



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2022

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.17627 of 2021

and

Crl.M.P. (MD)Nos.9589 & 9591 of 2021

Arasu

... Petitioner/ Sole Accused

Vs

The State of Tamil Nadu,
rep. by the Deputy Director (BOCW),
Industrial Security and Sanitation,
No.114/1, Vinayaga Nagar,
Madurai-20.

... Respondent/ Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the complaint pending in S.T.C.No.2762 of 2020 on the file of the Additional Chief Judicial Magistrate, Madurai and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Murali

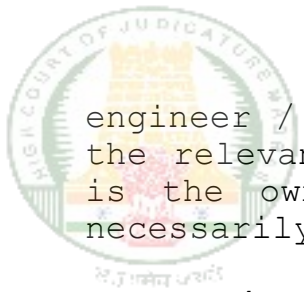
For Respondent: Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.2762 of 2020 on the file of the Additional Chief Judicial Magistrate, Madurai.

2. It is a private complaint filed by the respondent under Section 50 r/w Section 54 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

3. The case of the complainant is that the Madurai Corporation has taken up the Smart City Project for Madurai and in that connection, it is carrying out certain works on the north bank of vaigai from Alvarpuram Rajamill to Kuruvikkaran Road. On 06.02.2020 at about 4.30 a.m., three persons were run over by a lorry engaged in the project work. All the three persons died. Since the petitioner herein namely Thiru.Arasu in his capacity as



engineer / director, the Smart City Corporation Limited, had signed the relevant Form I, according to the complainant, the petitioner is the owner of the establishment in question and he has to necessarily face the impugned prosecution.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

5. The learned Additional Public Prosecutor submitted that the establishment as far as the case on hand is not the madurai corporation but the smart city corporation limited. The petitioner herein had signed the Form I under Rule 23(1) by declaring himself as the 'employer'. It is not therefore open to the petitioner herein to now wriggleout of the consequences that directly flow. The learned Additional Public Prosecutor further contended that the expression "employer" occurring in Section 2(i) of the Act is an inclusive definition and it would encompass not only the director whenever the construction works are to be carried on by or through a contractor but also the owner of the establishment. He drew my attention to Section 53 of the Act which states that where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Since admittedly the petitioner was in-charge of the affairs of the smart city corporation limited when the offence was committed, he is bound to face the prosecution.

6. I carefully considered the rival contentions and went through the materials on record. There is considerable force in the contention of the learned Additional Public Prosecutor that since the establishment in question is the Smart City Corporation Limited, the petitioner as the person responsible for the conduct of the business have to face the prosecution. This is all the more so because, the petitioner had signed the Form I by declaring himself as 'employer'. I would have dismissed this petition by accepting the aforesaid contention. But there is one fundamental defect as pointed out by the learned counsel appearing for the petitioner. Whenever an offence is committed by the company and prosecution is sought to be initiated, the company has to be the prime accused. The director in-charge or the nominee can be prosecuted only in vicarious capacity. In this case, the complainant had not arrayed the Smart City Corporation Limited as an accused. Therefore, prosecuting the petitioner alone without arraying the Smart City Corporation Limited as an accused is fatal. It is for this reason that I reject the contention advanced by the learned Additional Public Prosecutor. Since on this ground I am quashing the impugned proceedings, I refrain from considering the other contentions



proceedings stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional Chief Judicial Magistrate, Madurai.

2.The Deputy Director (BOCW),
Industrial Security and Sanitation,
No.114/1, Vinayaga Nagar, Madurai-20.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-1429[F] dated 12/01/2022)

Crl.O.P (MD) No.17627 of 2022
10.01.2022

rmi

MS/22.02.2022/3P.5C