



WEB COPY



Crl.O.P.Nos.1740 to 1742 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2022

DELIVERED ON : 24.02.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.1740 to 1742 of 2016

and

Crl.M.P.Nos.839 to 844 of 2016

K.Paramasivam

... Petitioner/Accused in
Crl.O.P.Nos.1740 & 1741/2016

Kanish Malik

... Petitioner/Accused in
Crl.O.P.No.1742/2016

Vs.

Deputy Director,
Industrial Safety and Health (In-charge),
Inspector of Factories,
Villupuram.

... Respondent in all Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records and quash the proceedings in complaint bearing C.C.Nos.254 & 255 of 2015 and 554 of 2014, respectively on the file of learned Chief Judicial Magistrate, Chengalpet.



WEB COPY



Crl.O.P.Nos.1740 to 1742 of 2016

For Petitioner : Mr.Rajesh Batra, Senior Counsel
in all Crl.O.Ps. for Mr.M.Kandasamy

For Respondent : Mr.L.Baskaran
in all Crl.O.Ps. Government Advocate (Crl. Side)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the complaint against the petitioner/Accused in C.C.Nos.254 & 255 of 2015 and 554 of 2014, respectively, pending on the file of learned Chief Judicial Magistrate, Chengalpet.

2. Since all the cases arise out of a common show cause notice, the same are disposed of by a common order.

3. The gist of the case is that the factory M/s.Pepsico India Holdings Private Limited (PIHPL) situated at Mamandur Village, Maduranthagam Taluk, Kancheepuram District was inspected by Joint Director, Industrial Safety and Health, Cuddalore on 25.06.2014. During



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

inspection, 19 violations under the Factories Act and Rules found. The Inspection Report along with show cause notice was issued to the petitioners on 01.07.2014. On receiving the notice, a reply was submitted by the petitioners on 07.07.2014, not satisfied with the reply, the respondent sent further action letter informing penal action would be taken in the Court of Law. After obtaining sanction on 28.08.2014, complaint filed before the learned Chief Judicial Magistrate, Chengalpet on 16.09.2014 and a case in C.C.Nos.254 & 255 of 2015 and 554 of 2014 registered. The case against the petitioners proceeded, on the ground that the petitioners Manager and occupier of PIHPL factory, are responsible and liable for the violations.

4. The allegation against the petitioner in C.C.No.254 of 2015 is that for the canteen situated in the premises of PIHPL factory, kitchen, therein not prepared food and the food was brought from the kitchen of S.S.Foods and supplied to the employees, for which, exemption permission not obtained from the Director, Industrial Safety and Health, Chennai as per



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

Section 46(1) of Factories Act r/w. Rule 71 of the Tamil Nadu Factory Rules, 1950. His further complaint is that no certificate obtained from the competent person for installation of conveyer belt in PIHPL as required under Section 21(2), Rule 53(1) Schedule XI, Part-A, Item 2(8) (a,c) of Factory Rules. The other allegation is that acknowledgements not produced for issuance of identity card to the employees as per Rule 103(c) of Factories Rules.

5. The complaint in C.C.No.255 of 2015 is that the sketch/map containing the details of Fire Fighting Installations in the factory premises of PIHPL not submitted, hence violation under Section 38(1)(3) r/w. Rule 61(15) committed. Further complaint is that the petitioners employed 250 employees, when 250 or more employees are employed in a factory, the factory should provide dining hall, kitchen, pantry and washing places which are not provided. Foods are being brought from outside canteen, hence, committed violation under Section 46(1)(2) r/w.65(5) of the Tamil Nadu Factories Rules. The further complaint is that documents relating to accounts



CrI.O.P.Nos.1740 to 1742 of 2016

and maintenance of canteen not produced. Hence, contravened Section 46(1)

WEB COPY

r/w.69(1) of the Tamil Nadu Factories Rules.

6. The case against the petitioner in C.C.No.554 of 2014 is that the factory not submitted, any application for approval from Site Appraisal Committee for erecting, additional building or installing additional machinery under Section 2(cb) of the Factories Act, 1948. Further, highly flammable liquid and gases are being used, earlier approval was accorded for expansion of the factory carrying on dangerous operations on 06.11.2013, thereafter, no further application submitted for approval from Site Appraisal Committee.

7. Further, the complaint is that in the factory, kitchen room facility not provided for preparing food and food was brought from the kitchen of S.S. Foods, for which, no exemption permission obtained. Hence, committed violation under Section 46(1) r/w. Rule 71 of the Tamil Nadu Factories



8. The learned counsel for the petitioners submitted that the inspection was conducted by the respondent on 25.06.2014 and thereafter show cause notice issued on 01.07.2014, reply to the show cause notice sent on 07.07.2014. In the reply, it is clearly stated that wherever required, an application for exemption would be submitted. As regards the petitioners providing foods from external vendor and serving to its employees, appropriate steps would be taken for exemption. He further submitted that in the inspection report it is recorded that there are 113 men and 87 women employed in total 200 employees. The restrictions as per Rule is that whenever the factory employed 250 or more employees, such facilities to be provided. Further nowhere in the Act and Rule it is stated that the food to be prepared inside the factory.



