



Crl.O.P.No.3808 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.3808 of 2022

and

Crl.M.P.No. 1833 of 2022

Uday Joshi,
Manager,
M/s. Piramal Pharma Limited

... Petitioner

Versus

State of Tamil Nadu,
rep. by Deputy Director of
Industrial Safety and Health,
Thiruvottriyur, Chennai-19.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 295 of 2021 pending on the file of Chief Judicial Magistrate, Tiruvallur and quash the same.



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For Petitioner : Mr.Rahul Balaji
For Respondent : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C. No. 295 of 2021 on the file of Chief Judicial Magistrate, Tiruvallur.

2. Heard both sides.

3. The petitioner is arrayed as accused in C.C.No. 295 of 2021 on the file of Chief Judicial Magistrate, Tiruvallur, which was lodged against this petitioner based on a private complaint filed by the respondent for the offence under Sec.92 of Factories Act for the alleged contravention of Sec.41 of Factories Act,1948 r/w Rule 61F of Tamil Nadu Factories Rules, 1950. Challenging the said complaint, the petitioner approached this court to quash the proceedings initiated against him.



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4. The learned counsel for petitioner would submit that it was alleged, on 10.03.2021, there was a fire accident, in which one of the employees unfortunately passed away and 5 contract workers sustained grievous injury. Thereafter, on 11.03.2021, the Factory Inspector inspected the factory premises and noticed the alleged contravention of the factory concerned. Subsequently, they have issued a show cause notice dated 15.03.2021 and the same was received and a detailed reply was submitted by the petitioner on 04.05.2021 explaining what are the safety measures followed in the factory premises. In spite of that reply, it has not been accepted by the respondent and lodged the present complaint. But, under law, the respondent have to give a detailed rejoinder for the reply given by this petitioner. Furthermore the cognizance taken by the learned Magistrate also not applied his mind and issued process by a 'rubber stamp' order. Placing that ground, the petitioner prayed to quash the proceedings initiated against him. To that effect, he relied the ratio laid down in the authority reported in **2021 SCC Online SC 1012** in the case of **Dayle De-souza vs. Government of India through Deputy Chief Labour Commissioner and another**, wherein the Apex Court held in para 33 as follows :-



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“33. There is also another aspect which requires our attention. We have noted in some detail the contents of the complaint, which refers to the violation as certain notices were not displayed and certain registers and forms were not kept at the ‘worksite’, namely, ATM of the SBI at AST, Komal Chand Petrol Pump, Civil Lines, Sagar, District Sagar. A response to the show-cause-cum- compliance notice in the form of a short reply by the authorised signatory of M/s. Writer Safeguard Pvt. Ltd. on 02nd April, 2014, which factum though accepted, has not been adverted to in the complaint. This short reply states that the Company neither manages the ATM nor works at the ATM and that the ATM site was managed by the respective banks and, therefore, the volitional as alleged do not apply to them. The complaint does not state why the reply was deficient or indicate even briefly as to the nature of activity and involvement of the Company's workers at the ATM site of the State Bank of India mandating compliance at the site in question. We are not ruling on merits, albeit highlighting the complaint being bereft and silent on these aspects and whether the authorities considered the legal provisions in the context of the factual background before initiating prosecution.”



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He has also relied the ratio laid down in the authority held by this court in ***Crl.O.P.No. 23034 and 23035 of 2015, dated 19.08.2019*** in the case of ***L.Ganesh and T.Solaippan vs. State of Tamil Nadu, rep. by Inspector of Factories, Chennai***, wherein it has been held in para 18 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 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 represented 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 represented 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?."

He has further relied the ratio laid down in the authority held by this court in

Crl.O.P.No. 7973 and 7968 of 2022, dated 06.07.2022 in the case of *Ajay*



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Sanghi and Samriddhi Mondal vs. State of Tamil Nadu, rep. by Deputy Director of Industrial Safety and Health-II, Chennai, wherein it has been held in para 7 as follows :-

7.As submitted by the learned Government Advocate (Crl. Side), it is not disputed that the show cause notice was issued and which was appropriately replied. Such being the position, there must be a proper order before filing a complaint. In this regard, this Court has held in Crl.O.P.No.23034 and 23035 of 2015 dated 19.08.2019 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.....”

5. By way of reply, the learned Government Advocate (Criminal side) appearing for respondent would submit that on 10.03.2021 the fire accident



was happened inside the factory premises, due to which, one of employee died and 5 other workers sustained serious injury. Hence, it needs detailed investigation and prayed to dismiss this petition.

6. Records perused. On seeing entire facts, it reveals that one M/s.Piramal Pharma Limited having factory at Ennore Express Highway, Ennore, which is an API manufacturing unit, on 10.03.2021 at about 2.00 p.m. onwards five contract workers from the contractors were required to open and weigh the violently reacts with water and atmospheric moisture and risk of explosion on shock and friction chemical lithium aluminum hydride in the same room. During measuring, since the chemical is a shock and friction sensitive got exploded, due to this explosion, entire warehouse was got fired. In this accident, one Hariharan was expired on the spot and other workers sustained grievous injury. The main reason for the accident occurred in the ware house is that contract labours were not trained in hazardous chemical works and in the same ware house-1, on the date of alleged occurrence, two incompatible chemical works viz., Dispensing of ethyl alcohol and weighing of lithium aluminum hydride were done together.



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Therefore, complaining all the irregularities, a show cause notice was issued to the petitioner on 15.03.2021, for which, the petitioner gave a detailed reply on 04.05.2021. On receipt of reply, the respondent sent a reply stating that the explanation offered by the petitioner is not satisfactory and thereafter, they have proceeded with a private complaint.

7. Furthermore, even in the reply given by the petitioner, it would clearly reveals that on the date of alleged accident on 10.03.2021, when five contract workers were carrying out certain activities together with under the instructions of deceased and the activity undertaken by the deceased for weighing lithium aluminum hydride was entirely unauthorised and not required to be undertaken on that particular date. If at all, on the side of petitioner employer, they are duty bound to supervise the work and so, the reasons assigned by them is not satisfactory. As the reply was not satisfied, which itself sufficient to prosecute them as there is an irregularity found in the factory premises at the time of inspection, which needs detailed trial and evidence. Thereafter, they gave the final report and proceeded with further proceeding. Moreover, the authorities relied on by the learned counsel for



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petitioner is not applicable to the facts of this case. Therefore, I am not inclined to quash the proceedings initiated against the petitioners and prima facie I do not find any irregularity in the charge sheet filed against him. Without influence of this order petitioner entitled to put forth all his defence during trial. Accordingly, this Criminal Original Petition is dismissed. However, since the petitioner is aged about 64 years, his personal appearance is ordered to be dispensed with and he shall appear before the trial court as and when required. Consequently, connected Criminal Miscellaneous Petition is closed.

19.03.2024

Index: Yes/No
Internet: Yes/No
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To

1. Deputy Director of
Industrial Safety and Health,
Thiruvottriyur, Chennai-19.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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