



CRL.O.P.Nos.24719crlop2019 batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.01.2023

CORAM:

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

Crl.O.P.Nos.24719, 24723, 24728, 24804 & 24734 of 2019
and
Crl.MP.Nos.13144, 13146, 13160, 13162, 13155, 13157, 13149,
13151,13222 & 13221 of 2019

T.Ravikumar
Manager,
M/s.Vaigai MBR Agro
Industries Pvt Ltd.

.. Petitioner/Accused in
Crl.OP.Nos.24719, 24734 & 24728
/2019

S.Mani
Proprietor of
M/s.Vaigai MBR Agro
Industries Pvt Ltd.

.. Petitioner/Accused in
Crl.OP.Nos.24723 & 24804/2019

Versus

The State by
The Inspector of Factories,
Office of the Inspector of Factories,
Gokulam Salai,
Fairland, Salem-16.

... Respondent/complainant in all Crl.OPs



CRL.O.P.Nos.24719crlop2019 batch

(i)Criminal Original Petitions in Crl.OP.Nos. 24719, 24734 & 24728 /2019 filed under Section 482 of the Code of Criminal Procedure to call for the records relating in C.C.Nos.208, 207 & 209 of 2018 respectively on the file of the learned Chief Judicial Magistrate, Namakkal and quash the same.

(ii)Criminal Original Petitions in Crl.OP.Nos. 24723 & 24804 /2019 filed under Section 482 of the Code of Criminal Procedure to call for the records relating in C.C.Nos.206 & 205 of 2018 respectively on the file of the learned Chief Judicial Magistrate, Namakkal and quash the same.

In all Crl.OPs.,
For Petitioner : Mr. V.Lakshmi Narayanan for
M/S.M.Palanivel
For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

COMMON ORDER

These Criminal Original Petitions filed to quash the proceedings in C.C.Nos.208, 207 & 209 of 2018 and C.C.Nos.206 & 205 of 2018 respectively, pending on the file of the learned Chief Judicial Magistrate, Namakkal, against the respective petitioner.

2.The petitioner in Crl.OP.Nos.24723 & 24804 /2019 is the occupier and the sole accused in CC.Nos.205 and 206 of 2018 respectively. The



petitioner in 24719, 24734 & 24728 /2019 one T.Ravi Kumar who is the sole accused in CC.Nos.207, 208 & 209 of 2018 respectively.

3.The name of the company is M/S.Vaigai MPR Agro Industries Pvt. Ltd, which involved in manufacturing rice bran oil. On 06.05.2019, a fire accident occurred in the industry in which 17 workers died and two workmen got injured. On 25.03.2010, five complaints have been filed against the occupier and the manager for violating the norms prescribed under the Factories Act. Subsequent to the accident, an inspection was done by the Inspector of Factories on 07.05.2019. During the said inspection and investigation, it is found that there was failure to provide and monitor the safety norms as prescribed under the Factories Act. After giving a show cause notice and getting the explanation from the accused, on 25.03.2010 the complaints were given by alleging that the factory had involved in manufacturing rice bran oil through solvent extraction method by using hazardous organic chemical by name Hexane as solvent. The said chemical should never to be allowed to leak in the air and as per the Indian Standard, its lower explosive limit is 1.1% in the air. Hexane would become vapor at 68 degree Celsius and it catches fire when its level exceeds 1.1 % in air in



the presence of an ignition source; in the absence of adequate ventilation the vapor gets accumulated and if its level exceeded 1.5% in air, it forms a vapor cloud and spread towards ground. This is because of its density is higher than that of air. This would cause spontaneous explosion in the presence of any form ignition source. The petitioners started the plant only 06.05.2009 and factory started the production activities from 04.05.2019.

3.1. The stacking of raw rice bran packs were continued during the above period and consequently the stocks of rice bran temporarily got raised blocking the adequate ventilation in the hall and it caused a ventilation failure. Due to ventilation failure, on 06.05.2009 at 9.00am there occurred a spontaneous vapor cloud followed by fire. The Hexane source was caught fire and exploded due to the electrical spark from the choke of a fluorescent lamp installed in the hall. As the explosion was spontaneous and its temperature was higher than the normal fire it broke out faster and engulfed the entire hall and due to which 19 workers who were working at that instant got caught in the fire and that resulted in the death of 17 workers and two workers sustaining severe burn injuries. As stated already, subsequent to the occurrence the inspection was made by the authorities



concerned, on 07.05.2009 at 10.00 am. The inspection revealed certain violations and due to which the petitioners were prosecuted through five different private complaints for the offences:

Sl.No	CrI.OP details	C.C. deatails	Offences
1	24719/2019	207/2018	Sec.41 of the Factories Act, 1948 and Rule 61E of the Tamil Nadu Factories Rules,1950; Sec.87 of the Factories Act, 1948 and Rule 95 of the Tamil Nadu Factories Rules,1950, Schedule XXIII 3 (a), Sec.878 of the Factories Act, 1948 and Rule 95 of the Tamil Nadu Factories Rules,1950 and Schedule XXIII 16
2	24723/2019	205/2018	Sec.87 of the Factories Act, 1948 Rule 95 of the Tamil Nadu Factories Rules,1950 and 6(b) Schedule XXIII
3	24728/2019	209/2018	Sec.87 of the Factories Act, 1948 Rule 95 of the Tamil Nadu Factories Rules,1950 and 6(b) Schedule XXIII and Sec.88 of the Factories Act, 1948 and Rule 96 of the Tamil Nadu Factories Rules,1950
4	24804/2019	206/2018	Sec.41 F of the Factories Act, 1948 and Rule 61G of the Tamil Nadu Factories Rules, 1950; Sec.38 of the Factories Act, 1948 and Rule 61(i) (evidence) of the Tamil Nadu Factories Rules, 1950 and Sec.41 of the Factories Act 1948 and Rule 61F of the Tamil Nadu Factories Rules, 1950
5	24734/2019	208/2018	Sec.41 F of the Factories Act, 1948 and Rule 61G of the Tamil Nadu Factories Rules, 1950; Sec.38 of the Factories Act, 1948 and Rule 61(i) (evidence) of the Tamil Nadu Factories Rules, 1950 and Sec.41 of the Factories Act 1948 and Rule 61F of the Tamil Nadu Factories Rules, 1950

4.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

5.The learned counsel for the petitioners submitted that as per Sec.106 of the Factories Act, no court shall take cognizance of any offence punishable under the Act, unless the complainant is made within three months from the date of the alleged commission of offence or from the date which the commission of offence came to the knowledge of the authority; however if the offences relate to disobedience of any written order, the



complaint should be made within six months from the date on which the offence is said to have been committed; in case of continuing offences the period of limitation shall be continuing during which the violations continues; since the alleged violation was found by the authorities concerned on 07.05.2009, the complaint ought to have been filed within three months from 07.05.2009; since the complaint has been first presented on 25.03.2010 and later represented on 25.02.2010, it is barred by limitation; even that complaint which was filed on 25.03.2010 was returned for certain defects but it was represented by the respondent after eight years; the delay was neither explained nor condoned and the order of the cognizance also does not disclose anything about the condonation of the delay; the victims and the injured workman have been compensated adequately in proceedings filed before the Workmen Compensation Tribunal, Salem. The accident had occurred due to an electrical spark which was not within the control of the petitioners. The occupier is aged at 84 years now and there is no purpose in keeping the case pending and hence, in the interest of the justice the complaints should be quashed.



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6. A detailed counter affidavit is filed on behalf of the respondent today and the learned Government Advocate (crl.side) appearing for the respondent and it is submitted that in the worst fire accident 17 lives were lost and two got injured; the complaint has been presented within the three months on 04.08.2009 itself but the delay in processing was due to the inaction on the part of the court and hence, it cannot be claimed that the complaint is barred by limitation.

7. There is no quarrel on the point that as per Sec.106 of the Factories Act, the complaint should be filed within three months from the date of the commission of the offence. If the offence of disobedience of any order which already issued, the limitation would extend to 6 months. In case of continuing offence, the period of limitation will get extended at every point of time during which the commission of offence continuous. For the sake of convenience Sec.106 of the factories act is extracted hereunder:

“Section 106 in The Factories Act, 1948

106. Limitation of prosecutions.—No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector: Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have



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been committed. 1[Explanation.—For the purposes of this section,—

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.] STATE AMENDMENT Uttar Pradesh. —After section 106, insert the following section.— "106A. Compounding in offences.—The Inspector may, subject to any general or special order of the State Government in this behalf, compound any offences punishable under this Act with fine only, and committed for the first time, either before or after the institution of the prosecution, on realisation of such amount of composition fee as he thinks fit not exceeding the maximum amount of fine fixed for the offence; and where the offence is so compounded,—

(i) before the institution of the prosecution, the offender shall not be liable to prosecution, for such offence and shall, if in custody, be set at liberty;

(ii) after the institution of the prosecution the composition shall amount to acquittal of the offender."