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

9. Further, as per Rule 65(2) of Tamil Nadu Factory Rules, 1950, the occupier of every factory as notified by the State Government, where more than 250 workers are ordinarily employed to provide in or near the factory an adequate canteen, further the Rules does not mandate that the employer shall himself run the canteen. It states that the employer should provide adequate canteen according to the standards prescribed in the Rules. There is no specific condition of running such canteen by the employer himself directly by engaging the workmen or by engaging an independent contractor to run it or by permitting the employees to run it on a co-operative basis or such other basis. In the reply, it is submitted that the canteen building constructed in accordance with the plan approved as required under Rule 65(5) of Tamil Nadu Factory Rules. Hence, there is no violation of Rules by the petitioner. Further submitted that Rule 53 of the Tamil Nadu Factory Rules provides for taking safety precautions under Section 21(2) of the Act. The allegation is that prior to the installation of a conveyor belt and



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

within 12 months thereafter, conveyors to be examined and certificate to be obtained from a qualified technician, approved by the Director, Industrial Safety and Health. No Gazette notification issued appointing any authorized person to conduct and issue certificate as per Rule 53(2). The petitioner factory got approval of blue print on 06.11.2013, in which the installation of the conveyor belt. Hence, there is no violation.

10. The learned Senior Counsel submitted that the acknowledgement proof for issuance of photo identity card produced , hence there is no violation in this regard. He further submitted that the allegation in the show cause notice that the sketch/map containing the details of Fire Fighting Installations at factory premises not submitted to the Joint Director, Industrial Health and Safety, is not proper. The approved layout of the factory dated 06.11.2013 would show that approved Fire Hydrant Tank & Fire Fighting Pipe Line submitted as per the advice of the Joint Director of Industrial Safety & Health. The copy of the approved Fire Hydrant Tank and



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

Fire fighting pile line submitted along with the reply to the show cause notice. He further submitted that the Fire Hydrant Tank and Fire Fighting Pipe line already available.

11. For the allegation for not providing canteen with kitchen and pantry facilities, submitted earlier, the canteen facility has been provided and food supplied through S.S.Foods. The payments to the service providers are maintained in the company accounts, which were produced along with the reply to the show cause notice. Hence, there is no violation.

12. For the allegation in erecting additional buildings or installing additional machinery in the factory, application to be presented to the Site Appraisal Committee for getting approval. The petitioners' company does not fall under the definition of 2(cb), since the factory comes under dangerous operation, but non-hazardous operation. Any violation of Section 41 and 41A and Rule 61Q(3) would get attracted when the factory fall under



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

the definition of 2(cb) involved in hazardous operation falling within Schedule 1 of Section 2(cb) of the Factories Act, wherein, item No.17 mentions Chemical Industries – Industrial Gases (Carbon dioxide) and Item No.29 mentions Highly Inflammable Liquids and Gases. The petitioners' factory is neither a chemical industry nor it uses the process of highly inflammable liquids and gases. The admitted position is that the petitioners factory manufacturing soft drinks.

13. The other contention is that the cases instituted beyond the period of limitation. The inspection of the factory was done on 25.06.2014. Show cause notice issued on 01.07.2014. Reply to the show cause notice submitted on 07.07.2014. Sanction for prosecution obtained on 28.08.2014, the complaint presented on 16.09.2014. Thereafter, complaint returned on 23.09.2014. Subsequently, represented on 16.12.2014 and 12.05.2015, respectively, finally the complaint was taken on file on 23.12.2014 and



Crl.O.P.Nos.1740 to 1742 of 2016

27.05.2015, respectively. The re-presentation of the complaint pertaining to
WEB COPY

Crl.O.P.Nos.1740 & 1741 was made with delay of 321 days. Likewise, re-presentation of the complaint pertaining to Crl.O.P.No.1742 of 2016 with delay of 174 days.

14. It is mandatory that as per Section 106 of The Factories Act, the complaint ought to be filed within three months of the date, on which the alleged commission of the offence came to the knowledge of the Inspector. In this case, it came to knowledge on 25.06.2014. Hence, cognizance taken is beyond the period of limitation. He further submitted that the petitioners' company on receipt of the inspection report dated 25.06.2014 along with the show cause notice dated 01.07.2014, sent reply on 07.07.2014. Thereafter, the orders ought to be passed giving right to the petitioners to prefer an appeal within a period of 30 days. In this case, no such orders passed and the petitioners' right of appeal was denied. He further submitted that neither in the sanction nor in the complaint, there is any reference to the reply given by



CrI.O.P.Nos.1740 to 1742 of 2016

the petitioners and for what reasons the reply not accepted, is not known.

