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CRL.O.P.Nos.2552 & 2558 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.Nos.2552 & 2558 of 2021

and

Crl.MP.Nos.1378, 1379, 1380 & 1382 of 2021

T.Dilip Kumar
Manager, Integral Coach
Factory, Furnishing Division,
Perambur, Chennai - 600 038. .. Petitioner/Accused in Crl.OP.2552/2021

C.M.Roa,
Occupier, Integral Coach
Factory, Furnishing Division,
Perambur, Chennai - 600 038. .. Petitioner/Accused in Crl.OP.2558/2021

Versus

Deputy Director -I
Industrial Safety And Health T.S.No.47/1
Block No.6 Thiru.Vi.Ka.Industries Estate
Near Metro Water Tank Rountana Guindy
Chennai - 600 032. ...Respondent in both cases

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.Nos.3774 & 3773 of 2020 now pending on the file of the Chief Metropolitan Magistrate Court Egmore, Chennai.



CRL.O.P.Nos.2552 & 2558 of 2021

In both cases,

For Petitioner	:	Mr. P.T.Ramkumar
For Respondent	:	Mr.A.Gopinath
		Government Advocate (crl.side)

COMMON ORDER

These Criminal Original Petitions have been preferred to quash the proceedings in C.C.Nos.3774 & 3773 of 2020 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. Both the cases arises out of the same cause of action, but against the different petitioners/accused. Out of whom, one is the manager and the another is the occupier of the Internal Coach Factory, Chennai. Both the petitions are taken up together and considered for a common order.

2. The respondent is the Deputy Director of Industrial Safety and Health. He has a filed private complaints against each of the petitioner for the alleged violations of Section 7A (1)(2) Section 41 rule 61 E and Rule 61 F and Section 38 (3) rule 61 (11)(e)(f) & 13 of the Tamil Nadu Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950.

3.The Internal Coach Factory, Chennai, is a premium coach



manufacturing unit of India established in the year 1955 under the Ministry of Railways. It is involved in manufacturing passenger coaches to Indian Railways and also exporting them to other countries. The Internal Coach Factory is herein after referred as ICF. The ICF is the largest coach manufacturing unit in the world.

3.1. The petitioner has been nominated as the manager for Furnishing Division, ICF, Chennai. He is a Group A officer of the Indian Railways appointed by the President of India. He is entitled to all the privileges and amenities provided under the Service Rules of Government of India, for all the acts discharged by him during the course of his official duties. The respondent has filed the complaint against the petitioner, who was the manager in ICF is for the offences under Section 41 rule 61 E and Rule 61 F and Section 38 (3) rule 61 (11)(e)(f) & 13 of the Tamil Nadu Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950 and the complaint against the petitioner, who is the occupier in ICF is for the offences under Section 7A (1)(2) sec.41 Rule 61 E and Rule 61 F and Section 38 (3) rule 61 (11)(e)(f) & 13 of the Tamil Nadu Factories Act 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950.



4.The brief facts set out in the complaint is as under:

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On 28/7/2020 at about 13 hours, the contract labourers by names S.Parthasarathi and Soundarapadian were required to collect materials by using the platform truck from electrical shop and parked it in the middle of line 2 & 3 of shop No.30 in the dispatch shed. After parking they went for lunch at 3:00 p.m. During inspection, it came to the notice that the marking of Forward and Reverse direction was written wrongly on the body of the vehicle. Since no work was allotted for the above labourers, they decided to hand over the platform truck to the electrical shop. While parking the platform truck the labourer Parthasarathi had given reverse acceleration instead of forward acceleration and due to that the platform truck hit on the Coach No.2888. It happened due to the wrong marking of the Reverse and Forward symbols for acceleration. In the said accident, Parthasarathi got seriously injured and he became unconscious. Immediately he was given with the first aid treatment and taken by an ambulance to the hospital and the doctor declared that he was brought dead. The above death was due to the wrong marking of directions and faulty break on the platform truck as automatic Fire Hydrant System with water for **firefighting** at the rate of 400



liters per minute and 7 kg/cm² of pressure and with a tank capacity for a period of fire fighting as specified in the rules, has not been provided and maintained.

