



Crl OP No. 17189 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.17189 of 2021
and Crl.M.P.Nos.9419 and 9420 of 2021

1. Sathish Hebber. R
Director – Operations
Global Calcium Private Limited
Unit – I, [KNG – 00058]
No. 126, SIPCOT Industrial Complex
Hosur Taluk, Krishnagiri District – 635 126.

...1st Petitioner/Accused

2. M. Naveen

...2nd Petitioner/Accused

Versus

The State
Rep. by Deputy Director,
Industrial Safety and Health
Hosur
Krishnagiri.

...Respondent/Complainant



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PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the complaint dated 08.02.2021 in STC.No.120 of 2021 on the file of the Hon'ble Chief Judicial Magistrate, Krishnagiri.

For Petitioners : M/s. Gupta and Ravi
For Respondent : Mr. A.Damodaran
Additional Public Prosecutor

ORDER

Criminal Original Petition has been filed for quashing the impugned complaint in S.T.C.No.120 of 2021, filed for the alleged contravention of the Provisions of the Factories Act, 1948, (hereafter referred to as "Factories Act" for the sake of convenience) and the Tamil Nadu Factories Rules, 1950, (hereafter referred to as "Factories Rules" for the sake of convenience) punishable under Sections 92 r/w 96 of the Factories Act, pending on the file of the learned Chief Judicial Magistrate, Krishnagiri.

2. It is alleged in the complaint that an inspection was made on 07.09.2020 in the factory premises of the petitioners; that the reason for the inspection was that on 05.09.2020 at about 10:30 AM, an employee died due to a burning sensation in the skin caused by a chemical spillage;



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that when the factory premises was inspected, the respondent found seven violations under the Factories Rules; that a Show Cause Notice was issued to the petitioners; and that the violations are punishable under the Factories Act. Hence, the complaint.

3. (a) Mr. Ravi, the learned Senior Counsel for the petitioners, submitted that in respect of the death of an employee, a First Information Report was registered against the petitioners and others, and the same is pending investigation; that the allegations in the impugned complaint are with regard to the violations under the Factories Act, found during the inspection on 07.09.2020.

3. (b) The learned Senior Counsel submitted that after the inspection, the respondent had issued a Show Cause Notice on 22.09.2020 informing the petitioners about the violations and calling upon them to Show Cause as to why the prosecution should not be launched against them for the violation of the Factories Act and the Factories Rules.



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3. (c) The learned Senior counsel for the petitioners further submitted that the petitioners sent a detailed reply on 04.11.2020 to the Show Cause Notice explaining their stand in respect of certain violations and also stating that they had rectified the defects/violations pointed out in the Show Cause Notice; and that they had attached the proof in the form of photographs to substantiate their reply. However, without considering the reply to the Show Cause Notice sent by the petitioners, the impugned complaint was lodged on 08.02.2021. Since the respondent had filed the impugned complaint without considering the reply, the complaint is liable to be quashed in view of the settled position of law.

3. (d) The learned Senior Counsel relied upon the following Judgments of this Court and that of the Karnataka High Court.

(i) ***C. Ramakrishna and others vs. The Chief Inspector of Factories, Madras and others*** reported in **1982 – L.W. [Crl.] 146.**

(ii) ***V.P.Ponnusami Vs. State*** reported in **1996 – 2 L.W. [Crl.] 493.**

(iii) ***Inspector of Factories Vs. Showa Engineering Ltd. Sholinghur*** reported in **2007 (4) L.L.N. 828.**



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(iv) ***K. Masthan Rao vs. State*** reported in **2015 – 1 – L.W. [Crl.] 254.**

(v) ***A. Goutam Datta & Another Vs. State by Inspector of Factories*** in **Crl.O.P.Nos. 1287 to 1293 of 2012** dated **04.04.2017.**

(vi) ***L. Ganesh and another vs. State of Tamil Nadu*** in **Crl.O.P.Nos. 23034 & 23035 of 2015** dated **19.08.2019.**

(vii) ***P.P. Upadhya & Another Vs. The State of Karnataka*** in **Crl.O.P.No.2167 of 2014** dated **28.01.2020.**

(viii) ***R.Kishore Kumar Vs. The Chief Inspector of Factories, Chepauk and others*** reported in **2021-1-L.W.[Crl.] 946.**

(ix) ***Mr.Mohammed Azeez & Another Vs. State of Karnataka*** in **Crl.O.P.Nos.2570 & 2594 of 2021** dated **10.08.2021.**

(x) ***Sri Sachin B Rathod & Another Vs. The State of Karnataka*** in **Crl.O.P.No.103875 of 2022** dated **02.12.2022.**



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(xi) ***Ajay Sanghi Vs. State of Tamil Nadu in Crl.O.P.No.7972 of 2022 dated 06.07.2022.***

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4. (a) Per Contra, Mr. A. Damodaran, the learned Additional Public Prosecutor, submitted that the petitioners had violated the Factories Act; that due to one of the violations, a chemical by the name “*Mebeverine Hydrochloride Acid*” was splashed over the skin of the deceased employee, who later succumbed due to that; and that they had also committed the violations of Sections 41 r/w Rule 61 D, 61 E and 61 F of the Factories Act, and Factories Rules, Section 41 r/w Rule 62 - O (1) (C) (i) (2) (4) of Factories Rules, 1950, Section 88 (1) Rule 96 (1) (2) of the Factories Rules, 1950 and Section 6 of the Factories Act.

4. (b) The learned Additional Public Prosecutor submitted that a learned Judge of this Court, in ***Manali Petrochemicals Limited Vs. The Joint Director, Industrial Safety & Health*** in ***W.P.Nos.25810, 25815 and 25816 of 2019***, held that since a prosecution under the Factories Act, and the Factories Rules, need not be preceded by a Show Cause Notice the non-consideration of reply to a notice sent would not render the complaint unsustainable in law.