Further, cognizance order does not reflect application of mind. Hence, the complaint filed against the petitioners are liable to be quashed.

15. In support of his contention, the learned counsel for the petitioners relied upon the decision of the Hon'ble Apex Court in the case of *J.J.Irani and another Vs. State of Jharkhand* reported in (2014) 15 SCC 813, the case of *Rajesh Pandya and another Vs. State of Himachal Pradesh* reported in 2015 SCC Online HP 1791 for the point of delay. He further relied upon the decision of this Court in the case of *V.P.Ponnusami Vs. State* reported in 1996(2) MWN (Cr.) 333, the case of *R.Kishore Kumar Vs. Chief Inspector of Factories and others* reported in 2020 SCC Online Mad 24590, the case of *P.P.Upadhya and another Vs. The State of Karnataka* reported in ILR 2020 KAR 2099 for the point that the explanation given in reply not considered and sanction order mechanically issued, following the same, without advertence to the reply, complaint filed. Further, relied upon the



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

decision of the Hon'ble Apex Court in the case of **Dayle De'souza Vs. Government of India and another** reported in **2021 SCC Online SC 1012** for the proposition that it is the duty of the Magistrate to apply his mind to get satisfied whether *prima-facie* case made out before taking cognizance.

16. Learned counsel for the petitioners further relied upon the judgment of this Court in the case of **Ness Wadai Vs. State of Tamil Nadu** in Crl.O.P.Nos.6714 & 6826 of 2018, wherein this Court reiterated the principle. In the absence of any reference to the reply, to the show, cause notice both in the sanction as well as in the complaint, then the complaint necessarily to be quashed.

17. Learned Government Advocate (Crl. Side) appearing for the respondent filed counter in these cases, all are similar. It is submitted by the respondent that the Joint Director of Industrial Safety and Health, Cuddalore conducted inspection on 25.06.2014. Finding several violations of Act and



CrI.O.P.Nos.1740 to 1742 of 2016

Rules, issued show cause notice along with inspection report on 01.07.2014.

WEB COPY

The petitioners were served with notice on 02.07.2014. The petitioners sent reply on 07.07.2014. The Joint Director perused the reply found explanation and reasons untenable, hence, sent a further action letter to petitioners informing that the Court action will be initiated against the management.

Thereafter, a case proposal was sent to the Additional Director of Industrial Safety and Health, Trichy on 17.07.2014. After obtaining sanction on 28.08.2014, complaint presented before the concerned Court on 16.09.2014, which is well within the period of three months. The Court thereafter returned the complaint and it was represented on 12.05.2015 and 16.12.2014, respectively. *Prima-facie* within the period of limitation, the complaint was filed. Hence, the petitioners cannot claim that the complaint is barred by limitation.

18. He further submitted that in the complaint, the inspection report, show cause notice, reply to show cause notice, proposal to take further



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

action, all annexed as documents. He fairly submitted that there is no mention about the details of the reply in the sanction order as well as in the complaint, since the documents form part of the complaint, the same can be explained during trial. He further submitted that the petitioners reliance on Section 107 of the Factories Act is not proper, in this case, it is not applicable, since there is no written order issued. Not satisfied with the reply to show cause notice, as a corollary, the complaint filed. From the reply to the show cause notice it is confirmed that there has been violations of Rules, these violations later rectified. It proves that the petitioners have committed violations. The points raised by the petitioners are factual in nature, which are necessarily to be decided during trial and hence, prayed for dismissal of these petitions.

19. This Court considered the rival submissions and perused the materials available on record.



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

20. It is not in dispute that the petitioners are the Manager and Occupier of Pepsico India Holdings Pvt. Ltd. The Inspection conducted by the respondent is also not in dispute. Likewise, the issuance of receipt of show cause notice and reply to the show cause notice are not disputed.

21. Primarily it is a case of violation of Rules. The violations are:

(i) non submission of certificate from the competent engineer about the standard of building situated in the factory, (ii) sketch/map containing all details of Fire Fighting Installations in the factory premises of PIHPL not submitted, (iii) Eye sight of the workers not tested, (iv) Site Appraisal Committee consent not obtained for constructing additional buildings or installing additional machinery in the factory premises, (v) Factory canteen not provided with dining hall, kitchen, pantry and washing places, (vi) For the newly installed conveyor belt, certificate not obtained from the competent person, (vii) Records and acknowledgement for issuance of identity card for the workers with their photograph, not properly maintained.