4.1.In view of the above stated violations, the above complaints made against the petitioners with the above allegations. The complaints were taken on file in C.C.Nos.3774 & 3773 of 2020 and summons were issued to the petitioners. The petitioners have filed these petitions by stating that there are no lapse or violations on their part and hence the proceedings should be quashed.

5.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

6.The learned Counsel for the petitioners submitted that the diseased worker was a contractual employee working under the contractor; the contract work was entrusted by ICF to M/s.Air Breeze India Pvt. Ltd, Chennai; and as per the terms of contract, the contractor is alone responsible for the safety of its employees; the petitioners have given proper explanation to the show cause notice issued to them and stated that the respondent had put the blame upon the petitioners unnecessarily; there is no



irregularity or error committed by the petitioners in contravention to the Tamil Nadu Factories Act and Rules; the petitioner and his subordinate had taken adequate measures at all times to maintain the safety of the employees at the premises in compliance with the statutory requirements; the petitioner in Crl.OP.No.2552/2021 is the public servant and he is entitled for all the privileges and amenities provided under the service rules of Government of India for all acts discharged by him during the course of his official duties; the respondent without obtaining valid sanction in compliance under Section 179 Cr.P.C., has filed the complaints; the learned Chief Judicial Magistrate has also taken the complaints on file without the order of sanction obtained from the government; the complaints have been filed without any application of mind and without considering the reply submitted by the petitioners to the showcase notice issued to them.

7.The learned Government Advocate (crl.side) for the respondent submitted that as per Section 7(1)(A) of the Factories Act-1948, every occupier shall ensure so far as is responsibly practicable, the health, safety and welfare of all workers while they are at work in the factory; the matters of safety would include the provisions and maintenance of plant premises



systems work in the factory that are safe and without risk to health; as per Section 2(n) of the Factories Act the occupier is a person who is the ultimate control over the office of the factory.

8. As per 92 of the Factories Act for any contravention of the provisions of the Factories Act or any rules made hereunder the occupier and the manager of the factory are guilty and punishable. Section 119 provides that the Factories Act would have the overriding effect over any other enactments for the time being in force. Under Section 92 of the Factories Act, there is a rebuttable presumption with regard to the guilt of the accused and that is directly in conflict with sec.197 Cr.P.C.,

9. In view of Sec.5 Cr.P.C and Sec.119 of the Factories Act the provisions under Sec.92 of the factory act will override the sec.197 Cr.P.C. In case sanction is not accorded under Section 197, the initial presumption under Section 92 would become meaningless. Section 116 of the Factories Act is applicable to all factories including the government owned factories. Since, the reply sent by the petitioners is not satisfactory, the respondent/compliant after having thoroughly considered the reply and filed the complaint. To initiate criminal prosecution no prior notice is



required. If the authority is satisfied with the irregularities are grave in nature the complaint can be laid before the competent Court. The decision to lay a complaint is not an order by the Inspector and that can not be subjected to appeal under Section 107 of the Act.

10.In respect of the above contention the learned Government Advocate (crl.side) for the first respondent relied on the judgment of the Hon'ble Supreme Court held in **C.A.No.599 of 2021 (Noorulla Khan Vs. Karnataka State Pollution Control Board)** and the order of this Court dated 09.09.2022 made in **WP.Nos.25810, 25815 and 25816 of 2019.**

11. Before adverting into the analysis of the merits of the case, it should be clarified that the petitioners have not filed these petitions for challenging the decision of the respondent to file the criminal complaint. Instead of the very same, the petitioners themselves have filed these petitions to quash the criminal complaints taken on file against them which are pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. So, the submission made by the learned Government Advocate (crl.side) with regard to the appeal under Section 107 has no relevance to the facts at the considerations of this case.



