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Crl.OP.Nos.2764 & 2765 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

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

Crl.OP.Nos.2764 & 2765 of 2017 and
Crl.MP.Nos.1962 to 1965 of 2017

Crl.OP.No.2764 of 2017

1.Syed Sajjid Ali
2.V.Joseph Wilson

... Petitioners

Vs.

State, rep. By R.B.Gnanavelou,
Inspector of Factories,
Office of the Chief Inspector of
Factories & Boilers,
Gandhi Nagar,
Puducherry 605 009

... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records culminated in STC.No.5 of 2017 on the file of the Chief Judicial Magistrate, Puducherry and to quash the same.

For Petitioners

: Mr.R.Prabhakaran

For Respondent

: Mr.K.S.Mohandass,
Public Prosecutor(Pondy)



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Crl.OP.No.2765 of 2017

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State, rep. By R.B.Gnanavelou,
Inspector of Factories,
Office of the Chief Inspector of
Factories & Boilers,
Gandhi Nagar,
Puducherry 605 009

... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records culminated in STC.No.4 of 2017 on the file of the Chief Judicial Magistrate, Puducherry and to quash the same.

For Petitioners : Mr.R.Prabhakaran

For Respondent : Mr.K.S.Mohandass,
Public Prosecutor(Pondy)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in STC.Nos.4 & 5 of 2017 on the file of the Chief Judicial Magistrate, Puducherry taken cognizance for the offence punishable under Section 92 of Factories Act, 1948 as against the petitioners.

2. The petitioners are the accused in STC.Nos.4 & 5 of 2017 on the



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file of the Chief Judicial Magistrate, Puducherry for the contravention of Sections 28(1)(e), 28(2)(a) & 28(2)(c) of the Factories Act and for the contravention of Section 7A(2)(c) of the Factories Act (hereinafter called as 'the Act) respectively. The crux of both the complaints is that the petitioners are the Occupier and the Manager of M/s.Eaton Power Quality Systems Limited. It is a factory which is registered and licenced under Factories Act, 1948. Based on the accident report from the management, the premises was inspected on 25.10.2016 by the respondent and conducted enquiry. During the enquiry, it was found that on 24.10.2016 at about 12.45 p.m., the deceased who was engaged in the job of supplying food had loaded the material lift used for lifting food to the first floor of the canteen building. It was reported that after loading food, he had climbed up the stairs and tried to forcibly open the gates of the lift and in the said process, he slipped and fell along with the fast moving lift, thereby he succumbed to head injuries. The petitioners failed to take adequate and reasonable measure to ensure safety of the workers which resulted in the fatal accident causing death to the worker.

3. The learned counsel for the petitioners would submit that



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M/s.Senthil Associates is the competent person for carrying out examination,

inspection and certification for buildings, dangerous machinery, lifts and hoists,

lifting machines and lifting tackles etc. They carried out inspection in respect of

cargo lift at the canteen and found satisfactory thereby issued fitness certificate

dated 09.08.2016. The accident happened on 24.10.2016. As per Section 28 of

the Factories Act, 1948, deals with hoist and lifts. Accordingly, when a person

who appointed to carry out inspection and to certify by fitness certificate, no

fault can be attributed upon the petitioners. The goods lift should not be used

as passenger lift at any time. Admittedly, the lift which is located in the canteen

meant for goods. It has both electrical and mechanical interlocks in the ground

floor and the first floor. The unfortunate accident happened because the victim

opened lift gate forcibly by by-passing and tampering with the interlock and

entered inside the gate where no person is allowed to enter. In fact, there is

safety alert signage displayed in the lift that no person is allowed to travel in

the lift. It is designed for carrying material only and not for carrying persons.

Further, the victim was not an employee / worker of the petitioners' company.

