



Crl.O.P.Nos.29245 & 29246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.29245 & 29246 of 2022

and

Crl.M.P.Nos.17889, 17890, 17891 & 17892 of 2022

Anurag Tibrewala

...Petitioner in both OPs

vs.

State rep by
Joint Director II (Factory Inspector)
Industrial Safety and Health
S.F.No.47/1, Block 6,
Thiru Vi Ka Industrial Estate,
(Near Metro Water Rountana)
Guindy,
Chennai 600 032.

...Respondent in both OPs

COMMON PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in CC.Nos.245 & 246 of 2022 respectively now pending on the file of Chief Judicial Magistrate, Tiruvallur and quash the complaint.



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For Petitioner
in both OPs : Mr.S.Haroon Al-Basheed
for M/s.T.S.Gopalan and Co.

For Respondent
in both OPs : Mr.A.Damodaran,
Additional Public Prosecutor.

COMMON ORDER

The issue involved in the both these petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The respondent has filed two complaints against the petitioner before the Court below, which are pending in CC.Nos.245 and 246 of 2022 and both these proceedings have been put to challenge in these quash petitions.

3. The case of the respondent is that the petitioner has not provided and maintained fire hydrant system with water for firefighting as specified under the Factory Rules. That apart, the petitioner has not properly maintained the belt conveyor. Hence, the complaint has been filed for contravention of Section 38 (3) of the Factories Act read with Rule 61(11)(e)(f) of the Factories Rules & Section 21(2) of the Factories Act read with Rule 53, Annexure 11 , Part A, Category 3(1) of the Factories Rule.



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4. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

5. It is seen from records that the factory in question is involved in manufacturing products after obtaining environmental clearance from the Pollution Control Board. However, the respondent has proceeded against the petitioner as if the factory falls under Section 2CB of the Factories Act and it is treated as a hazardous industry. On 28.11.2020, the respondent had conducted an inspection in the factory premises. Based on the said inspection, a Show Cause Notice dated 05.12.2020 came to be issued, which mentioned 28 transgressions and called upon the petitioner to explain as why no action should not be initiated against the factory. A reply dated 16.12.2020 was given answering each and every charge that was made in the Show Cause Notice. On receipt of the same, the respondent re-inspected the factory on 13.02.2021. Thereafter, the petitioner did not receive any notice from the respondent. Straightaway a complaint came to be filed before the Court below against the petitioner for the contravention of the Act and Rules as stated supra.



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6. The complaint is completely silent about the earlier Show Cause Notice, the reply that was given for the Show Cause Notice, the re-inspection that was made after the reply and as to what was found to be deficient even after the re-inspection. Straightway an allegation has been made against the petitioner as if there are transgressions.

7. There is not even a mention in the complaint with regard to the reply that was given by the petitioner for the Show Cause Notice. This Court in Crl.O.P.Nos 23034 and 23035 of 2015, dated 19.08.2019, has dealt with a similar issue of not considering the reply given and it was held as follows:

*“18.The petitioners have given a detailed reply for the Show Cause Notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the Show Cause Notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind. Useful reference can be made to the judgment of this Court in **K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore reported in 2014***



(3) MWN (Cr.) 86. *The relevant portions of the judgment is extracted hereunder:*

“27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant



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being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the proprietary of the explanations offered.

*28. In terms of **Rule 102 of the Tamil Nadu Factory 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 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 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the



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complaint was re-presented i.e., on 30.09.2013. There is no explanation forth coming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was represented 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”.

8. In the instant case, the respondent has not taken into consideration the reply given by the petitioner either at the time of granting sanction or at the time of filing complaint and hence the complaint pending before the Court below is liable to be interfered on this ground alone. That apart, the complaint is completely bereft of details and there is no mention regarding the earlier show cause notice and the transgressions that were pointed out and the later inspection that was made after the transgressions were set right by the petitioner. If there were any transgressions even after the re-inspection, the respondent ought to have issued a notice to the petitioner and given an opportunity to the petitioner to submit their reply. Without following this procedure, straight away a complaint has been filed before the Court below and the Court below has taken cognizance of the complaint without any application of mind.

9. In the light of the above discussion, the proceedings in CC.Nos.245 and



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246 of 2022 pending on the file of the learned Chief Judicial Magistrate,

Tiruvallur, are quashed. Accordingly these criminal original petitions are

allowed. Consequently, the connected miscellaneous petitions are also closed.

30.08.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order
nsa

To

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