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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-19609-2016 (O&M)

DATE OF DECISION: 12.07.2023

Sandeep Garg and another**...Petitioners**

Versus

State of Punjab and another**...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.S. Cheema, Senior Advocate with
Mr. S.S. Kang, Advocate,
Mr. A.S. Cheema, Advocate,
For the petitioners.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioners seek quashing of impugned order dated 29.04.2016 (Annexure P-1) passed by learned Chief Judicial Magistrate, Sangrur. Further prayer has been made for quashing of complaint No.23 dated 29.04.2016 titled “State through Deputy Director of Factories v. Niteen Pradhan and another” (Annexure P-2) filed under Section 92 of the Factories Act, 1948 (hereinafter referred to as “the Act”).

2. Succinct facts first, as pleaded in the instant petition.

3. Petitioner No.1 is factory manager and petitioner No.2 is occupier at one of the factories of M/s Pepsico India Holdings Private Limited. Said premises were inspected on 08.01.2016 and certain irregularities were found. It was further alleged that appointment of Shri Ranjeet Kumar, Welfare Officer was not as per norms prescribed in Section 49 of the Act read with The Punjab Welfare Officers (Recruitment and Conditions of Service) Rules, 1952 (hereinafter referred to as “State Rules”).

4. Learned senior counsel for petitioner argues that no offence as alleged under Factories Act is made out. There is no violation of Section 49 of the Act read with State Rules. The violation, if any, was in the knowledge of respondent No.2 with effect from 02.06.2014, whereas, present complaint has been filed on 29.04.2016 i.e., after more than 22 months. No application for condonation of delay has been filed. Learned counsel further argues that present complaint is in violation of Section 106 of the Act. There is nothing mentioned in the complaint as to how the appointment of Welfare Officer is not as per State Rules.

4.1 Learned senior counsel would argue that Section 105 of the Act mandates that cognizance can only be taken on a complaint by or with the previous sanction in writing of an Inspector. Since complainant himself is an Inspector, no sanction was required.

5. On the contrary, learned State counsel opposes the petition on the ground that same is not maintainable as the petitioners have alternative remedy to file revision petition against the impugned order. Petitioners are liable to be prosecuted under Section 92 of the Act as there were shortcomings in the appointment of welfare officer in the factory having more than 500 workers. Company was directed to overcome the shortcomings and send the case to Deputy Director. However, needful was not done by the petitioner-company.

6. I have heard rival contentions of learned counsels for parties and have gone through the case file carefully.

7. Section 106 of The Factories Act, 1948 is reproduced herein below:

***“106. Limitation of Prosecution :- No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector.*”**

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.”

8. The relevant allegations in the impugned complaint dated 29.04.2016 Annexure P-2 are as under:

“xxx xxx xxx xxx

2. The above said factory was inspected on 08.01.2016 by Sh.Sukhminder Singh, Deputy Director of Factories, Sangrur (Inspector under Factories Act), the following irregularities were found :

“More than 500 workers are working in the factory, but, the appointment of Sh.Ranjeet Kumar as Welfare Officer is not as per Section 49 of the Factories Act, 1948 read with The Punjab Welfare Officers (Recruitment and Conditions of Service Rules) 1952.

xxx xxx xxx xxx”

8.1 Letter dated 02.06.2014 issued by the Director of Factories, Punjab to M/s Pepsico India Holdings Pvt. Ltd. (the petitioners’ establishment) also forms part of the complaint (Annexure P-2). It states that the required documents and information regarding Ranjit Kumar Welfare Officer appointed in the petitioners’ establishment were not submitted. Vide the said letter, the petitioners’ establishment was advised to submit the required documents and information to the office of the Deputy Director of Factories, Sangrur and also to send copy to the office of the Director of Factories, Punjab so that further action can be taken for the approval for the appointment of Welfare Officer.

8.2 It is, thus, clear from the above, that the irregularity, if any, in the appointment of Ranjit Kumar as Welfare Officer and alleged commission of offence under the Act were in the notice of the complainant Department on 02.06.2014. The complaint was filed in the court only on 29.04.2016 i.e., more than 22 months after that. It was filed long after the limitation period of the extended limitation period of six months prescribed under section 106 of

the Act from the date on which the alleged commission of the offence came to the knowledge of the complainant, even if the petitioners had disobeyed a written order made by the Inspector.

8.3 The complaint shows that at the time of inspection by the complainant on dated 08.01.2016, the appointment of Ranjet Kumar Welfare Officer was found not as per Section 49 of the Act read with the Rules there under and thus the accused had committed the offence under the Act. The complaint was filed on 29.04.2016, i.e., 3 months and 21 days after the date of inspection when the alleged commission of the offence came to the knowledge of the complainant. Thus, irrespective of the fact that the complainant Department was aware of the alleged commission of offence as far back as 02.06.2014, the complaint based on the inspection dated 08.01.2016 was also time barred.

8.4 Section 106 of the Act *ibid* mandates that no court shall take cognizance of any offence punishable under the Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector and where the offence consists of disobeying a written order made by an Inspector, within six months of the date on which the offence is alleged to have been committed.

9. Only because a revision petition is maintainable, the same by itself would not constitute a bar upon the inherent powers of this Court to prevent the abuse of process of Court and/or to secure the ends of justice. I am of the view that nothing in the Code of Criminal Procedure shall be deemed to limit the inherent powers of this Court under Section 482 Cr.P.C.

10. Since the complaint itself is time barred, I see no grounds as to why further criminal proceedings should continue as same would be an exercise in futility and wastage of precious time of Court below.

11. In the premise, I am of the considered opinion that it is a fit case where this Court would exercise its discretionary jurisdiction to prevent the abuse of process of the Court.

12. As an upshot, instant petition is allowed. Impugned order dated 29.04.2016 (Annexure P-1) passed by learned Chief Judicial Magistrate, Sangrur as well as complaint No.23 dated 29.04.2016 titled “State through Deputy Director of Factories v. Niteen Pradhan and another” (Annexure P-2) filed under Section 92 of the Factories Act, 1948, are hereby quashed.

13. Disposed of in above terms.

14. Pending application(s), if any, shall also stand disposed of.

JULY 12, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No