12.The first submission of the learned counsel for the petitioners is that the deceased Parthasarathy is a contractual employee and it is the Contractor who has to ensure the safety of all the persons who were engaged by the petitioners. It is seen from the purchase order and the entry permit of contract employees, that the contractor has undertaken to ensure safety of the persons engaged by him. It is his personal responsibility to provide protective equipments in compliance of the Factories Act. The entry permits also contains the names of the persons of the contractor's company which engaged the deceased.

13.There is no dispute with regard to the fact that the deceased who was a contractual employee, who was engaged by the contractor by name M/s. Air Breeze India Private Limited. On the date of occurrence, the deceased had preceded to operate the Battery operated platform truck and moved it away from the work spot. The allegations of the respondent is that the Battery operated platform truck had the symbols of reverse and forward marks wrongly and that caused the accident. Before filing the complaint, the respondent himself had issued a show cause Notice on 15.09.2020 by calling for the explanation within 7 days from the petitioners. On receipt of



the same, the petitioners had sent a detailed statement by stating that the deceased Parthasarathy had taken the Battery operated platform truck (hereinafter referred as PFT) unmindful of the position of the handle which was in the reverse direction. Since he gave the acceleration without setting right the handle, the PFT moved backwards and hit the side of the wagon of the coach behind him.

14.On the alleged day of occurrence, the deceased employee had handled the PFT with another employee by name Soundarapandian, to transport the materials to the dispatch shop No.30. After finishing the work, the PFT was parked even while the other employees were taking lunch. The deceased Parthasarathi thought of taking back the PFT to transportation shop. Only during time, he gave the accelerating without observing the direction of the handle.

15.It is not the claim of the respondent that the PFT was manufactured by the ICF and was given to the employees for their use. The original marking was made by the company which manufactured PFT. In the photograph, of Lever/Knob type, it only shows that if one has to take the vehicle forward, he has to move the lever/knob to the side of a mark shown



as 'FOR' and to move the lever/knob to the REV side, if he needs to move the vehicle backwards. If any operator stops and parks PFT by leaving the handle as such and if it is started by giving the accelerating unmindful position of the handle, that would cause the movement of the vehicle in the direction of the handle already settled.

16.The ICF was using the PFT purchased from the company by name M/s.Godrej and M/s.Josts. The PFT operated by the deceased belongs to the M/s.Josts make. In fact the ICF is using 33 PFT of the same company of different make of different years and different models. The PFT is said to have been handled by the deceased was 2018 model and 19 such PFTs were in ICF for transportation purposes. Since the make has got the standard design and the knob type is also uniform, there cannot be any mistake in the making of the Forward and Reverse handles.

17.In fact the deceased himself was operating the PFT before the lunch. Had there been any problem due to wrong marking, he could not have operated it successfully. If the lever is settled at neutral position, the operator ought to have been careful in moving the lever to the desired side and then give the accelerator. If the lever position is not noticed and before



setting its right, if the accelerator is given, the accident is bound to happen.

Even though the standard design of M/s.Josts was explained by the petitioners in their replies, the avernments of the complaint would show that the respondent /complainant did not consider the reply. No reason is stated in the complaint as to why the explanation is overlooked and the violations / negligence is fixed upon the petitioners. A bland complaint by stating the manner of the accident alone cannot be sufficient to fix the liability on the petitioners.

18.Even though the respondent is not obliged to give show cause notice before filing the complaint, in case the irregularities is grave and patent and for which penal action is inevitable. In the case in hand the deceased himself has carelessly handled the PFT without noticing the directions/position of the lever. So that accident had occurred beyond the control of the petitioners. Had the respondent carefully scrutinized the explanation given by the petitioners for the showcase notice furnished to the petitioners, it would have been possible to understand the circumstance in which the accident had occurred.

19.The operation made by the deceased required proper skill and



training. The deceased was employed by the contractor only because he had the skill of operating PFT. Since the marking on the PFT cannot be not be presumed by of the respondent as wrong without verifying the company which manufactured the truck. It is also explained by the petitioners that the marking were uniform in other vehicles of the same Make. Despite that, the charge made against the petitioners, and in my view these are baseless.

