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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP (MD) No.15044 of 2019

and

Cr1.MP (MD) No.8986 of 2019

Justin Amalraj : Petitioner/Sole Accused

Vs.

1.The State rep. by
The Inspector of Police,
Muthiahpuram Police Station,
Thoothukudi District.
(In Crime No.337 of 2017) : R1/Complainant

2.Udhayakumar : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records from the Judicial Magistrate No.II, Thoothukudi, in CC No.202 of 2018 and quash the same as against the petitioner.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.S.Vanchinathan



operator, who was on duty was negligent. Because of his negligence only, the above said boiler also caught fire and burnt. On the basis of the above said complaint, the case was registered. After completing the formalities of investigation, the final report has been filed stating that this petitioner is responsible for the above said fire accident and because of his negligence only, it happened.

3. Now seeking quashment of the same, this petition has been filed by the petitioner solely on the ground that against the Manager as well as the Proprietor of the company, they were proceeded in STC Nos.3 and 4 of 2018 for violation of the safety provisions as set out in the Factories Act, 1948 and they have been convicted and also paid the fine. On that ground, this petition has been filed by the petitioner to the effect that as per the judgment of this Court in the case of ***P. Loganathan Vs. State (Cr1.O.P. (MD). No. 4612 of 2014, dated 23.10.2018***), the prosecution itself is bad under law.



6. There is specific allegation to the effect that this petitioner was working as Operator of the boiler; He ought to have been vigilant and careful on duty; But because of his negligent attitude only, the above said fire took place and spread to the Unit and caused injury as well as death of the co-worker namely Marimuthu.

7. Even though, the learned Senior counsel for the petitioner has relied upon the above said judgment, they have not produced any instruction or the duty and responsibility of the petitioner to show that he was not responsible for the maintenance and operation of the above said boiler during the relevant time.

8. It is seen that because of the combustion of the coal, that was stored in the boiler portion, suddenly it got fire; No safety measures have been taken or provided at the time of the above said fire accident.

9. Whether the above said occurrence took place due to the negligence on the part of the petitioner or not, cannot be matter for consideration in this petition, since it is a disputed question of fact. Moreover, the



duties and responsibilities is also the matter for consideration by the trial Court.

10.The contention on the part of the petitioner to the effect that the Manager and as well as the Proprietor, who were responsible for the day today affairs of the company were not proceeded, but the person, who was the Operator has been proceeded, which according to the learned Senior counsel for the petitioner, is a clear abuse of process of the court.

11.But, as I mentioned earlier, these are disputed question of facts, which cannot be gone into and in the light of the difference of opinion between various High Courts as to whether in the light of the prosecution under section 92 of the Factories Act, the prosecution under the general provision of IPC is bad in law. So, I am of the considered view that the case must be proceeded to its logical conclusion.

12.With reference to the specific point that the Special Law must give way to the General Law, it must be clearly established the fact that the ingredients of both



Here, there is a specific allegation against the petitioner to the effect that he did not take proper care and caution.

14. In the result, this criminal original petition is **dismissed**. But however, considering the oldness of the matter, there shall be a direction to the trial Court to expedite the trial process and completed the same within a period of five months from the date of receipt of a copy of this order. Since the petitioner is working in a company, his personal appearance before the trial Court is dispensed with on condition that within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that he will appear as and when required by the court, the attested photograph must be attached in the affidavit and he must ensure that he is



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properly represented by an Advocate. Consequently,
connected Miscellaneous Petition is closed.

25/08/2022

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Inspector of Police,
Muthiahpuram Police Station,
Thoothukudi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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Crl.OP (MD) No.15044 of 2019

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