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Crl.O.P.No.30301 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2023
Pronounced on : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.30301 of 2019

and

Crl.M.P.Nos.16379 and 16380 of 2019

M.Ramanathan

... Petitioner

Vs.

Deputy Director – I
Industrial Safety and Health
T.S.No.47/1, Block No.6,
Thiru.Vi.Ka.Industries Estate,
Near Metro Water Tank Rountana,
Guindy, Chennai – 600 032.

...Respondent

Prayer: This Criminal Original Petition has been filed to call for the records in C.C.No.6679 of 2019 now pending on the file of the Hon'ble Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.



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For Petitioner : Mr.P.T.Ramkumar
For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

The petition seeks to quash the private complaint filed by the respondent herein for the offence under Sections 41 R/w. Rule 61 E & 61 F of the Factories Act, 1948 and Amended Factories Act 1987 and Tamil Nadu Factories Rules 1950.

2.The petitioner is working as a Deputy Chief Electrical Engineer of Furnishing Division in the Integral Coach Factory, Chennai. It is alleged that on 16.06.2019, the Joint Director – I of the Industrial Safety and Health Department inspected the furnishing Division of the Integral Coach Factory; that he noticed that the petitioner had contravened the provisions of Factories Act in his capacity as Manager of the said Division; that on 15.06.2019 at about 10.45 p.m when the E.M.U., coach was planned for change of boggies, the coach which was placed nearby started to move defying the skid placed to stop the coaches; that the coach hit a small wall and a contract employee who had dinner near the wall sustained



injuries and died later; that no suitable warning signals were made during the movement of E.M.U; coach; that the flange of the skid which is used to stop the coach was not properly designed and placed properly which resulted in the accident; that the employees were permitted to take food in a platform instead of the dining area and; that there was no effective supervision. Hence, the respondent filed complaint under Section 105 (i) of the Factories Act, 1948 seeking to punish the petitioner under Section 92 of Factories Act.

3.The learned counsel for the petitioner submitted that prior to the initiation of the prosecution, the respondent had issued a show cause notice listing out the lapses which is alleged in the impugned complaint calling for an explanation from the petitioner. The petitioner had sent a detailed reply on 25.07.2019 wherein, he had stated that all safety measures were taken and; that an unfortunate incident of an accident is sought to be projected as a case of negligence and dereliction of duty on the part of the petitioner. The learned counsel for the petitioner further submitted that the respondent had not considered the reply before filing the impugned complaint; and hence the impugned complaint is vitiated for non



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application of mind. He relied upon the following Judgments of this Court:

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- (i) ***K.Masthan Rao vs. State*** reported in ***(2014) 3 MLJ (Crl)***
- (ii) ***Crl.O.P.Nos.27835 & 27838 of 2014 dated 19.08.2019***
(L.Ganesh vs. State of Tamil Nadu) reported in ***2020 (2) CTC 666***
- (iii) ***Crl.O.P.No.6640 of 2020 dated 21.06.2022 (S.V.Raja vs. Deputy Director – I)***
- (iv) ***Crl.O.P.Nos.2552 and 2558 of 2021 dated 31.01.2023***
(T.Dilip Kumar and C.M.Roa vs. Deputy Director-I)
- (v) ***Crl.O.P.No.25565 of 2018 dated 04.02.2022 (M.Padmanabhan vs. State)*** in support of the said submission.

4.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the impugned complaint discloses all the offences. A worker died due to the negligence on the part of the petitioner. The submissions of the petitioner that he had taken all precautionary measures is factually disputed and should only be adjudicated in the trial. Hence, he prayed for dismissal of the quash petition.



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5. Heard Mr.P.T.Ramkumar, the learned counsel for the petitioner and Mr.Leonard Arul Joseph Selvam, the learned Government Advocate (Crl.Side) appearing for the respondent.

6.This Court finds that a notice was issued on 15.07.2019 calling upon the petitioner to show cause as to why action should not been taken for the death of a contract employee due to his act. The petitioner had given a detailed reply on 25.07.2019. In the list of documents which is annexed to the complaint, the reply given by the petitioner is shown as eighth document. However, the complaint does not refer to the reply sent and the explanation offered by the petitioner. The complainant has ignored the reply to the show cause notice sent by him.

7.In this regard, it would be useful to refer to the order of this Court in the case of ***K.Mastan Rao, Deputy Cheif Engineer, Engineering Workshop, Southern Railway, Arakkonam, Vellore Vs. The State Rep. by its Inspector of Factories, First Circle, Vellore***, reported in (2014) ***MLJ (Crl).523***. The relevant portion of the aforesaid order is extracted hereunder:-



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“...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 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 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.?

8.The very same view was taken by this Court in a number of subsequent cases (viz) ***Crl.O.P.No.6640 of 2020 dated 21.06.2022, Crl.O.P.Nos.2552 & 2558 of 2021 dated 31.01.2023, Crl.O.P.No.25565 of 2018 dated 04.02.2022 and***



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Crl.O.P.Nos.27835 & 27838 of 2014 dated 19.08.2019. In a recent order of this

Court reported in ***2020 (2) CTC 666*** this Court had held as follows:

“10.When a Show Cause Notice was issued by the Respondent, the Petitioners have given a detailed reply for the same. The Reply has not been considered either by the Sanctioning Authority 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 due to non-application of mind.”

9.In view of the above settled position of law, the impugned complaint which has not considered the reply of the petitioner is liable to be quashed as it suffers from non application of mind.



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10.In the result the Criminal Original Petition is allowed. Consequently, the

connected miscellaneous petitions are closed.

23.03.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.Deputy Director – I,
Industrial Safety and Health
T.S.No.47/1, Block No.6,
Thiru.Vi.Ka.Industries Estate,
Near Metro Water Tank Rountana,
Guindy, Chennai – 600 032.

2.The Public Prosecutor
High Court of Madras

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SUNDER MOHAN, J

dk

Pre-delivery order in

Crl.O.P.No.30301 of 2019

and

Crl.M.P.Nos.16379 and 16380 of 2019

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