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4. (c) The learned Additional Public Prosecutor, also referred to the

Counter filed by the respondent, wherein the violations have been reiterated. The learned Additional Public Prosecutor, therefore, submitted that the impugned complaint, which discloses the offences committed by the petitioners, cannot be quashed. Hence, he prayed for the dismissal of the quash petition.

5. This Court, on perusal of the impugned complaint, finds that the inspection was made pursuant to the death of an employee. The instant complaint does not pertain to the negligence of the petitioners in causing the death of the employee. This is the subject matter of an investigation by the Jurisdictional Police. The instant complaint relates to violations under the Factories Act and the Factories Rules, out of which, one violation had allegedly caused the death of the employee. The violations, according to the respondent broadly, are that a proper pipe was not fixed to allow the outlet of the acid; that the roads, pathways and platforms in the factory premises were not found to be safe; that the occupational health centre was not available in the factory; that the migrant labourers were employed without license etc.



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6. It is the admitted case of the respondent that they had issued a Show Cause Notice on 22.09.2020. The respondent in their Counter has not denied the receipt of the reply to the Show Cause Notice. In the complaint, however, there is no reference either to the Show Cause Notice issued to the petitioners or their reply, though, it is seen that the Show Cause Notice and the reply are part of the list of documents filed along with the complaint. Therefore, the question is whether the filing of the complaint without considering the reply to the Show Cause notice is sustainable. This Court had consistently taken the view that non-consideration of the reply either at the time of granting sanction or at the time of filing the complaint would render the complaint unsustainable.

7. In ***K.Masthan Rao Vs. State*** reported in ***2015 – 1 – LWC (Crl.) 254***, a learned Single Judge of this Court, Justice Mr.T.S.Sivagnanam as His lordship then was had held as follows.

“27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability



certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit



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their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the propriety of the explanations offered.

*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 certain contraventions and if the contraventions exist,*



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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 represented 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



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to why the complaint was represented 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?."

Following the aforesaid Judgment, two other learned Judges Justice N.Anand Venkatesh and Justice N.Sathish Kumar of this Court in ***L.Ganesh and another vs. The State of Tamil Nadu*** in ***Crl.O.P.Nos.23034 & 23035 of 2015***, dated ***19.08.2019*** and ***Ajay Sanghi vs. State of Tamil Nadu Rep.by Deputy Director*** in ***Crl.O.P.No.7972 of 2022*** dated ***06.07.2022***, had held that the non-consideration of the reply to the Show Cause Notice in the complaint would render the complaint liable to be quashed.

8. Further, it is seen that a Division Bench of this Court in ***Inspector of Factories, Vellore vs. Showa Engineering, Ltd. Sholinghur*** reported in ***2007 (4) L.L.N.828*** had held as follows:

"2....Therefore, in view of not considering the explanation submitted by the Manager and the writ-petitioner, dated 8 January 2003 and 22 January 2003.



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respectively, launching the prosecution mainly on the ground that they have to launch the prosecution within a period of three months from the date of knowledge of the accident is illegal, contrary to the provisions of the Factories Act and detrimental to the interest of the petitioner as they have lost the right of appeal provided under the statute and they also have a right to seek time to comply with the lapses pointed out during the inspection by the Inspector and the limitation starts date instead of 90 days from the date of knowledge of the accident. Therefore, the order is set aside"

Following the Judgment of the Division Bench of this Court, another learned Single Judge of this Court, Justice C. T. Selvam, in ***Crl.O.P.Nos 1287 to 1293 of 2012*** dated ***04.04.2017*** had held as follows:

*"9. This Court is in respectful agreement with the observations of the Division Bench of this Court in ***Inspector of Factories, Vellore v. Showa Engineering Ltd., Sholinghur [2007 (4) LLN 828]*** which is to the effect that non-*



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acceptance of reply/explanation by a factory/company would provide occasion for filing an appeal u/s. 107 of the Factories Act, 1948. Any prosecution launched in denial of such right would have to be nipped in the bud."

9. It is pertinent to point out, based on the abovesaid Division Bench Judgment, the Karnataka High Court in ***P.P. Upadhya & Another Vs. The State of Karnataka*** in ***Crl.O.P.No.2167 of 2014*** dated ***28.01.2020*** and ***Mr.Mohammed Azeez & Another Vs. State of Karnataka*** in ***Crl.O.P.Nos.2570 & 2594 of 2021*** dated ***10.08.2021*** held that initiating the prosecution without considering the reply would render the prosecution liable to be quashed.

10. However, this Court finds that Dr. Justice G. Jayachandran in ***Manali Petrochemicals Limited Vs. The Joint Director, Industrial Safety & Health*** in ***W.P.Nos.25810, 25815 and 25816 of 2019*** dated 09.09.2022 had taken the view that there is no necessity for considering the reply since the Factories Act does not contemplate sending of Show



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Cause Notice prior to initiation of the complaint. In view of the consistent view taken by the Division Bench of this Court and at least four learned Judges of this Court besides the Karnataka High Court contrary to the view taken by Honourable Dr. Justice G.Jayachandran, this Court is inclined to follow the Judgments which reiterate the proposition that the reply to the Show Cause notice has to be considered before filing the complaint under the Factories Act. Since admittedly in the instant case, the reply to the Show Cause Notice had not been considered, the impugned complaint is liable to be quashed.

11. For the foregoing reasons, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

23.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Deputy Director,
Industrial Safety and Health,
Hosur,
Krishnagiri.



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2. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN, J

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