



Crl.O.P.Nos.22824 and 22825 of 2023
and
Crl.M.P.Nos.15974,15975,15977 and 15979 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.10.2023

Pronounced on : 30.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.22824 and 22825 of 2023

and

Crl.M.P.Nos.15974,15975,15977 and 15979 of 2023

Crl.O.P.No.22824 of 2023:

K.N.Radhakrishnan,

Son of Mr.K.S.Narayanan,

Aged about 56 years,

Occupier TVS Motor Company Ltd.,

Survey No.41,42,43,44/1,44/2,

44/3,45/1,45/2,46,50/1,521B,

1A1, 1A2, 1A3,48,49/1,49/2,

53,56,57,65,Post Box No.4,

Harita, Hosur,Krishnagiri District 635 109.

.. Petitioner/Accused

/versus/

Deputy Director,

Department of Industrial Safety and

Health, Hosur 635 109.

.. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.462 of 2023, pending on the file of the learned Chief Judicial Magistrate, Krishnagiri, and quash the same.



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For Petitioner :Mr.A.Ramesh, Senior Counsel for
Mr.R.S.Diwaagar for
M/s Vivrti Law

For Respondent :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

Crl.O.P.No.22825 of 2023:

Jason Samuel,
Son of Mr.Justin Sugunaraj,
Aged about 59 years,
Manager, TVS Motor Company Ltd.,
Survey No.41,42,43,44/1,44/2,
44/3,45/1,45/2,46,50/1,52 1B,
1A1, 1A2, 1A3,48,49/1,49/2,
53,56,57,65,Post Box No.4,
Harita, Hosur,Krishnagiri District 635 109. .. Petitioner/Accused

/versus/

Deputy Director,
Department of Industrial Safety and
Health, Hosur 635 109. .. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.461 of 2023, pending on the file of the learned Chief Judicial Magistrate, Krishnagiri, and quash the same.

For Petitioner :Mr.A.Ramesh, Senior Counsel for
Mr.R.S.Diwaagar for
M/s Vivrti Law

For Respondent :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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COMMON ORDER

These two criminal original petitions under Section 482 of Cr.P.C are filed by the Occupier and the Manager of TVS Motor Company Ltd, Hosur, Tamil Nadu to quash the criminal prosecution launched against them by the Deputy Director, Department of Industrial Safety and Health for violation of the provisions under the Factories Act and Rules framed thereunder.

2. In the Manufacturing plant of Two wheelers and Three wheelers of TVS, Hosur, two accident occurred within a span of 15 days. First on 22/05/2023 at about 8.00 a.m, a worker by name Balachander in plant-I of TVS Motor Company Ltd, (KNG 00090) engaged in shifting material through material Lift from the ground floor to 1st floor. While doing the material movement, the double door material Lift after moving 2 feet upward stopped abruptly. At that time, another worker by name Vijay Kumar, aged 21 came and inspecting the lift found the welding of the strips holding the doors given way due to damage. Through the gap between the two doors, he inserted his bare hand and attempted to fix the damaged latch. Suddenly, the lift doors closed and the lift started moving upward. The right hand of Vijay Kumar caught



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between two doors and he sustained wrist fracture. The cause for the accident was due to the failure of the occupier/Manger to provide safety gears to the workers while engaging them in hazardous activity and omission to provide adequate training in industrial safety.

3. The next accident occurred on 08/06/2023 in the first shift of the day in plant - II, a trainee worker by name Mahesh aged 22 was engaged in mezzanine floor to unload plastic parts from the material trolley. After unloading at about 10:45 a.m when he was moving the empty trolley towards the lift, he tried to pull the chain of the trolley on the right side without wearing hand gloves. When the trolley moved with heavy force, Mahesh tried to stop the trolley with his bare hands . In the said attempt, his left hand ring finger caught in between the trolley wall and the handle chain. When tried to retrieve his finger, his left hand ring finger to edge got crushed. The trolley was not fixed with push and pull handle bar. The said employee was not provided with adequate training regarding safety measures and was not provided with hand gloves.



