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Crl.O.P.Nos.23468 & 23500 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2023

PRONOUNCED ON: 19.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23468 of 2021 and Crl.M.P.No.12871 of 2021

and

Crl.O.P.No.23500 of 2021 and Crl.M.P.Nos.12884 & 12886 of 2021

R.Krishnan ... Petitioner in
Crl.O.P.No.23468 of 2021

K.R.Srinivasan ... Petitioner in
Crl.O.P.No.23500 of 2021

/vs/

The Tamil Nadu State
represented by,
Deputy Director of Industrial Safety
and Health, 6/11 & 6/12, II Floor,
Lal Bahadur Sastri Street,
Periyakuppam, Tiruvallur-602 001. ... Respondent in
both Crl.O.Ps.

Common Prayer : Criminal Original Petitions have been filed under Section 482 Cr.P.C.to call for the records in C.C.Nos.270 & 269 of 2021 on the file of the Chief Judicial Magistrate Court, Tiruvallur and quash the complaint dated 21.09.2021.



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For Petitioners
in both Crl.O.Ps.

... Mr.S.Ravindran
Senior Counsel for
Mr.S.Bazeerahamed

For Respondent
in both Crl.O.Ps.

... Mr.L.Baskaran
Govt. Advocate (Crl.side)

COMMON ORDER

Challenging the criminal proceedings in C.C.Nos.270 & 269 of 2021 on the file of the Chief Judicial Magistrate, Thiruvallur, the present criminal original petitions have been filed.

2.The petitioner in Crl.O.P.No.23468 of 2021 is the Manager of the Tube Investments of India Ltd., and the petitioner in Crl.O.P.No.23500 of 2021 is the Occupier of the Tube Investments of India Ltd.,. Since both the cases are similar to the fact and involved in same questions of law, passed the common order.

3.The case of the complainant is that on 28.06.2021 at around 09.00 p.m. the worker by name Mr.Arumugam, (age 19) S/o.Mr.Arumugaswamy, was required to work in 63 ton press in SU21 assembly Line. The 63 ton



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Press which is having three operations like Length cutting, Radius notching and Flange folding operations. While working part of the body can reach through the feed area, which is below light curtain sensor. At the time of the incident, the above trainee put his hand below the light curtain sensor and try to remove the defective part from the mold and unknowingly, he pressed the foot pedal. It activated the press tool and his right-hand fist got crushed. The accident happened because of the 63 ton press machine was not provided with a fixed guard with a slip plate caused serious injury to the worker Mr.Arumugam. Thus, the Manager and Occupier have failed to ensure the safety of the worker Mr.Arumugam at work on 28.06.2021. Therefore, a show cause notice was issued on 19.07.2021, for that, reply letters were sent from the petitioners on 24.07.2021. The complainant re-inspected based on the reply on 31.08.2021. Since not satisfied, obtained sanction from the Director of Industrial Safety and Health, Chennai on 14.09.2021 and filed the complaint on 22.09.2021, which is now under challenge.



4.The learned counsel appearing for the petitioners contended that in respect of the show cause notice dated 06.07.2021, the petitioners submitted detailed reply on 24.07.2021, wherein, the petitioners specifically pointed out that A.Arumugam unauthorizedly operated the Press, which resulted in the unfortunate accident. The petitioners also produced documentary proof of training given to the said person. The petitioners also submitted that apart from the existing safety norms, additional safety apparatus has been installed. In the complaint filed by the respondent, there is no reference to the said reply at all. The complaint does not disclose that the respondent considers the legal provisions in the context of the factual background before initiating the prosecution. The Madras High Court in the case of ***L.Ganesan and Anr V. State of Tamil Nadu by order dated 19.08.2019 in Crl.O.P.Nos.23034 & 23035 of 2015*** has held that when a reply is given to the show cause notice, the said reply has to be considered and dealt with at the time of filing of complaint, failing which, the complaint itself becomes unsustainable on the ground of non-application of mind and that such a complaint is an abuse of process of Court and no useful purpose would be served by making the persons to