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

22. In reply to the show cause notice, the petitioners confirmed that the Stability Certificate dated 25.06.2012 valid upto 24.06.2015, issued by the Director of Industrial Safety and Health available. A copy of the building stability certificate handed over to the Joint Director of Industrial Safety and Health in the year 2012. Further it is seen that the copy of approved Fire Hydrant Tank and Fire Fighting Pipe Line factory layout and for installation of conveyor belt permission dated 06.11.2013 obtained and submitted in the office of the Joint Director of Industrial Safety and Health, Cuddalore. Further qualified eye Doctor conducted eye check for all the fork lift operators details given. The Petitioners' factory does not handle hazardous and dangerous chemicals. They are soft drink manufacturers. Further, Rest Room in the factory provided for the employees with cot to relax, separate serving place provided in dining hall for serving food. The factory maintains a record for canteen expenditure and the same presented before the canteen committee members. The meeting records produced. The Chartered



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

Accountant verified the accounts. Further, steps already taken for seeking exemption. The acknowledgement for issuance of identity card to the workers submitted. Thus almost all the violations pointed out have been now complied. Though respondent filed a counter, in the counter no explanation given, for what reasons the complaint represented after 174 & 321 days, there is no answer. Likewise, no reason given for rejection of reply of the petitioners, further there is no reference or any advertance both in the sanction and in the complaints. By way of explanation on the respondent cannot improve its case. The explanation in the counter cannot be given credence.

23. The aim and purpose of the inspection in the factory is that if the official finds any violations, the same to be informed to the concerned by way of show cause notice and to ensure its compliances. If the violations not complied, then only penal action to follow. In this case, admittedly, after the inspection, show cause notice issued by the respondent to the petitioners,



Crl.O.P.Nos.1740 to 1742 of 2016

compliance report by way of reply was submitted by the petitioners rectifying the violations. Once the violations are rectified ensuring all safety measures and welfare measures put in place, no further prosecution to be initiated. Here, even though the petitioners have rectified the violations identified in the factory. The respondent launched prosecution and filed complaints against the petitioners. Further, the trial Court without considering the compliances of the petitioners, took cognizance and issued summons to the petitioners. As could be seen from the complaints and sanction order, there is no reference to the reply given by the petitioners, dated 07.07.2014 and there is nothing to show any continuation of violations.

24. Following the decision of the Hon'ble Apex Court in the case of *“State of Gujarat Versus Kansara Manilal Bhikhalal reported in AIR 1965 SC 1893”*, this Court in the cases of *“K.Masthan Rao Versus State reported in 2014 (3) MLJ (Crl.) 523; Dr.Vinoth Nowal & Anr. Versus State of Tamil*



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

Nadu in Crl.O.P.Nos.9742 & 9743 of 2021, dated 23.09.2021; Ness Wadia

Versus State of Tamil Nadu reported in MANU/TN/3963/2022; L.Ganesh

Versus State of Tamil Nadu reported in 2020 (2) CTC 666” held that ‘the

respondent cannot ignore the reply to the show cause notice and cannot

proceed to lodge the complaint. In terms of Rule 102 of the Tamil Nadu

Factories 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 has been complied with or whether

any order of the Inspector has not carried out. Thus, the Rules contemplates

an opportunity for compliance.’. In this case, the compliance done and the

same reported to the respondent. But for the reasons best known, the reply

not considered by the respondent. As pointed above, there is no reference to

the reply submitted by the petitioners either in the sanction order or in the

complaints.



Crl.O.P.Nos.1740 to 1742 of 2016

WEB COPY

25. In the case of “*Pepsi Foods Limited Versus Special Judicial Magistrate reported in 1998 SCC (Crl.) 1400*” the Hon'ble Apex Court held that the learned Magistrates ought to have scrutinized the evidence brought on record and thereafter, issue summons to the accused. In this case, from the adjudication, it is found that no such exercise done.

26. The object of the Act is for welfare of the labour. Various restrictions and conditions are imposed in the interest of public health and welfare of the labours employed in the factory. It not the case of the respondent that the explanation offered by the petitioners is not tangible and lacks bonafide.

27. In the light of the above discussions, this Court has no hesitation to hold that the complaints are vitiated on account of total non-application of mind. Hence, no useful purpose will be served by making the petitioners to undergo the ordeal of facing a trial.



CrI.O.P.Nos.1740 to 1742 of 2016

WEB COPY

28. In the result, the proceedings in C.C.Nos.254 & 255 of 2015 and 554 of 2014, respectively on the file of learned Chief Judicial Magistrate, Chengalpet are quashed. Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

24.02.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order
rsi

To

1.The Chief Judicial Magistrate,
Chengalpet.

2.The Deputy Director,
Industrial Safety and Health (In-charge),
Inspector of Factories,
Villupuram.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.Nos.1740 to 1742 of 2016

M.NIRMAL KUMAR, J.

rsi

Crl.O.P.Nos.1740 to 1742 of 2016

and

Crl.M.P.Nos.839 to 844 of 2016

24.02.2023