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4. Both these accidents were intimated to the Department by the Management in Form-18. The Deputy Director of Department of Industrial Safety and Health caused inspection of the industries on 16/06/2023. She found various violations and omissions of safety measures, which are mandated in Factories Act and Rules and the same was caused for these two accidents. Hence, show cause notices dated 23/06/2023 was issued by registered post to the petitioners being the Occupier and Manager of the factory. On 04/07/2023 further proceedings was issued by Joint Director intimating that no reply for the show cause notice received and the defects mentioned in the show cause notice not rectified. Therefore, the department is going to proceed further against them. Thereafter the Joint Director, Industrial Safety and Health, submitted an proposal to the Additional Director, Industrial Safety and health, Salem for initiating criminal action against the petitioners under Section 7 A(1)(2) and Section 41 of Factories Act 1948 r/w Rule 61 E and 61 F of the Tamilnadu Factories Rules 1950. On receiving the sanction order dated 11/08/2023 to prosecute, the complaint laid before the Chief Judicial Magistrate, Krishnagiri on 14/08/2023 and the same was taken on file as:-



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(1) C.C.No.461/2023 against Mr. Jason Samuel, the Manager of TVS Motor Company Ltd, Hosur (petitioner in Crl.O.P.No:22825/2023) for offences under :-

(i) Sections 41 r/w Rule 61 E and 61 F and

(ii) u/s 41 r/w 61 E r/w 61 F and r/w 61-0 of Factories Act and T.N.

Factories Rules.

(2) C.C.No.462/2023 against Mr. K.N.Radhakrishnan, Occupier of TVS Mort Company Ltd, Hosur (petitioner in Crl.O.P.No.22824/2023) for offences under:-

(i) Sections 7A (1)(2) and u/s 41 r/w Rules 61 E r/w 61 F and

(ii)Section 7A (1)(2) and 41 r/w Rules 61 E, u/s 61 F and 61-0 of

Factories Act and T.N Factories Rules..

5. Challenging the criminal prosecution against the Manager and the Occupier, these two petitions are filed.

6. The learned Senior Counsel for the petitioners submitted that the complainant failed to consider the reply to the show cause notice which was



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handed over in person to the complainant on 13/07/2023 through hand delivery.

In the sanction to prosecute, there is no reference about the show cause notice and the reply given by the petitioners. Likewise even there is reference about the show cause notice or the reply given by the petitioners. Thus, the non application of mind is well exposed. The employee by name is Vijay Kumar got injured while he unauthorisedly attempted to repair a lift, which was stuck in the middle of its movement. The said lift had been in use for more than two decades. The lift is periodically maintained and service by the factory. There was no complaint or recommendation for modification in relation to the lift received so far. Suppressing the reply to the show cause notice, on presumption that the fault in the lift not rectified, prosecution has been launched. The proceedings letter dated 04/07/2023 not received by the petitioners and the complainant has not enclosed the postal acknowledgement for the receipt of the intimation letter.

7. The petitioners have provided the dates and events of the two accidents occurred in their factory premises and challenges the prosecution of its Manager and Occupier in C.C.Nos.461/2023 and 462 of 2023 respectively.