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undergo the ordeal of trial before the court of law. This view has been echoed in the case of ***N.Shashi Bushan V. Deputy Director, Industrial Safety and Health in the order dated 11.03.2020 in Crl.O.P.No.6887 of 2015.***

5.He further submitted that whenever a show cause notice is issued alleging violation of provisions of Factories Act, 1948 and reply is given by the concerned person, the respondent is duty bound to consider the same and pass appropriate orders enabling the concerned person to file an appeal to the prescribed authority of the State Government in terms of Section 107 of the Factories Act, 1948. Failure to do so by the respondent is fatal to the criminal complaint filed against the petitioner. This is the dictum laid down by the division bench of Madras High Court in ***Inspector of Factories, Vellore V. showa Engineering Ltd., Shollinghur*** reported in ***2007 (4) LLN 828***, which has been followed by this Hon'ble Court in the case of ***A.Goutam Datta V. the State*** reported in ***(2017) SCC Online Mad 18593*** by which the criminal proceedings were quashed.



6.The Hon'ble Supreme Court in the case of **Dayle D' Souza V.**

Government of India reported in **(2021) SCC Online SC 1012** has held that non consideration of explanation submitted to the show cause notice and a complaint which is bereft and silent on these aspects would highlight whether the authorities considered the legal provisions in the context of the factual background before initiating the prosecution. It was further held that criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion or when the violation of law is doubtful. Hence, it is submitted that the criminal proceedings filed by respondent against the petitioners are liable to quashed and thus, pleaded to quash the criminal proceedings against the petitioners.

7.The learned counsel appearing for the respondent submitted that the factory Tube investments of India Ltd., Unit: TI Metal Forming, situated at Rs.No.182 to 186, 188 to 192, 192/2 &3, Chennai – Thiruvallur High Road, Tiruninravur, Thiruvallur District, is a registered factory under



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the Factories Act, 1948 bearing registration Number TVR01836. The factory is involved in the manufacturing of Cold roll formed metal profiles.

The Joint Director of Industrial Safety and Health, Tiruvallur has inspected the factory on 06.07.2021 on the occurrence of a Serious accident to a worker named Mr.Arumugam (19 years), S/o.Mr.Arumugaswamy on 28.06.2021 while he was working on a 63 ton press machine and issued a show cause notice on 19.07.2021 to the Occupier and Manager for the contraventions noticed during the above inspection. The petitioners have submitted a reply letter to the show cause notice dated on 24.07.2021. based on the reply, re-inspection was conducted by Joint Director on 31.08.2021 and case proposal was submitted to the Additional Director for the contraventions mentioned in item No.1 and 2 of the show cause notice which were not rectified during re-inspection. Thus, it is submitted that the Joint Director has considered the reply furnished by the petitioners and the allegations put forth by the petitioners in this regard are untrue. Further intimation letter was issued by the Joint Director of Industrial Safety and Health, Tiruvallur on 01.09.2021 and case sanction order was



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received from the Additional Director on 14.09.2021 and subsequently case has been filed by the respondent/case filing authority for the aforesaid violations against the petitioners before the Hon'ble Chief Judicial Magistrate Court at Tiruvallur which has been numbered as C.C.No.270 of 2021. The sequence of the events are hereunder;

<i>S.No.</i>	<i>Events</i>	<i>Date</i>
1.	Date of accident	28.06.2021
2.	Date of Inspection	06.07.2021
3.	Date of issue of show cause notice	19.07.2021
4.	Reply letter from the petitioner to the show cause notice dated on 19.07.2021	24.07.2021
5.	Date of re-inspection based on the reply from the petitioner	31.08.2021
6.	Letter of communication from Joint Director of Industrial Safety and Health regarding initiation of prosecution	01.09.2021
7.	Case sanction memo issued by the Director of Industrial safety and health, Chennai.	14.09.2021
8.	Case filed before the court of Chief Judicial Magistrate, Tiruvallur	22.09.2021 (Date of Inspection 06.07.2021)



