



Crl.O.P.No.30218 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.30218 of 2018

and

C.M.P.No.17754 of 2018

M.Panneerselvam

... Petitioner

Vs.

The Tamil Nadu State rep. By
Deputy Director
Industrial Safety and Health,
6, Lalbahadur Sathiri Street,
Periyakuppam, Tiruvallur.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.61 of 2018 on the file of the learned Chief Judicial Magistrate, Tiruvallur and quash the same.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.L.Baskaran
Government Advocate [Crl. Side]

ORDER



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The petitioner, Manager at EMU Workshop, Southern Railway, Avadi, Chennai, who was arrayed as accused in C.C.No.61 of 2018 facing trial before the learned Chief Judicial Magistrate, Tiruvallur for violation of Section 41 r/w. 61A and 61C and Rule 88 (1) and (2) r/w. Rule 96(1) and (2) and Section 92 of Factories Act, 1948 filed this quash petition.

2.The gist of the complaint is that on 19.01.2017 at about 3.00 p.m., the damaged asbestos in the workshop was replaced by one V.Yuvaraj, who climbed to the top, slipped from there, fell down on the boggie of the train, thereafter to the ground, sustained head injury and succumbed to the same on the way to the hospital.

3.The case is that no person in the factory is required to stand or pass over or walk on rear roof of ceiling covered with fragile materials which is likely to break and cause a fall unless suitable and sufficient ladders and protective materials are provided. The other violation is that though the incident took place on 19.01.2017 at about 3.00 p.m., within 12 hours it



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ought to be intimated to the authorities which was not done. Hence, in violation of the above, the prosecution was launched.

4.The contention of the learned counsel for the petitioner is that admittedly the petitioner was not on duty and present in the factory on that day. He would submit that one Thanigaivelu given a statement to the Deputy Director, Industrial Safety and Health, Tiruvallur informing that he was the person who was present at that time and the work of replacement of asbestos roof was entrusted to Mr.Selvaraj, M/s.Laxmi Industries, an independent Contractor who engaged V.Yuvaraj to carry on the work, who fell down from the top and succumbed. He further submitted that immediately after the accident, Form 18 was duly filled and submitted to the nearby Government/Railway Police at Avadi Railway Station on the same day at 21.00 hours. Further, when the Deputy Director, Industrial Safety and Health was attempted to be contacted in his landline, he could not be contacted. He would further submit that during the relevant period, there was Vardha cyclone which caused great damages to the roads and communication were disrupted, for that reason the Deputy Director could not be contacted



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immediately. In any event, the accident was intimated to the Railway Police and the injured was immediately taken to the Railway Hospital and thereafter, the Deputy Director on getting information conducted inspection on 24.01.2017, wherein the events were explained and the contemporary documents for the accident was produced by the petitioner.

5.He further submitted that the Deputy Director sent a communication on 30.01.2017 calling for explanation, the petitioner sent a detailed explanation on 17.02.2017 narrating the accident and giving reasons. Thereafter, the complaint was filed, reply given by the petitioner was not considered and no reason was given for rejecting the reply except annexing it as a document. This would only show that the explanation of the petitioner was not considered. In this case, the replacement of asbestos was entrusted to an independent Contractor Mr.Selvaraj, M/s.Laxmi Industries, who was to implement the work taking all precautionary safety measures and added to it, Mr.Thanigaivelu, Supervisor was overseeing the work. In view of the same, the petitioner cannot be prosecuted. He further submitted that the respondent filed C.C.No.60 of 2018 for the same violations against one M.Padmanabhan



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as occupier. This Court by order dated 04.02.2022 in Crl.O.P.No.25565 of 2018 quashed the proceedings. He further submitted that the petitioner as Manager was on duty only upto 2'O clock and thereafter, the other Manager to take charge. Further, the work was monitored by a Senior Level Officer Mr.Thanigaivelu.

6.He further submitted that compensation was paid to the family of the deceased Yuvaraj. Further, the Railways is a Government Organization following all safety measures, during the 32 years of its existence, this was the first incident, that to by a independent contract labour. Hence, he prayed for quashing the proceedings against the petitioner.