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They contend that the factory had been constructed with utmost safety and rule compliance. The factory is functioning successfully for more than three and half decades. It never compromised with the safety standards. The allegations in the complaints are very vague. Soon after the incidents, intimation about the accident was sent to the authorities as per Form-18. The inspection was conducted belatedly by the Deputy Director of Industries Safety and Health on 16/06/2023. The Joint Director before launching the prosecution ought to have considered the reply dated 27/06/2023 to the show cause notice. He had arrived at the decision to take further action on a wrong presumption that the petitioners had not rectified the defects mentioned in the show cause notice. Non consideration of the bonafides of reply to the show cause notice vitiate the prosecution for non application of mind and bad for want of full disclosure as laid by this Court in ***K.Masthan Rao –vs-State, Rep. by Inspector of factories, Vellore*** reported in [2014(3) MWN (Cr.) 86] followed by ***Dr.Vinoth Nowal and Anr –vs- State of Tamilnadu; Ness Wadia –vs- St of Tamilnadu; L.Ganesh –vs- State of Tamilnadu; K.Paramasivam and Kanish Malik v. Deputy Director, Industrial Safety and Health(incharge), Inspector of Factories, Villupuram; N.Ramanathan –vs- Deputy Director –I, Industries Safety and Health, Guindy; Toshihiko Sano and Takei Koji –vs- State Rep by***



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Deputy Director, Industries Safety and Health, Sriperumbadur. Therefore, the complaint is liable to be quashed.

8. Further it is contended that, the proceedings dated 04/07/2023 is a non-speaking and non-reasoned order. It is contrary to the judgement of the Supreme Court in *State of Orissa –vs- Dhani Ram Lokur*, reported in [2004 (5) SCC 568] and followed by this Court in *Jason Samuel –vs- State, Rep by Deputy Director, Industries Safety and Health, Hosur*. According to the Senior Counsel representing the petitioners, reason is the heart beat of every conclusion, and without the same it becomes lifeless. Right to reason is an indispensable part of sound judicial system. The sanction order which is silent about the reply indicates that the sanction to prosecute obtained without placing the reply of the petitioners. Therefore for non application of mind by the sanctioning authority, the complaint is liable to be quashed.

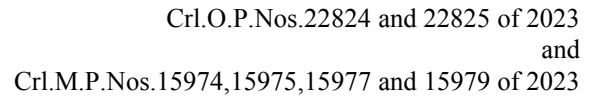
9. The learned Senior Counsel for the petitioners also submitted that, the note of the trial Court for taking cognizance apparently prepared by the clerical staff of the Court and the trial Court without applying its mind



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mechanically signed.

10. Per contra, the learned Government Advocate (criminal side) representing the Department submitted that the inspection conducted by the Deputy director on 16/06/2023 in the factory of the petitioners noted two major accidents in the premises due to failure on the part of the Manager and Occupier of the factory to provide safety gauges, training and failure to maintain the material Lift and Trolley. Based on the inspection report, show cause notice was sent to the petitioners on 23/06/2023, both to the Occupier and the Manager. The show cause notice was received by the occupier Radhakrishnan on 27/06/2023. The petitioner replied to the show cause notice by hand delivery on 13/07/2023 at Tapal Section. Since the reply to the show cause notice not received within 7 days time as prescribed under the Rule. The proceedings dated 04/07/2023 was issued by Joint Director intimating the occupier and the manager that the defects pointed out in the show cause notice not been rectified and therefore, for their lapse of not providing safety measures has lead to two accidents they will proceeded further.



12. Likewise, the judgment of the Hon'ble Apex Court rendered in *State of Orissa –vs- Dhaniram Luhar* also factually different from the case in hand. The accidents are admitted by the petitioners. The first accident which caused fractured injury to Vijaykumar occurred on 22/05/2023 and it was intimated to the authorities on the next day. The second accident which caused mutilation of left hand ring finger tip of Mahesh occurred on 08/06/2023 and the accident was intimated on the next day. Both the accidents occurred within



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the factory premise while the employee was discharging his duty. It involve the men and machines installed in the factory. From the facts disclosed by the petitioners in their intimation under Form 18 and the inspection report, the sanction to prosecute been granted after applying the mind and on full satisfaction of the sanctioning authority. The non existing reply introduced belatedly without any proof of delivery cannot be a ground for quashing the criminal prosecution for violation of the provisions of Factories Act.

