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Crl.O.P.No.30272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.30272 of 2022

and

Crl.M.P.Nos.18542 & 18545 of 2022

D.Sanjiv Kumar
S/o.Dinesh Prasad Singh,
Occupier,
Tamil Nadu Waste Management Ltd.,
(Now RE Sustainability IWM Solutions Ltd.)
Plot No.5 to 15, 28-33,
Sipcot Industrial Complex,
Gummidipoondi – 601 201.

...

Petitioner

Vs.

State of Tamil Nadu,
Rep by its Joint Director II, (Industrial Inspector),
Industrial Safety and Health,
S.F.No.47/1, Block No.6,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in the private complaint in C.C.No.141 of 2022 pending on the file of Chief Judicial Magistrate, Thiruvallur and quash the same.



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For Petitioner : Mr.S.R.Rajagopal, Senior Counsel
for Mr.L.Murali Krishnan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed to call for the records in the private complaint in C.C.No.141 of 2022, pending on the file of Chief Judicial Magistrate, Tiruvallur and quash the same.

2.The learned counsel for the petitioner submitted that the petitioner is prosecuted for the offences under Section 2 (cb) Schedule -I-17, and 7A(3) Section 41 C, 41 (c) and 112 Rule 62 O (1)(c) and 62 N (1) of the Industrial Act 1984 (as Amended Act 1987) and Tamil Nadu Industries Rules 1950 in C.C.No.141 of 2022. The main contention of the learned counsel for the petitioner is that the complainant conducted a inspection on 28.11.2020 at about 15.30 hours and found out certain defects in the petitioner's Company namely, Tamil Nadu Waste Management Ltd. A show cause notice dated 26.12.2020, in Na.Ka.No.AA/2526/2020, was issued pointing out 12 defects/violations.



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3.In response to the Show Cause Notice, petitioner had rectified the defects pointed out and sent a reply dated 30.01.2023 about the rectification of the defects pointed out in the show cause notice. However, the complaint came to be filed against the petitioner without any reference to the show cause notice issued and reply given etc.

4.It is further submitted by the learned counsel for the petitioner that as per the communication of the Joint Director - I in Ka.No.AA/2526/2020, dated 16.02.2021, it was informed that certain defects pointed out in the show cause notice were rectified and for the defects which were not rectified, case would be filed against the petitioner. Unless the complaint has details about the show cause notice, reply, defects rectified and defects not rectified, it would not be possible for the learned Chief Judicial Magistrate to apply his mind and take the case on file. Non mentioning about the show cause notice, reply and other details amount to non application of mind and this vitiates launching of prosecution. In support of his submissions, the learned Senior Counsel for the petitioner, pressed into service the following orders passed by this Court. ***(i) Crl.O.P.No.7347 of 2017, dated 17.11.2021 in A.T.Kannan Vs. The State.***



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(ii) Crl.O.P.No.15980 to 15984 of 2014 and batch dated 03.07.2014 in

K.Masthan Rao Vs. State Rep by Inspector of Factories, First Circle, Vellore.

(iii) Crl.O.P.Nos.23034 & 23035 of 2015 dated 19.08.2019 in L.Ganesh Vs.

T.Solaippan.

(iv) Crl.O.P.Nos 6714 & 6826 of 2018 and W.P.No.4529 of 2018, dated

27.05.2022, in Ness Wadai Vs. State of Tamil Nadu and Ness Wadia Vs.

Deputy Director, Industrial Safety and Health and Ors.

5.Continuing his submission, the learned Senior Counsel for the petitioner submitted that the order taking cognizance shows that there was absolutely non application of mind on the part of the learned Chief Judicial Magistrate, Tiruvallur. There was no subjective satisfaction recorded for taking the case on file. A rubber stamp was affixed for taking cognizance. It is impermissible and condemned by this Court by time and again. This mode of taking cognizance was considered by this Court in ***Crl.O.P.No.7347 of 2017, dated 17.11.2021 in A.T.Kannan Vs. The State.***

6.It is also his submission that the petitioner is not engaged in dealing with hazardous material and engaged only on the treatment and disposal of



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industrial wastes. Therefore, launching of prosecution against the petitioner is improper and illegal and thus, prayed for quashing of the proceedings.

7.In response, the learned Government Advocate (Crl.Side) submitted that petitioner is dealing with hazardous material and for the said purpose, he was granted license. Of the 12 defects/violations pointed out, 7 defects/violations had been rectified and only for the defects/violations, which were not rectified, prosecution was launched. The case is pending for trial and prayed for dismissal of this petition.

8.Considered the rival submission and perused the records.

9.It is seen from the records produced and submissions of the learned counsel appearing for the parties that the petitioner's Company was inspected by the complainant on 28.11.2020. Thereafter, a show cause notice was issued pointing out 12 defects/violations on 26.12.2020 in Na.Ka.No.AA/2526/2020. In response to this, petitioner sent a reply dated 30.01.2021 informing about the rectification of the defects/violations.



