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Crl.O.P.No.18516 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.18516 of 2021
and Crl.M.P.Nos.10182 & 10183 of 2021

1. Ishwar Achata
Managing Director of
M/s. Indo Pacific Solution Pvt. Ltd.,
No.5, II Floor, Smith Lane,
Anna Salai,
Chennai – 600 0002.

2. M/s. Indo Pacific Solution Pvt. Ltd.,
Rep by Ishwar Achata,
Managing Director,
No.5, II Floor, Smith Lane,
Anna Salai,
Chennai – 600 0002.

...Petitioners

Vs.

1. S.Shiva Kumar,
Assistant Director (Safety)
Inspectorate Dock Safety,
Government of India,
Ministry of Labour and Employment,
Anchor Gate Building,
III Floor, Rajaji Salai,
Chennai – 600 001.

2. M/s.A.S.Shipping Agencies Pvt. Ltd.,
113, Armenian Street,
Chennai – 600 002.



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3. Lalit Beriwalla,
Director,
M/s. A.S.Shipping Agencies Pvt. Ltd.,
113, Armenian Street,
Chennai – 600 002.

4. K.Adhikesavan,
M/s. A.S.Shipping Agencies Pvt. Ltd.,
113, Armenian Street,
Chennai – 600 002.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to C.C.No.866 of 2021 on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioner	: Mr.Gautam S. Raman
For Respondents	
For R1	: Mr.N.Ramesh
For R2 & R3	: Mr.S.Ramachandran
For R4	: No appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.866 of 2021 on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai, thereby taken cognizance for the offences punishable under Sections 14(2)(a) of the Dock Workers (Safety, Health & Welfare) Act, 1986, as against the petitioners.



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2. The first respondent filed complaint as against the petitioners and other respondents for the offence punishable under Section 14(2)(a) of the Dock Workers (Safety, Health & Welfare) Act, 1986 (hereinafter called as “the Act”) for breach of regulations 57(8)(a), 107(1), 111(1), 116 (1 & 3) and 117 of the Dock Workers (Safety, Health & Welfare) Regulations 1990 (hereinafter called as “the Regulations”). The first accused is the principal employer carrying on the business of loading and unloading of the cargo to and from the ships in the Chennai port trust.

3. While being so, on 29.12.2019 at about 10 a.m., one A.Kumar was engaged by the first accused company for unlashing the C.R. coils inside the hatch of the vessel M.V. Grand Fortune berthed at centre quay of Chennai Port Trust. The first accused had engaged the forklift of the third accused, which is the company by name M/s. A.S. Shipping Agencies Pvt. Ltd., Chennai, carrying on the business of handling and transporting of cargo with their own transport equipments. While work was in progress, the fifth accused with the help of forklift was moving the coils at corner of star board side near afterward area to middle of the hold and while reversing the forklift hit the victim viz.,



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A.Kumar, who was doing segregation of bands and picking the binding wires from the ground at after-part area. As a result of this accident, the victim had got grievous internal injuries and succumbed to the said injury. On that complaint, the trial Court had taken cognizance and issued summons to the accused.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.

5. There are totally five accused in which, the petitioners are arrayed as A1 and A2. Though the petitioners raised so many grounds, in particular, raised ground that the respondent filed complaint belatedly and therefore, the complaint itself barred by limitation and the trial Court ought not to have taken cognizance on the belated complaint. The accident had occurred on 29.12.2019. After the accident, the area Shed Master on duty as well as the Port Trust ambulance was immediately informed and the injured person was taken to Stanley Hospital. Unfortunately, he succumbed to the injury.



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6. The next ground is that as per the Regulations, only the Employer as defined under the Act, has to ensure compliance of the various Regulations relating to safety, health and welfare of the dock workers. The employer of the forklift operator, as per the Act is only the third and fourth accused. Even as per the Act, the employer is liable to be prosecuted for the breach of any Regulations. Admittedly the petitioners are the principal employers and the accused 3 & 4 are the employers as contemplated under the Act.