He was a canteen food supplier. He was covered under the mandatory periodic

training. In fact, he was trained to operate the material lift to open gate, load

the food vessels and close the gate, press the forward push button and he was

trained to open the gate in the first floor, unload the food vessels, close the gate



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and press the reverse push button. Therefore, initiation of prosecution as against the petitioners cannot be sustained since they had not committed any offence as alleged by the respondent. That apart, already for the untoward incident, a criminal case was registered in crime No.49 of 2016 and the same has culminated for criminal trial in CC.No.92 of 2018 on the file of the Judicial Magistrate, Puducherry and it is pending for trial. Therefore, initiation of prosecution under the Factories Act is nothing but double jeopardy and it cannot be sustained.

4. He further submitted that under Chapter II of the Factories Act, Section 8 says that under the title 'Inspectors' wherein the State Government by notification in the official Gazette shall appoint Inspectors and more specifically Sub Section 4 of Section 8 indicates that the District Magistrate shall be an Inspector for his district i.e. normally in the rank of District Collector. Under Sub Section 2A of Section 8, the State Government may by notification, appoint Additional Chief Inspectors, Joint Chief Inspectors and Deputy Inspector and exercise such of the powers of the Chief Inspector as may be specified in such notification. Accordingly, Section 105 of the Act prescribes that no court shall take cognizance of any offence under this Act, except on complaint by, or with the previous sanction in writing of, an Inspector.



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Therefore, the respondent must obtain an approval for sanction for prosecution from the Chief Inspector or Joint Chief Inspector for Factories by furnishing materials including the explanation submitted by the petitioners. Unfortunately, in the case on hand, after issuance of show cause notice, the petitioners submitted a detailed explanation. However, before according sanction for prosecution, the Joint Chief Inspector of Factories without even applying its mind, mechanically accorded sanction without considering the explanation submitted by the petitioners. In fact, the respondent failed to forward the explanations submitted by the petitioners. Therefore, the entire proceedings initiated by the respondent is nothing but clear abuse of process of law.

5. He further submitted that as per Section 2(1) of the Factories Act, 'worker' means a person (employed, directly or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not) in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process. Therefore, it applies only to the persons employed in a factory or involved in any of the manufacturing activities. In the case on hand, the deceased was being a food supplier to the factory, therefore



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he was not employed or involved in any of the manufacturing process. The untoward incident cannot be brought within the purview of the Factories Act.

6. The respondent filed counter and the learned Public Prosecutor(Pondy) appearing for the respondent submitted that the petitioners are arrayed as A1 and A2. They are the Occupier and the Manager of M/s.Eaton Power Quality System Limited. On 24.10.2016, the deceased had loaded material in the lift to the first floor. Since it was not properly maintained, while opening the lift, he fell down and died. On enquiry, the respondent found the following violations:

(i) Occupier has failed to provide the material lift carrying food with gates fitted with interlocking devices such that the gate does not open except when the cargo is in the landing and Cage cannot be moved unless the gate is closed which has resulted in the accident leading to the death of the worker Karunamoorthy which is violation of sec. 28(1)(e) of the Factories Act 1948;

(ii) Occupier has failed to provide material lift carrying food with atleast 2 ropes or chains separately connected with the cage and balance weight and so that each rope with attachment are capable of carrying the whole weight of the



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cage together with maximum load which is in violation of sec.

28(2) (a) Factories Act 1948.

(iii) Occupier has failed to provide material lift carrying food with efficient automatic device to prevent the cage from over running which is in violation of sec. 28(2)(c) of the Factories Act.

(iv) Occupier has not provided such information, inspection, training and supervision as are necessary while operating material lift which is in violation of sec. 7 A (2) (c) of the Factories Act 1948.

7. Therefore, they were issued show cause notice dated 03.11.2016. Though they submitted explanation, the same was not satisfactory and accorded sanction to prosecute the petitioners. The accident did not occur due to the deceased travelling as a passenger. It was occurred only for the reason that the outer gate of the lift opened because of improper maintenance of the lift. They used only single rope instead of double rope for the lift. Though already FIR was registered for the untoward incident and they are facing trial, it is not an impediment to prosecute them under the Factories Act. In fact, they admitted their liability and paid a sum of Rs.7,88,240/- as compensation to the victim's family. That apart, the grounds raised by the petitioners are mixed question of facts and they can be considered only before the trial court during



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the trial.

