divisional Engineer in Southern Railway.

5. Heard both sides and perused the materials available on record.

6. It is not disputed by the respondent that the sub contractor, namely Lakshmi Industries was in charge of the repair work to be carried out in the asbestos sheets at Railway Workshop, Avadi, at the relevant point of time and the sub contractor, admittedly, paid compensation to the legal heirs of the employee, which is also not disputed by the respondent and when the Railways withheld the amount of Rs.10,00,000/- payable to the sub contractor on account of the accident, challenging the same he has filed a writ petition in W.P. No.9727 of 2017, wherein they have admitted that they have engaged its employees and gave proper safety equipment to its employees such as harnesses, safety belts, helmets, gloves besides a safety rope fixed across in the working area. When the sub contractor themselves admitted that they only engaged its employees and proper safety measures and have also paid compensation before the Deputy Commissioner of Labour, as admitted by both the sides. It is also evident from the proceedings signed by the Deputy Commissioner of Labour and a copy of the demand draft taken in this regard, this court is of the view that the prosecution as against the petitioner is without any materials.

7. It is not the case of anyone that the accident was on account of direct or negligent act on the part of the present petitioner. Therefore, when the accident had taken place, while the sub contractor was in charge of the work, merely because this petitioner is a Railway official, he cannot be prosecuted, that too, without any sanction being obtained.



8. In the light of the above, this court is of the opinion that the proceedings are liable to be quashed. Further, in the complaint there is no details as to the nature of the forms, which was not submitted by the Railways. In the absence of any material, the complaint for above failure also will not give rise to the prosecution.

9. Accordingly, this criminal original petition is allowed and as a sequel, the proceedings in C.C. No.60 of 2018 now pending on the file of the learned Chief Judicial Magistrate, Thiruvallur, are quashed. Consequently, the connected criminal miscellaneous petitions are quashed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Asr
To

1.The Chief Judicial Magistrate,
Tiruvallur.

2.The Deputy Director of Industrial Safety and Health
No.6, Lalbahadur Sasthri Street
Periyakuppam, Thiruvallur - 602 001

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.T.Ramkumar,Advocate Sr.NO.7775

CrI. O.P. No.25565 of 2018 and
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SJ(CO)
A.SK(28.02.2022)