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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 10/02/2023

Date of Pronouncement : 31/03/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)Nos.211 and 212 of 2022

The State represented by its
Inspector of Factories
Dindigul.

: Petitioner/Complainant
(in both cases)

Vs.

Mr.Sakthivel,
Manager,
Tamil Nadu State Transport
Corporation Limited,
Dindigul.

: Respondent/Accused
(in both cases)

PRAYER:- These Criminal Revisions have been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the entire records relating to the common order in C.A Nos.10 and 11 of 2016, dated 07/08/2017 passed by the Sessions Court, Dindigul and set aside the same as illegal.



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For Petitioner
(In both cases)

: Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

For Respondent
(in both cases)

: Mr.J.Senthil Kumariah

COMMON ORDER

Both the Criminal Revisions have been filed seeking in order to set aside the common order passed in C.A Nos.10 and 11 of 2016, dated 07/08/2017 by the Sessions Court, Dindigul, reserving the common order passed by the trial court.

2.The facts in brief:-

On 23/03/2011 at about 10.30 in the night, the complainant along with his team of members, inspected the Depot belongs to the Tamil Nadu State Transport Corporation Limited Unit at Dindigul. At that time, the Accused Sakthivel was working as Manager. During their inspection, they found Form-VI was not maintained. They also violated the Shops and Establishment Act and The Tamil Nadu Industrial Establishment (National Festival and Holiday Act), 1958.



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3.Next violation is that they failed to maintain the wage salary Registers for 10 employees. They violated the provisions of Payment of Wages Act. Form-25 was not complied, which is violation and punishable under section 112 Rule 103 of the Factories Act. Form-15 as per the Holidays Act has not been maintained, which is punishable under section 83 of the Factories Act. They have also failed to produce the stability certificate of the building, which is punishable under section 92 of the Factories Act.

4.As per the Inspection report, complaints were filed. STC cases viz., 45, 46 and 47 of 2011 were taken on file by the Chief Judicial Magistrate, Dindigul.

5.Before the trial court, on the side of the prosecution, 2 witnesses were examined, 11 documents marked. On the side of the accused, 3 witnesses were examined and 8 documents marked.

6.At the conclusion of the trial process, the trial court convicted the accused for the offences punishable under section 26(3)(a) and Rule 5 and 6(b) r/w



Rule 23 of Payment of Wages Act and Rules and sentenced to pay a sum of Rs.1,000/- as fine with default clause in respect of **STC No.46 of 2011**. In so far as **STC No.47 of 2011**, he was convicted and sentenced to pay a sum of Rs.10,000/- with default clause and for the offence 83 and 87(2) r/w section 92 of the Act, he was sentenced to pay a fine of Rs.10,000/- with default clause and under section 7(1) r/w Rule 12(b)(3), (4) r/w section 92 of the Act, he was sentenced to pay a fine of Rs.10,000/- with default clause. In STC No.45 of 2011, the accused was acquitted by the trial court.

7.Challenging the above said conviction and sentence, he preferred appeal in CA Nos.10 and 11 of 2016 before the Additional District Judge, Dindigul, against the judgment passed in STC Nos.46 and 47 of 2011. The first appellate court acquitted the accused of all the charges.

8.Against which, these revisions have been preferred.

9.Heard both sides.



10. Now let us straightaway go to the judgment of the first appellate court as to see whether any sufficient ground was available to the first appellate court to reverse the judgment of conviction.

11. The first appellate court has taken note of the complaint, dated 06/09/2010 received from the Labour Union. But however, the inspection was undertaken, on 23/02/2011. The reason for the delay in inspection was not explained by the prosecution. This is one of the grounds.

12. The next ground is that at the time of inspection, PW1 enquired only 10 employees. Even though 18 persons were available and working, among 18 persons, 7 were working in the body building section as cleaners and the remaining 11 persons were permanent employees. But he did not prepare any report.

13. By pointing out this failure on the part of PW1 to enquire 7 persons with regard to the appointment, nature of the work, etc., the prosecution case was doubted.



14. With regard to the fitness certificate, he would say that PW1 has admitted that no certificate was forwarded to the Inspector of Factories by the competent person. So this lapse was also found in favour of the accused. So, he was acquitted in both cases.

15. Now the correctness of the judgment of the first appellate court has been challenged by way of these criminal revisions.

16. Since it is a case of reversal, unless the prosecution is able to establish the fact that the first appellate court erred in law and facts in coming to the conclusion of the reversal, the prosecution cannot succeed. As mentioned by the first appellate court, the very nature of the inspection undertaken by PW1 is doubtful. There was no complaint from the independent employee. Only the Union of the Employees Association has sent a complaint.

17. No doubt that on the basis of the above said complaint, PW1 would have undertaken the inspection immediately. But he waited for six months. The reason has



not stated. But this does not assume any importance. But the fact remains that with regard to the nature and duty of seven persons, in respect of whom proper wages records, salary records and duty records were not maintained is concerned, no proper enquiry has been made with seven persons. Whether they are permanent employees or temporary employees or only daily wages ought to have been verified by PW1 in a proper manner. So absence of verification of such thing will affect the basis of the prosecution case. On that account, I find no reason to differ from the view of the first appellate court.

18.The next aspect is fitness certificate. No doubt that the fitness certificate was not maintained and properly produced before the Inspecting Authority. The explanation that has been offered by the accused ought to have been properly appreciated by PW1. According to the respondent, the fitness certificate file was forwarded to the Head office. After receiving the fitness certificate from the Head Office, they will inform PW1. Now the explanation offered by PW1 is that the above said fitness certificate was not received by him till the complaint was filed. Even though, the first appellate court stated



that the respondent will not fit into the definition of the employee or management, which may not be correct in the correct sense. But the fact remains that the fitness certificate was under process of approval. The inspection was undertaken, on 23/02/2011. It was presented before the trial court, on 14/06/2011. Whether any reminder was sent to the accused to produce the fitness certificate is not clear on record. No doubt that the inspection was undertaken by the Engineer, on 03/01/2011 and the certificate was issued, on 04/05/2011.

19. Pointing out this lapse, the trial court has stated that no proper step was taken by the management to assess the fitness of the factory. No doubt there is a delay. Even before filing of the complaint, the above said fitness certificate has been issued. This ought to have been taken into account by the complainant at the time of filing the complaint. This was taken into account by the first appellate court, which I find no reason to differ. So, I find that the reasons assigned by the first appellate court for reversing the judgment of conviction, does not suffer from any illegality or irregularity or perversity.



20. In the result, both the criminal revisions are dismissed. I

31/03/2023

Index: Yes/No
Internet: Yes/No

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To,

1. The Chief Judicial Magistrate,
Dindigul.
2. The Additional District Judge,
Dindigul.
3. The Inspector of Factories,
Dindigul.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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