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10. Annexures to the complaint refers about the inspection report, show cause notice and reply sent by petitioner. However, the reading of the complaint shows that nothing is stated about the inspection report, show cause notice and reply sent by petitioner. It is also seen from the letter of the Joint Director- I, in Ka.No.AA/2526/2020, dated 16.02.2021 that some defects/violations had been rectified and some had not been rectified and for the defects which were not rectified, it was proposed to launch prosecution. That be the case, the complainant is duty bound to refer in the complaint about the defects noted, show cause notice given, reply given by the petitioner, defects rectified and defects not rectified. Absolutely, nothing is available in the complaint.

11. It is pertinent to refer to the relevant portions of the Orders relied by the learned Senior Counsel for the petitioner.

(1) Crl.O.P.No.15980 to 15984 of 2014 and batch dated 03.07.2014 in K.Masthan Rao Vs. State Rep by Inspector of Factories, First Circle, Vellore.

52. As regards the other points canvassed, the



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observations and the findings rendered by this Court in the previous paragraphs would be equally applicable to these batch of cases, the complaint is vitiated by total non-application of mind. The complainant did not afford an opportunity to the petitioners to rectify the so called defects and the show cause notice itself was issued with a threat of prosecution. The bonafides of the explanation offered, has not been considered rather not even referred to in the complaint. At the first instance, when the complaint is perused one gets an impression that the petitioners were never put on notice and no explanation was submitted by them. When the complainant has issued a show cause notice on 24.10.2013, calling upon the petitioners to explain within seven days, as to why the prosecution should not be launched or bound to disclose the issuance of notice, the reply given and then make a statement in the complaint as to how the offence still continues.

53. In the absence of any of these grounds in the complaint, it is a good ground to quash the complaint. The respondent has not explained as to why two complaints were given against the same petitioner in respect of the same allegation with verbatim averments. In the absence of any explanation to this, necessarily this is also a ground to quash the complaint, as being vitiated for total non-



application of mind. Hence, for all the above reasons, the petitioners are entitled to succeed.

(2) Crl.O.P.Nos.23034 & 23035 of 2015 dated 19.08.2019 in L.Ganesh Vs. T.Solaippan.

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.

It is useful to refer to the order passed by this Court in **Crl.O.P.Nos 6714 & 6826 of 2018 and W.P.No.4529 of 2018, dated 27.05.2022, in Ness Wadai Vs. State of Tamil Nadu and Ness Wadia Vs. Deputy Director, Industrial Safety and Health and Ors.**

20. It is seen from the show cause notice that totally six charges framed against the petitioner. The said six charges culminated to two cases. The Manager K.P.Iyyappa faced prosecution for charge Nos.2, 5 & 6, pleaded guilty and he was convicted in S.T.C.No.5 of 2017. It pertains to the role of the Manager. The role,



responsibility and duty cast of Manager and Occupier are not one and the same. Further, the Crl.O.P.Nos.6714 & 6826 of 2018 and W.P.No.4529 of 2018 'Occupier' under the Factories Act, cannot be omnipresent, in order to ensure that every requirement set out under the Rules are adhered to and complied with by everyone working in the factory.

21. On a bear reading of the complaint, it is seen that there is no reference to the show cause notice and reply to the show cause notice. This Court time and again in several cases held that non mentioning of show cause notice and reply given to the show cause notice would amount to non application of mind. This Court has not hesitation to hold that the complaints are vitiated on account of total non-application of mind. Added to it, there is no violation of law and rules and regulations. The Factory had intimated the concerned authorities then and there for modifications, additions and provisions of safety measures. The complaints are filed belatedly.

With regard to taking cognizance of the cases by using Rubber Stamp, it is observed in ***Crl.O.P.No.7347 of 2017 dated 17.11.2021 in A.T.Kannan Vs. The State*** as follows:



8. Yet another submission made by learned Government Advocate (Crl.side) that, as the trial has already commenced, the Court cannot exercise the power under [Section 482](#) Cr.P.C, has no legs to stand and the issue is no longer res integra as the Apex Court in *Kamlesh Kumar Vs. State of Bihar* and another reported in (2014) 2 SCC 424 held that when the complaint is barred under law even after the trial has commenced, the Court can exercise power under [Section 482](#) Cr.P.C. It is also relevant to note that besides violation of [Sections 42](#) and [47](#) of the Act, the very complaint is filed beyond the period of limitation. However, the learned Crl. O.P. No.7347 of 2017 Magistrate, without noticing the fact that complaint has been filed beyond the period of limitation, has mechanically taken the complaint on file and took cognizance. While taking cognizance of the complaint on file, the learned Judicial Magistrate has to look into the provisions of the law and find out whether the complaint is filed within a period of limitation as provided in the special Statute, but that has not been done. Further, on perusal of the very complaint and the seal it comes to light that learned Magistrate has just affixed the seal as 'TOF', denoting only 'Taken on File'. In a routine manner, the rubber stamp has been used mechanically to show that the complaint was taken on file. That itself indicate that



Judicial Magistrate has not applied his mind while reading the complaint and provision of law and has not come to a definite conclusion as to whether the complaint is within the time or not. Such act of the learned Judicial Magistrates have been condemned by this Court in various judgments. Despite the same, judicial officers are using the rubber seal and taking cognizance of the complaint without even verifying the period of limitation or Statute. It is nothing but a clear abuse of process of law. Such an attitude should be hereafter stopped by the Judicial Magistrates. Though Crl. O.P. No.7347 of 2017 this Court has ample power to call for an explanation, this Court keeping in view of the long duration of the period between the taking of cognizance and now, is of the view that it will suffice to direct the Director, Tamil Nadu State Judicial Academy to sensitize the Judicial Magistrates in this regard during the regular training programme.