13. Heard the counsels. Records perused. Judgements cited considered.

14. Two accidents in the factory premise occurred causing greivous injuries to two employees of the petitioners factory. The date of accidents are 22/05/2023 and 08/06/2023. The inspection of the factory conducted by the Assistant Director on 16/06/2023. Show cause notice issued on 23/06/2023. The show cause notice received by the petitioners on 27.06.2023 as per the Rules and the show cause notice, the petitioners expected to give their reply within 7 days from the date of receipt of the notice. However, the petitioners



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claim that for the show cause notice they delivered on hand their reply on 13/07/2023. Since reply not received within the time prescribed, the intimation for further proceedings given to the petitioners on 04/07/2023, at least after receipt of this intimation, the petitioners should have responded by reiterating their earlier reply as we find in the case of *Mastan -vs- State* (cited supra). It is contended by the petitioners that they did not receive the intimation dated 04.07.2023. The petitioners after receipt of summons in the criminal case had come before the Court stating that their reply to the show cause notice though sent after 7 days, it had reached the respondent before lodging the complaint. Therefore, following *Mastan* case, the complaint must be quashed.

15. For clarity, Paragraph 28 and 29 of judgment of ***K.Masthan Rao -vs- State, rep by Inspector of Factories, First Circle, Vellore reported in [2014(3)MWN (Cr.)86]*** are extracted below to understand how the facts in the *Mastan* case is slightly different from the fact of the case in hand.

“28. In terms of Rule 102 of the Tamil Nadu Factories 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



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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, 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 20.6.2012 and filed before the Court on 21.6.2012, presumably not in full form and appears to have been returned and re-presented on 30.9.2013. In the intergnum, the Petitioner has been given the replies dated 16.4.2012 and 31.5.2012. That apart, the further explanations dated 12.7.2012 and 28.9.2012, were submitted much prior to the date on which, the Complaint was re-presented i.e., on 30.9.2013. There is no explanation forthcoming as to why the Complaint which was presented on 21.7.2012 was returned and as to why the Complaint was re-presented 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.”



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18. The strict interpretation of the statute if applied, the belated reply of the petitioners need not be taken into consideration. However, being a criminal prosecution, in the interest of justice, the belated reply if given within the reasonable time and with sufficient cause, same can be taken into account for consideration, before granting sanction to prosecute. In this case, the reply is dated 27.06.2023 received by the respondent at the Tapal Section on 13.07.2023. It is true that there is no whisper about it in the sanction order. At the same time, in the reply to the show cause notice though dated 27.06.2023 but delivered at the office of the respondent in person on 13.07.2023, does not whisper the reason for delay in submission of the reply.

19. In the said facts and circumstances, the genuine response shown by the Deputy Chief Engineer/Occupier, Southern Railway in *Masthan Rao case* cannot be equated with the unexplained delayed response by the Occupier/Manager in the case in hand. The implementation of the provisions of the Factories Act are time bound. When only three months time is granted for the department to take penal action from the date of occurrence, the



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Occupier/Manager cannot take their own time to reply beyond the prescribed 7 days limitation, without assigning any reason for the delay. Particularly, the date in the reply is shown as 27.06.2023, but handed over in person only on 13.07.2023 appears to be a calculated delay keeping in mind the limitation prescribed under Section 106 of the Factories Act to take cognizance of the offence.

20. The Department on expiry of 7th day (i.e. on 04.07.2023) had intimated the Occupier/Manager that they are going to proceed against them and had laid the complaint after getting sanction within the time prescribed under Section 106 of the Factories Act.

21. For the said reasons, **these Criminal Original Petitions are dismissed.** Consequently, connected Miscellaneous Petitions are closed.

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Index:yes
Speaking order/non speaking order
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To:

- 1.The Chief Judicial Magistrate, Krishnagiri.
- 2.The Deputy Director, Department of Industrial Safety and Health, Hosur 635 109.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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delivery common order made in
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