8. As per the contention of the learned government advocate crl.side for the respondent it is stated that the private complaint has been presented as early as on 4.8.2009 and hence it is not barred by limitation. The certified xerox copy of the complaint was produced on the side of the petitioners. In



the said complaint it does not disclose any seal of the Court which bears the date 04.08.2009.

9.The learned Government Advocate (crl.side) for the respondent attracted the attention of this Court to some endorsement made in the scanned copy of the register maintained by the first respondent to show that in their register there is a seal with date 04.08.2009. It is seen that the complaint was presented before the Chief Judicial Magistrate, Namakkal. The seal shown in the register of the respondent does not disclose the name of the parties. Without the material details, it cannot be presumed that the seal has got any relevancy to the presentation of this complaint. Further the said register is maintained by the respondent themselves and it is only self serving.

10. No doubt, the signature of the inspector of factories as seen in the complaint shows the date as 31.07.2009. However, without any corresponding seal of the court in which the complaint was presented, it cannot be presumed that the complaint was filed within the period of limitation. Even if the compliant might have been ready at the respondent's



office, it was presented before the court only at a later date, during which time the limitation got expired.

12.The complaint appears to have been returned on 25.03.2010 for production of original documents and the opinion of the Assistant Director of Prosecution and some other documents. It was represented on 06.12.2018 which is after eight years.

11.The learned Government Advocate (crl.side) submitted that the delay on the part of the Court cannot be construed as the delay on the part of the complainant and it has to be taken that the complaint has been filed within time. Without any authentication to show that the complaint was filed on 04.08.2009, it cannot be claimed that the complaint was presented well within time but the Court had taken it for consideration only in the year 2010. Strangely, even the court while returning the complaint on 25.03.2010 did not make any endorsement as to the point of limitation and raised a question about its maintainability.

12.As of now with available materials it can only be concluded that the complaint was not presented within the period of limitation. Even for the



sake of argument if it is taken that the complaint was first presented within the period of limitation and the delay was only in representing the same, it has to be seen whether the delay had defeated the interest of justice. For a complaint which was returned in the year 2010, if representation is made only in the year 2018, after a lapse of eight years, there is every possibility for the loss of essential evidence and the memory of the witnesses would also fade. The very object of the speedy trial is to secure the evidence before it is perished or lost from the memory of the human mind. If the complaint is presented after an inordinate delay of eight years, the damage it could cause on the evidence cannot be denied.

13.The learned counsel for the petitioners submitted that now the factory is closed and it does not manufacture any product. The premises was put to disuse for several years. So, it is arduous to have any idea about how the premises could have been appeared at the time of the occurrence. Admittedly the offence in question it is not a continuing one because subsequent to the occurrence the factory was closed.

14.Though the delay cannot be the only ground on which the proceedings could be quashed, if the delay frustrates the very object of the



prosecution and the materials which would be relevant for the purpose of the case is lost due to delay, there is no point in putting the accused to undergo the ordeal of trial. In a serious case of this nature which had resulted in the loss of 17 lives of workmen, the prosecuting agency ought to have been more serious and filed the criminal complaint with all seriousness. The conduct of the respondent would also show that they had also complemented the delay and thereby diluted the seriousness.

15. The learned Government Advocate(crl.side) for the respondent further submitted that it was not the fault of the officers but it was due to the continuing vacancy of the post of Chief Judicial Magistrate, Namakkal. Such a generalized submission cannot be made because of the sole reason that no Court can be left without any in-charge officer to take care of the matters to attend any immediate and serious eventualities or barred by limitation. So the reason stated by the respondent now appears to be imaginary. Since the delay that had occurred in these cases had frustrated the whole exercise of the prosecution, nothing is going to serve if the accused are subjected to trial.

In view of the above stated reasons, these Criminal Original Petitions



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are **allowed**. The proceedings in C.C.Nos.208, 207 & 209 of 2018 and C.C.Nos.206 & 205 of 2018, pending on the file of the learned Chief Judicial Magistrate, Namakkal, against the respective petitioner are quashed. Consequently, connected miscellaneous petitions are closed.

23.01.2023

jrs

Index: Yes/No

Internet: Yes/No

Speaking :Yes /No

Neutral :Yes /No

To:

1.The Inspector of Factories,
Office of the Inspector of Factories,
Gokulam Salai,
Fairland, Salem-16.

2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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