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WEB COPY 8. Further he submitted that the petitioner in Crl.O.P.No.23468 of 2021 is declared as the Manager as per Form No.2 (license application). As he is the nominated manager, he is the one responsible for ensuring the health, safety and welfare of the workers employed therein as per the provisions of the Factories Act, 1948 and he cannot deny the fact by claiming that he cannot be omni present in the factory. As per the provisions of the Factories Act, 1948, both the occupier and the manager are equally responsible for ensuring the safety, health and welfare of the workers employed in the factory. Hence, it is clear that the petitioners have violated the provisions of the Factories Act, 1948 and the Tamil Nadu Rules and thus pleaded to dismiss the criminal original petitions.

9. I have considered the matter in the light of the submissions made by the learned counsel for the petitioners as well as the learned Government Advocate (Crl.side) for the respondent.



10. On perusal of the records, it is seen that the petitioners are Manager and Occupier of Tube Investments of India Ltd.,. It is not disputed that the accident was happened on 28.06.2021, in that accident, worker namely Mr.Arumugam S/o Arumugaswamy, while working on a 63 ton Press, met with serious accident. Thereafter, on 06.07.2021, the inspection took place and noticed contraventions, in consequence, a show cause notice dated 19.07.2021 was issued to the Occupier and the Manager of the company during the above inspection. For that show cause notice, a reply has been given on 24.07.2021, thereafter, re-inspection was done on 31.08.2021 and found the same irregularities, hence, after obtaining sanction dated 14.09.2021, the impugned complaint has been filed on 22.09.2021. The main contention of the learned counsel for the petitioners is, a non consideration of the explanation of the petitioners submitted to the show cause notice, the complaint was silent on this aspect, it reflects the non application of mind in filing the criminal complaint. Hence, the criminal complaint is liable to be quashed. To support his argument, the learned counsel heavily relied upon the judgment of the Hon'ble Supreme Court in ***Dayle De'souza Vs. Government of India Through Deputy Chief***



Labour Commissioner (C) and another reported in ***2021 SCC OnLine***

1012. Further, the learned counsel also relied upon the judgment of this Court in ***Inspector of Factories, Vellore v. Showa Engineering Ltd., Shollinghur*** reported in ***2007 (4) LLN 828*** which was followed by this Court in another case in ***A.Goutam Datta V. The State*** reported in ***(2017) SCC OnLine Mad 18593***. The learned counsel further submitted that an appeal opportunity prescribed in terms of Section 107 of the Factories Act, 1948 was denied to the petitioners. Therefore, on this ground, the criminal complaints are liable to be quashed.

11. Further, on perusal of the impugned complaint, it is noticed that in the complaint, explanation submitted by the petitioners to the show cause notice is silent. Further, an opportunity of appeal to the petitioner under Section 107 of the Factories Act, 1948, was denied. Under these circumstances, applying the principles of the Hon'ble Supreme Court in ***Dayle De'souza Vs. Government of India Through Deputy Chief Labour Commissioner (C) and another*** reported in ***2021 SCC OnLine 1012*** and the principle stated by this Court in ***K.Masthan Rao V.***



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***State Rep., by Inspector of Factories* reported in 2014 (3) MLJ (Crl.)**

523, this criminal proceedings are liable to be quashed.

12.In view of the above fact and law, the criminal proceedings in C.C.Nos.270 & 269 of 2021 on the file of the Chief Judicial Magistrate Court, Tiruvallur against the petitioners are quashed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
sms
To

19.09.2023

- 1.The Tamil Nadu State
represented by,
Deputy Director of Industrial Safety
and Health, 6/11 & 6/12, II Floor,
Lal Bahadur Sastri Street,
Periyakuppam, Tiruvallur-602 001.
- 2.The Chief Judicial Magistrate Court,
Tiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM,J.



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Pre-delivery order made in
Crl.O.P.No.23468 & 2021 and
Crl.M.P.No.12871 of 2021
and
Crl.O.P.No.23500 of 2021 and
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19.09.2023