With the above observations, this petition is allowed and the case in S.T.C.No.1935 of 2014 is quashed.

12.The ratio of the three judgments referred above is that, when a reply is given to 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. It is also



relevant to refer to the order passed in ***Crl.O.P.No.10106 of 2019, dated 16.07.2019***, in ***Shanmugam and Others Vs. Inspector of Police and Another***, reported in ***2019 SCC Online Mad 2667***. The relevant portion of the order is extracted hereunder:

19. It has been repeatedly held that taking cognizance is a judicial act which requires application of mind and the Court must give some reasons for taking cognizance. Failing which, the cognizance itself becomes bad in the eye of law. Unfortunately in this case, the Court below has resorted to “Rubber Stamp” cognizance without assigning any reason.

20. The Hon'ble Supreme Court in [Pawan Kumar Sharma v. State of Uttaranchal] in Crl. Appeal No. 1692 of 2007(ASLP (Crl.) No. 4701 of 2007, has dealt with this issue and the relevant portions of the judgment is extracted hereunder:

“In the State of Uttaranchal (now known as State of Uttarkhand) there exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on “rubber stamped” orders.

A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It



may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.

Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC.

In State of Karnataka v. Pastor P. Raju (2006) 6 SCC 728, this Court has clearly made out a distinction between an order taking cognizance of an offence and an order of issuance of process stating:

“13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the



Court decides to proceed against the offenders against whom a prima facie case is made out.”

21. The Hon'ble Supreme Court in [Sunil Bharti Mittal v. Central Bureau of Investigation] reported in (2015) 4 SCC 609 has held as follows:—

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.



53. However, the words “sufficient grounds for proceeding” appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is *prima facie* case against accused, though the order need not contain detailed reasons. *A fortiori*, the order would be bad in law if the reason given turns out to be *ex facie* incorrect.

22. It is clear from the above judgments that the Hon'ble Supreme Court has deprecated the practice of taking cognizance through “Rubber Stamp” orders. The Hon'ble Supreme Court has made it very clear that taking cognizance is a judicial act which requires application of mind. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a *prima facie* case against accused persons. Of course, the order need not contain detailed reasons.

23. In view of the above judgments, the cognizance taken by the Court below by means of a Rubber Stamped



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order is patently illegal and this Court has to necessarily interfere with the manner in which the cognizance was taken in this case.

13.In the case before hand, the learned Chief Judicial Magistrate, Thiruvallur, has taken cognizance of the offences by affixing the rubber stamp. There is no indication in the order taking cognizance about whether on going through the complaint allegations and the materials produced, the learned Chief Judicial Magistrate, Thiruvallur, came to the satisfaction that a case is made out for taking cognizance of the offences under Section 2 (cb) Schedule -I-17, and 7A(3) Section 41 C, 41 (c) and 112 Rule 62O (1)(c) and 62N (1) of the Industrial Act 1984 (as Amended Act 1987) and Tamil Nadu Industries Rules 1950 in C.C.No.141 of 2022. Time and again, this Court had deprecated the practice of using the rubber stamp for taking cognizance of the offences.

14.This Court wants to reiterate that taking cognizance of a case affixing a rubber stamp shows non-application of mind. Necessary training programs have to be organised by the Director of Tamilnadu State Judicial Academy to sensitize the Judicial Magistrates as observed by this Court in ***Crl.O.P.No.7347 of 2017, dated 17.11.2021 in A.T.Kannan Vs. The State,***



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with regard to the necessity to record satisfaction of the learned Magistrates, on the basis of the complaint allegations, materials produced along with the complaint for taking cognizance of the offences against the accused.

15.In fine, this Court is of the view that the complaint lacks credibility and maintainability for the reason that the Show Cause Notice issued, reply given to the Show Cause Notice, defects rectified, defects not rectified had not been mentioned in the complaint and therefore, it vitiates the entire prosecution. Thus, this Criminal Original Petition is allowed and the proceedings in C.C.No.141 of 2022, on the file of Chief Judicial Magistrate, Thiruvallur, is quashed.

16.Accordingly, this Criminal Original Petition is allowed.
Consequently, connected miscellaneous petitions are closed.

15.03.2023

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order

To:

17/19



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1.The Chief Judicial Magistrate,
Thiruvallur.

2.The Joint Director II, (Industrial Inspector),
Industrial Saftey and Health,
S.F.No.47/1, Block No.6,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032.

3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
sli

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