7. Admittedly, the accused 3 & 4 were engaged by the principal employer and the alleged accident was happened, while the fifth accused was in operation of forklift with any valid licence, resulting in the death of the dock worker. Therefore, the offence under Section 14(2)(a) of the Act only upon the persons whose duty, it was to ensure compliance with the requisite Regulations viz., the respondents 2 to 4 herein. Therefore, they have to prove their compliance with the Act and Regulations.

8. The entire allegations revealed that the death of dock worker had occurred due to the fifth accused without the requisite license



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operated the forklift upon the dock worker. As per the Regulations 7 & 57(8), the responsibility to ensure the authorized person operate the forklift is only on the accused 3 to 5. Further, immediately after the accident, it was reported to the Inspectorate Dock Safety on 30.12.2019 itself. It was received and acknowledged by the Inspectorate Dock Safety on 30.12.2019 at about 16.30 hours and it was duly informed about the accident to the Inspectorate Dock Safety viz., the complainant herein. However, the complaint was filed on 19.03.2021. Thereafter, the trial Court had taken cognizance only on 26.08.2021.

9. Section 17(3)(b)(iii) of the Act says about the limitation, which is extracted hereunder :-

“17. Provisions relating to Jurisdiction:-

(1).....

(2).....

(3)

(b) in the case of an offence punishable with imprisonment

(i) within one year from the date of the offence ; or

(ii) where the commission of the offence was not known to the Inspector within one year from the first day on which the offence comes to the knowledge of the Inspector; or



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(iii) where it is not known by whom the offence was committed, within six months from the first day on which the identity of the offender is known to the Inspector.”

Accordingly, the first respondent ought to have lodged complaint within a period of one year from the date of offence. If the offence was not known to the Inspector, within a period of one year whenever the offence comes to the knowledge of the Inspector. The complaint has to be filed within a period of one year from the date of knowledge. In the case on hand, the first respondent was duly informed about the accident on 30.12.2019 itself. Whereas the complaint was filed only on 19.03.2021. Therefore, it is clearly barred by limitation.

10. The first respondent filed counter and it revealed that that due to Covid-19, the complaint was lodged belatedly and as such the delay can be condoned as per the order dated **10.01.2022**, passed by the Hon'ble Supreme Court of India in suo motu writ petition in ***Suo Motu W.P.(C)No.3 of 2020***. It is held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. The



relevant portion is extracted hereunder :-

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“2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No. 665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the



number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) No. 3 of 2020; and

ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020; and

iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned Counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.



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II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed Under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”



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11. Subsequently, the Hon'ble Supreme Court of India clarified above decision in the judgement reported in **(2021) 12 SCC 1** in the case of **S. Kasi vs. State through Inspector of Police, Madurai**, that while considering the default bail under Section 167(2) of Cr.P.C., the limitation cannot be extended since the denial of compulsive bail to the accused will definitely amount to violation of his fundamental right under Article 21 of the Constitution of India. No accused is deprived of his valuable right as contemplated under Section 167 (2) of Cr.P.C.

12. Therefore, the order passed by the Hon'ble Supreme Court of India in the Suomuto Writ Petition (C).No.3 of 2020, never meant to curtail any provisions of the Code of Criminal Procedure or any other statute which was enacted to protect the personal liberty of a person. Hence, the judgement cited by the learned counsel appearing for the first respondent is not applicable to the case on hand. However, on the other grounds as stated above, the complaint lodged by the first respondent is not sustainable as against the petitioners and it is liable to be quashed.



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13. In view of the above discussions, the proceedings in C.C.No.866 of 2021 on the file of the learned XVI Metropolitan Magistrate Court, George Town, Chennai, is hereby quashed as against the petitioners alone. The trial Court is directed to proceed with the trial as against the other accused persons and complete the same on merits and in accordance with law.

14. With the above directions, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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1. The XVI Metropolitan Magistrate Court,
George Town, Chennai
2. The Assistant Director (Safety)
Inspectorate Dock Safety,
Government of India,
Ministry of Labour and Employment,
Anchor Gate Building,
III Floor, Rajaji Salai,
Chennai – 600 001.



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