7.The learned Government Advocate [Crl. Side] submitted that the accident took place on 19.01.2017, immediately thereafter the Manger or Occupier of the premises/factory failed to intimate to the respondent. After getting information from others on 24.01.2017 inspection was conducted, thereafter show cause notice was issued on 30.01.2017 for violation of Factory rules and regulations, for not providing safety gears and also for not



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informing the accident to the concerned authorities within 12 hours. He would submit that reply was sent by the petitioner on 17.02.2017, since the same was not convincing and acceptable, the same was rejected. On 23.03.2017, the Deputy Director written a letter seeking for sanction for prosecution, on 19.04.2017 sanction was received from the Director of Industrial Safety and Health, Chennai and on 21.04.2017 case was filed before the learned Chief Judicial Magistrate, Tiruvallur. The petitioner being a responsible Senior Officer ought to have informed the Deputy Director about the accident giving information and filing Form 18 with Avadi Police Station may be an internal arrangement by the Railways, it is nothing to do with the Factories Act or with the Deputy Director. The office of the Deputy Director situated in Tiruvallur which is hardly few kilometers from the accident spot, the reply given by the petitioner that it was the first time such accident took place and was not aware of the procedure is not acceptable one. He further submitted that the points raised by the petitioner is to be considered during trial and hence, prayed for dismissal of this petition.

8.Considering the submissions made and on perusal of the materials, it



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is seen that the petitioner is a Manager of EMU Workshop, Southern Railways, Avadi, the duty time for the petitioner is only upto 2'O clock and thereafter the next man takes charge. The accident took place at about 3.00 p.m. on 19.01.2017, during the accident one Mr.Thanigaivelu was supervising the factory and overseeing the change of asbestos roof carried out by one Yuvaraj, a contract labour from M/s.Laxmi Industries. The said Yuvaraj while climbing to the top used his mobile phone and thereafter slipped from there, the fall and accident was the contribution by the said Yuvaraj. The staff of the Avadi Workshop immediately rushed the injured to the hospital where he was pronounced brought dead. The intimation of the accident was submitted to the Avadi Railway Police in Form 18. At that time, the landline was not in a working condition and hence, the Deputy Director could not be contacted. Thereafter, word was sent to him, he came for inspection on 24.01.2017, detailed explanation was given by the petitioner and despite the petitioner giving detailed explanation nothing is available in the complaint except listing the reply as Document No.5. Further, the case against the Occupier who is similarly placed like that of the petitioner, was quashed by this Court in Crl.O.P.No.25565 of 2018 dated 04.02.2022.



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9.It is also seen that the family of the deceased Yuvaraj was paid compensation of a sum of Rs.7,83,560/- on 06.04.2017 by the Commissioner for Employees Compensation. This amount was remitted by M/s.Laxmi Industries, an independent Contractor by way of Demand Draft. After confirming the payment of compensation, the deposit amount of Rs.10 lakhs made by the Contractor was released by the Senior Divisional Electrical Engineer, Southern Railways. It is not in dispute that the work of replacement of asbestos was entrusted to an independent contractor M/s.Laxmi Industries and the said Yuvaraj is a contract labour. The accident was intimated immediately to the Railway Police at Avadi Railway Station by way of Form 18 within seven hours. There was no intention or reason to suppress the accident by the petitioner. The Police intimated about the same, who would have sent the message to all concerned. The purpose of intimation is to avoid delay or not to play any mischief in the accident but in this case, immediately accident was intimated, injured was taken to the hospital and the accident was recorded by the public authorities. Further compensation paid.



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10. In view of the above and considering the fact that the case against the other Occupier of the Avadi Workshop has already been quashed, this Court finds no reason to continue the prosecution against the petitioner. Hence the proceedings against the petitioner in C.C.No.61 of 2018 pending on the file of the learned Chief Judicial Magistrate, Tiruvallur is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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M.NIRMAL KUMAR, J.

cse

To

- 1.The Deputy Director
Industrial Safety and Health,
6, Lalbahadur Sathiri Street,
Periyakuppam, Tiruvallur.
- 2.The Chief Judicial Magistrate,
Tiruvallur.

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