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8. Heard, the learned counsel appearing on either side.

9. The petitioners are arrayed as A1 and A2. The first petitioner is the Occupier and the second petitioner is the Manager of M/s.Eaton Power Quality Systems Limited. Admittedly, both were not present in the place of occurrence. On 24.10.2016, when the deceased loaded food materials to the first floor, immediately he climbed through staircase and after taking food materials from the lift, he again loaded with vessels and he also went inside the lift. The lift is meant for passengers. Unfortunately, he met with an accident during forcible opening of the door of the lift, due to which he succumbed to head injuries. Immediately, a case was registered in crime No.49 of 2016 for the negligence, which culminated into trial in CC.No.92 of 2018 on the file of the Judicial Magistrate, Puducherry. Thereafter, it was duly informed to the respondent and on the next day, i.e. on 25.10.2016, they conducted inspection and conducted enquiry. After enquiry, the respondent found contraventions that the petitioners failed to provide material lift with gates fitted with interlocking devices. They failed to provide atleast two ropes or chains separately connected with the cage and balance weight. They also failed to provide material lift carrying food with



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efficient automatic device. Further, they failed to provide information, instruction, training and supervision as are necessary while operating the material lift.

10. On perusal of records, certificate was issued by the competent person, M/s.Senthil Associates and issued fitness certificate dated 09.08.2016. The accident had happened on 24.10.2016. As per the fitness certificate, there was no failure on the part of the petitioners. Further, the victim is not employed or worker of the petitioners' factory. He is working under the contractor of food supplier to the factory. Therefore, he is a third person and he is not supposed to get inside the lift which is meant for goods. Further, even though he is not a third party to the petitioners' factory, he was also trained to operate the material lift to open the gate, load the food vessels, close the gate and press the buttons.

11. On perusal of inspection report in Form-17, revealed that the lift is goods lift. The victim was driver for canteen food caterer. The said lift is located in the canteen of the factory. Therefore, the victim is not a worker / employee under the petitioners, the victim brought food in his vehicle and used the goods lift to lift it up to the first floor. The lift went upto the first floor and it did not come down. Therefore, the victim climbed towards the staircase to first floor



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and tried to open the door by force. Therefore, the lift was brought down suddenly with the victim. Therefore, he sustained head injuries and died.

Hence, the accident occurred only due to the negligence of the victim and not by any of the contraventions indicated by the respondent. Further, the lift is situated in the canteen and not in the factory premises. The said lift is meant for goods and not for passengers. It is located in the canteen premises and as such, there is a possibility for any third party to use the lift. Though the victim was trained to operate the lift, since he was regularly coming to canteen for supplying the food, however he forcibly opened the door of the lift and the accident occurred. Mere payment of compensation would not amount to admission of liability. This Court can visualise that immediately after the untoward accident, there was public gathering since the victim died on the spot. In order to pacify the general public, the management of the factory might have assured to pay compensation to the victim's family without admitting their liability. Accordingly, the petitioners had paid a sum of Rs.7,88,240/- as per the provisions of Workmen Compensation Act. Though the victim was working under the contractor, he had supplied food for the petitioners' canteen. That apart, already criminal case was registered as against the persons concerned and they are facing criminal prosecution in CC.No.92 of 2018 on the file of the Judicial Magistrate, Puducherry. Therefore, the impugned proceedings cannot



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be sustained and liable to be quashed.

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12. Accordingly, the entire proceedings in STC.Nos.4 & 5 of 2017 on the file of the Chief Judicial Magistrate, Puducherry are quashed and both the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

20.11.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.The Chief Judicial Magistrate,
Puducherry
- 2.R.B.Gnanavelou,
Inspector of Factories,
Office of the Chief Inspector of
Factories & Boilers,
Gandhi Nagar,
Puducherry 605 009
- 3.The Government Advocate,
High Court of Madras



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