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Crl.R.C.No.1308 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.R.C.No.1308 of 2017

State Rep by
The Public Prosecutor,
High Court, Madras.
(Deputy Director of Industrial
Safety & Health, Tiruvarur)

... Petitioner

Vs.

K.R.Paneerselvam

... Respondent

PRAYER : Criminal Revision is filed under Sections 397 & 401 of Cr.P.C., to set aside the order passed by the District and Sessions Court, Tiruvarur in Crl.R.P.No.28 of 2015 in Crl.M.P.No.270 of 2015 in C.C.No.1 of 2015 on the file of the Chief Judicial Magistrate, Tiruvarur dated 18.11.2016.

For Petitioner	: Mr.R.Moorthi, Govt. Advocate
For Respondent	: Mr.Mohammed Saifullah, Legal Aid Counsel



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ORDER

This Criminal Revision has been filed to set aside the order passed by the District and Sessions Court, Tiruvarur in Crl.R.P.No.28 of 2015 in Crl.M.P.No.270 of 2015 in C.C.No.1 of 2015 on the file of the Chief Judicial Magistrate, Tiruvarur dated 18.11.2016.

2. Heard the learned Government Advocate for the petitioner and the learned counsel for the respondent.

3. The petitioner is the State who has filed a complaint against the respondent for the offences under Section 41 r/w Rule 61(E) and Section 105 r/w. Rule 13(C) and Section 92 of the Factories Act. The petitioner has given a private complaint on the allegation that the respondent is the owner of KRP Modern Rice Mill situated at Keezhathuraiyur, Keezhavidaaiyal, Tiruvarur District. On 14.02.2014, four loadmen were loading the rice bags in the lorry and when two loadmen by name Rajappa and Tamilvanan went to refresh themselves and took water from the nearby hand pump, they got electrocuted due to electrical short circuit and that resulted in the death of the above said two loadmen. On 17.02.2014, the petitioner authorities inspected the premises



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and came to know that the electrical motor pump was fixed on 13.02.2014, after recoiling and repairing. Since the main board did not have earth leakage circuit breaker, there was a leakage of electricity and that had caused the accident. On these allegations, a private complaint was filed and taken on file in C.C.No.1 of 2015. Subsequently, the respondent has filed a petition to discharge himself and the said petition was dismissed by the Trial Court. The said order was challenged by the respondent in Crl.R.P.No.28 of 2015 before the District and Sessions Judge, Tiruvarur and the said revision was allowed by reversing the dismissal order of the Trial Court. Now the petitioner had preferred this Criminal Revision by challenging the order of the District and Sessions Judge, Tiruvarur.

4. The learned Government Advocate (Crl.Side) appearing for the petitioner submitted that the learned Sessions Judge had chosen to allow the discharge petition on the observation that the prosecution of the respondent for the offences under the Factories Act would amount to double jeopardy because the prosecution has already been initiated against the respondent for the offence under Section 304 (A) of IPC and he was acquitted in the said case; the Supreme Court has held in the case of ***Sangeetaben Mahendrabhai***



Patel Vs.State of Gujarat reported in (2012) 7 SCC 621, that even though there might be some overlapping of facts even in both the cases under IPC and under Special Act, but the ingredients of the offence are entirely different; hence it is not barred to proceed under both the provisions.

5. The learned counsel for the respondent submitted that the occurrence had taken place on 14.02.2014 and the Inspector of Factories visited the premises on 17.02.2014; however, the complaint was filed on 29.05.2014 and again re-presented on 17.04.2015; as per Section 106 of the Factories Act, the petitioner ought to have initiated proceedings under the said Act within three months from the date of the knowledge of the violation; in the case in hand, the complaint was re-presented on 17.04.2015 after a delay of one year and the delay was not condoned by the Court below and hence the complaint itself is barred by limitation.

6. In pursuant to the order of this Court dated 02.01.2023, the records pertaining to C.C.No.1 of 2015 was called for and it was now produced before this Court. On perusal of the complaint filed by the petitioner, it is seen that the complaint was first presented on 15.05.2014 on the same day itself it was returned for certain lapses. Thereafter, the complaint was re-presented on



16.05.2014 but it got once again returned on 03.06.2014. Thereafter, the case was taken on file on 17.04.2015. The records does not disclose when was the complaint re-presented for the second time after complying the remarks. Even though if it is taken that the complaint was re-presented on 17.04.2015 and on which date it was taken on file, the fact remains that the complaint was first presented before the Court within a period of limitation.

7. Now the point which has been submitted by the learned counsel for the respondent is that initiating proceedings under Factories Act for the very same occurrence would fall under double jeopardy and it is right for the learned Sessions Judge to discharge the petitioner; before filing of this complaint, the proceedings have been initiated against the respondent for the offence under Section 304(A) of IPC; at the conclusion of the said proceedings, the Trial Court proceeded to find the accused not guilty and acquitted; there is no appeal preferred against the order of acquittal by the State; now the petitioner had preferred this criminal revision by stating that the proceedings under the Criminal Act is entirely different from that of the violation for which the present proceedings have been initiated under the Factories Act.



WEB COPY 8. The learned counsel for the respondent pointed out that conflicting views has been expressed in two cases with regard to the proposition of law as to double jeopardy and the same is pending. The learned counsel for the respondent also submitted that the age of the accused was 77 years in the year 2015 itself and now he is nearly 85 years. It is further submitted that the respondent had given explanation to the show cause issued to him but the petitioner did not apply his mind to the explanation and proceeded to file a private complaint in a mechanical manner.

9. The records would show that the respondent has submitted his explanation by stating that the labourers who had been transporting rice bags on the alleged date of occurrence has got nothing to do with the bore well or with the operation of the motor. The respondent had taken proper care to repair the motor and fixed it appropriately. There is no negligence and violations on the part of the respondent and the accident had caused for the reasons not known to him. The detailed explanation submitted by the respondent was not considered and the allegations made in the complaint does not make any reference about the explanation given by the respondent.



However the documents annexed with the complaint would show the show cause notice given to the respondent and his explanation.

10. On perusal of the affidavit filed by the respondent along with the petition for claiming discharge, the respondent has stated that even though there is no negligence on his part, he paid compensation on humanitarian ground to both the families of the deceased and the earth leaking circuit breaker has already been fixed. Without the above facility, the factory cannot be run. But the petitioner without noticing the same, had filed a private complaint. The respondent had filed the discharge petition by submitting various other factors. The learned Sessions Judge while considering the same, had chosen to take a stand about the double jeopardy.

11. Since the private complaint filed by the petitioner would show that there is no application of mind and the essential facts have been overlooked before filing the prosecution and those contradictions are apparent on the face of the records, I feel that there is no reason to interfere with the order of the learned Sessions Judge, even though the reason for coming to the said conclusion is different.



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R.N.MANJULA, J.

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12. In view of the above stated reasons, this Criminal Revision is dismissed and the order passed by the District and Sessions Court, Tiruvarur in Crl.R.P.No.28 of 2015 in Crl.M.P.No.270 of 2015 in C.C.No.1 of 2015 on the file of the Chief Judicial Magistrate, Tiruvarur dated 18.11.2016. is confirmed.

Index: Yes/No

02.02.2023

Speaking / Non Speaking Order

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To

1.The District and Sessions Court, Tiruvarur.

2.The Chief Judicial Magistrate, Tiruvarur.

3.The Public Prosecutor,
High Court, Madras.

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