



Crl.A.No.793 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2023

Pronounced on : 16.03.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.A.No.793 of 2015

The State Rep. By
The Public Prosecutor,
High Court, Madras,
(In the matter of Inspector of
Factories, Erode)

... Appellant / Complainant

Vs.

E.Thamotharan

... Respondent / Accused

This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to allow this Appeal and set aside the Judgment of Acquittal of the respondent / accused passed by the Chief Judicial Magistrate Court, in C.C.No.154 of 2012 dated 15.05.2013.

For Appellant : Mr.R.Murthi,
Government Advocate (Crl. Side)

For Respondent : Ms. Vigneswari for
Mr.M.Guruprasad



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JUDGMENT

This criminal appeal has been preferred challenging the Judgment of the learned Chief Judicial Magistrate, Erode made in C.C.No.154 of 2012, dated 15.05.2013.

2. The state is the appellant herein. The case has been arisen out of a private complaint given by the factory Inspector on the allegations that on 27.02.2012 at about 10.45 p.m when the factory Inspector inspected the premises of the factory of the respondent/accused by name M/s.Hari Textile Finishers, it was found that there were certain violations and hence the respondent was charged for the offences under Sections 6(1) (a)(aa)(b)(c), Rule 3(1)(2) & 6(1)(t), Rule 4 (1)(2)(3) of the Factory Act 1948 (Amended Act, 1987) and Tamil Nadu Factory Rules, 1950.

3. As per the case of the complainant, the accused was using the machine power with electricity connection with the tune of 45 H.P. Machine power by employing 6 male labourers and 5 female labourers. As per Section 6(1)(d) of the Factories Act r/w Section 4 (1) (2) (3) of the Factories Rules, if more than 10 workers were employed, the required licence should



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be taken. But the respondent has not obtained due licence in accordance with the said Rules. If the factory runs by using machine power with 45 H.P., the machineries ought to have been submitted to get due approval in accordance with the Factories Act. In view of the above said violations, the private complaint has been filed. After the complaint was taken cognizance, the trial has been conducted.

4. During the course of trial, on the side of the appellant / prosecution, P.W.1 and P.W.2 were examined and Exs.P1 to P4 were marked. On the side of the respondent / accused, the respondent himself has examined as DW1 and Exs.D1 and D2 were marked.

5. After conclusion of the trial, the learned trial Judge acquitted that accused. Aggrieved over the same, the prosecution has preferred this appeal.

6. The learned Government Advocate (Crl. Side) appearing for the appellant submitted that the learned trial Judge had omitted to take into all the facts that the accused was using 45 H.P. machine power with electricity



connection without getting due approval. Despite one factory is run by the respondent, it has been shown as though two factories were run and the same was not properly appreciated. The Inspector of Factories and the Deputy Inspector of Factories who were examined as P.W.1 and P.W.2, had deposed evidence and produced materials to show that the accused had committed the above offence. Since the learned trial Judge did not consider the materials in a proper perspective, the Judgment of the learned Chief Judicial Magistrate, Erode is liable to be set aside and the accused should be found guilty.

7. The learned counsel for the respondent/accused submitted that the respondent has sent a due reply and that was not filed as a document along with the complaint. Six Male members and five female members were not working in the same factory and they are working in two different establishments situated adjacent to each other and hence that will not come under the purview of the Rules to get licence for the same. Neither P.W.1 nor P.W.2 have stated in their evidence about the electricity connection through which the alleged machine power was used by the accused by



utilizing 45H.P motor. Even the prosecution witnesses themselves have stated that they had issued notice only after 12 days of inspection and the signature of all the persons who were working at the relevant point of time were not obtained. In fact, the respondent was conducting two cottage industries in Door Nos.13 and 15 by two names viz., M/s.Hari Textile Finishers and Sri vela Centering Mills. Since the number of employees employed in the factory are below 10, there is no necessity to obtain any licence.

8. The word Manufacturing is defined under Section 2 (k) of the Factories Act and it will not include bleaching. The owners signatures was not obtained. For the inspection report with regard to the presence of 45 H.P. Motor, no independent witnesses have been examined. The prime contention of the appellant is that the respondent had employed more than 10 workers without obtaining due licence. But the contention of the respondent is that he was conducting merely two industries in two different door numbers in Door Nos.13 and 15 in the name and style M/s.Hari Textile Finishers and Sri vela Centering Mills. In order to substantiate the same, the



respondent has also produced the due licence obtained from Corporation and also the professional tax paid in the names of the two different Industries. In fact, the two different small scale Industries did not belong to the same person and tax has been paid in the names of two different owners. The functions of two cottage industries are entirely different and it has got no connection with each other. The Factory Inspector had taken into account of the workers employed in both the industries, but shown them as the workers of M/s.Hari Textile Finishers. When the license and other tax receipts show that two different establishments, the case has been filed on a wrong notion that only one factory is conducted in both the door numbers.

9. The learned trial Judge has rightly appreciated the evidence and arrived at a conclusion that few workers were working at M/s.Hari Textile Finishers and few workers were working in M/s.Sri Vela Catering Mills. So the Rule which is applicable to the employees of more than 10 workers will not applicable to the case in hand. The complainant who was examined as P.W.1 has stated in his cross examination that in the receipt given by the respondent, he has stated about the two different industries being run in two



different door numbers. But the said explanation was not attached with the complaint. Without considering the reply of the respondent and without verifying the facts about the employment of the persons in the respective industries, the complaint has been given. In fact, no statement has been obtained from the workers who were working in the premises. So the Act of the complainant would show that he had filed a case out of his own presumption without verifying the real facts.

10. The next charge framed against the respondent is that he was using machine power of 45 H.P in the premises without licence. It has been established that the respondent was running the Small Scale Industry and not a factory. P.W.2 had stated in his cross examination that he did not furnish the name of the persons in whose name the electricity connection for the said 45 H.P motor has been obtained. No person has been examined as witness from the Electricity Department on the side of the prosecution and no document was produced in order to show the usage of alleged motor pump sets at the premises of the respondent. Without proving the fundamental facts, the complainant has proceeded to file the complaint



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without any basis. Since the evidence on the side of the complainant itself would highlight the infirmities in the case of the prosecution, the learned trial Judge had properly appreciated the same and found the accused not guilty and acquitted him. The findings of the learned trial Judge have been made only after a thorough consideration of the materials available on record and it does not suffer from any legal infirmity warranting any interference.

11. In the result, this Criminal Appeal stands dismissed by confirming the Judgment of the learned Chief Judicial Magistrate, Erode, dated 15.05.2013 made in C.C.No.154 of 2012.

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Index : Yes/No
Speaking order / Non speaking order
vum



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WEB COPY To

1. The Chief Judicial Magistrate Court, Erode.
2. The Public Prosecutor, High Court of Madras.



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R.N.MANJULA, J.,

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