20.The other allegation that the petitioners did not have automatic hydrant system with prescribed capacity of water, has also been answered properly by the petitioners that there was sufficient water storage and firefight equipments 24 x 7. In fact ICF is having the fire license valid upto 26/11/2010 issued in accordance with Sec.13 of the Tamil Nadu Fire Service Act-1995.

21.All the above facts have been stated by the petitioners in the explanation. In fact, in the complaint itself the respondent had attached the explanation of the petitioners as document No.11. But the contents of the complaint that does not speak anything about the explanation and the consideration of the same. It is a bald complaint which only narrates the manner of the accident and it is not sufficient to make out a case against the



petitioners that they had violated the safety requirements. The petitioners are no way is directly or remotely responsible for the accident occurred due to the wrong operation of the PFT by the deceased employee.

21. In this regard, it is relevant to refer the judgment of this Court held in the case of **K.Mastan Rao, Deputy Chief Engineer, Engineering Workshop, Southern Railway, Arakkonam, Vellore Vs. The State Rep. by its Inspector of Factories, First Circle, Vellore**, reported in **(2014) 3 MLH (crl.) 523**. and the relevant portion of the aforesaid judgement is extracted hereunder:-

“.....28. In terms of Rule 102 of the Tamil Nadu Factory Rules, 1950, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out



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certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply.

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and represented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forth coming as to why the complaint which was presented on 21.07.2012 was returned and as to why



the complaint was re-presented after more than one year.

Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind.”

22. As stated already, the present complaint also did not have any reference about the explanations submitted by the petitioners and the respondent has lodged the complaint without application of mind. Such kind of bald complaints made against the petitioners can only be considered as abuse of process of law.

23. The present presumption contemplated under Section 92 of the Factories Act would arise only if the foundational facts about the negligence or the violation on the part of the petitioners are brought before the Court in order to make out a prima facie case. Without discharging the said initial responsibility in the course of filing complaints, the respondents cannot claim any benefit under Section 92 of the Factories Act and for the same reason, the respondent ought to have obtained sanction from the appropriate authority under Section 197 Cr.P.C.

24. The petitioners being public servants cannot be deprived of the amenities provided by them under the Service Rules of the Government of



India for the acts discharged during the course of their official duties. Hence the respondent cannot seek shelter under Sec.119 of the Factories Act for the failure on their part to comply the basic requirements and to make out the foundational facts for making out a prima facie case. If the complaint is made without application of mind, the prosecution is still maintainable for certain valid reasons. But here is a case where the respondent has not attempted to get any sanction at all, before initiating Criminal action against the petitioners who are the government servants.

25.In view of the above stated reasons and also considering the fact that the deceased employee was a contractual employee and for whom the contractor is liable to give all safety equipments, etc., the petitioners cannot be held liable. Further, the accident had occurred due to the wrong operation of the accelerator of the PFT without turning the lever to the Forward side. So the petitioners cannot be cornered with any criminal liability for the occurrence that had happened in such an extraordinary situation. Since the respondents has laid the complaints unmindful of acceptable explanation submitted by the petition, I feel the powers of the Court is exercised under Section 482 of Cr.P.C in order to serve the ends of the justice.



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In the result, these Criminal Original Petitions are **allowed**. The proceedings in C.C.Nos.3774 & 3773 of 2020 on the file of the Chief Metropolitan Magistrate Court Egmore, Chennai is quashed as the petitioners. Consequently, connected miscellaneous petitions are closed.

02.02.2023

Index: Yes/No
Internet: Yes/No
Speaking ;Non-speaking
Neutral : Yes/No

jrs



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To:

1. The Deputy Director -I
Industrial Safety And Health T.S.No.47/1
Block No.6 Thiru.Vi.Ka.Industries Estate
Near Metro Water Tank Rountana Guindy
Chennai - 600 032.

2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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