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Crl.O.P.Nos. 7955 & 7958 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

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

Crl.O.P.Nos. 7955 & 7958 of 2022

and

Crl.M.P.Nos.4612 & 4614 of 2022

N.Rajendran,
Manager,
Time Technoplast Ltd.

.. Petitioner in
Crl.O.P.No.7955/2022

Naveen Jain,
Occupier,
Time Technoplast Ltd.

... Petitioner in
Crl.O.P.No.7958/2022

Versus

State rep. by
Deputy Director -II (Factory Inspector,
Industrial Safety and Health,
S.F.No.47/1, Block 6,
Thiru Vi Ka Industrial Estate,
(Near Metro Rountana),
Guindy, Chennai-600 032.

... Respondent in
both Crl.O.P.s

PRAYER in Crl.O.P.No. 7955 of 2022: Criminal Original Petition filed
under Section 482 of the Code of Criminal Procedure, to call for the



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records in C.C.No.44 of 2022 now pending trial on the file of Chief Judicial Magistrate, Tiruvallur, quash the proceedings.

PRAYER in Crl.O.P.No. 7958 of 2022: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.43 of 2022, now pending trial on the file of Chief Judicial Magistrate, Tiruvallur, quash the proceedings.

For Petitioners in

both Crl.O.P.s : Mr.Haroon Al Rasheed,
for M/s.T.S.Goplan & Co.

For Respondent in

both Crl.O.P.s : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the charge sheets in C.C.Nos.43 and 44 of 2022 on the file of learned Chief Judicial Magistrate, Tiruvallur respectively.

2. Heard both sides.

3. Brief facts of the case is as follows :-

The petitioner viz., N.Rajendran is the General Manager and the petitioner viz., Naveen Jain is the occupier of Time Technoplast Limited



respectively situated at Gummidipoondi, which was started in the year of 2010 and it has got a compliment of 200 employees and ever since, it has commenced its operations, thereby it has been adhering in spirit in respect of all statutory compliances including safety and welfare of employees under the provisions of Factories Act. The plant is into manufacture of HDPE drums to supply food and chemical industries for packing purpose and HDPE pipes meant for usage in water and sewage projects on the basis of tenders floated by Government and institutional orders. The Petitioner/General Manager of the company attends to various other affairs including the affairs of the factory, except that he is Manager in Gummidipoondi Factory, the particular operations of the factory manned by the respective shift head/incharge.

4. While being so, on 11.06.2020, one of the employee viz., Mr.Batohi Sharma, who had sufficient knowledge and training in blow moulding machine, which was involved in the process of removal of drum from the machine once it is blown to a drum form. From the accumulator eject parison tube once goes into the mould, will be blown to form a drum, which will have to be removed manually before next cycle starts.



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The time interval for one drum in regular cycle will be of 120 to 130 seconds. Before the lapse of prescribed time, the concerned employee will have to take the first drum. However, the employee failed to take the first drum from the machine before completion of cycle time. He noticed that when the second drum parison ejection has started, he tried to pull out the missed first drum from the mould by placing his hand in top slide of blow machine, in which he was not supposed to rest his hand. When the machine is in motion, the head slide will move up and down. Therefore, when the employee attempted to remove the drum by resting his hand in between the slide, the head slide came down and crushed his finger, which was not due to the fault of petitioner or its subordinates. Thereafter, immediately after the accident, the employee was taken to the hospital and he was given first aid treatment, but unfortunately, the little finger of left hand had to be removed as it was beyond any repair. Soon after the accident, it was intimated to the respondent. Based on the intimation from the factory, inspection was conducted by the respondent and after the said inspection, respondent pointed out that the fixed mould hydraulic slide did not have any safety guard. Therefore, it would



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contravene the provisions of Sec.41 Rule 61E and Sec.7A(1)(2) of Factories Act. In pursuance of the same, a show cause notice was issued on 01.09.2020, for that, the petitioners gave detailed explanation stating about the safety measures taken by the factory and also the nature of accident took place on that day, besides, they have denied the allegation made by the Factory Inspector that no safety measures taken on that day. Having not satisfied with their reply, immediately the respondent initiated complaint in order to prosecute the petitioners. However, as a factory manager and occupier, the petitioners were prosecuted by the respondent, thereby a complaint was lodged.

5. The learned counsel for petitioners would submit that if at all, the respondent is not satisfied with the reply given by them, they might have given the reason for denying the reply, but instead of that, they gave a formal notice dated 08.09.2020 without assigning any reason to deny the explanation offered by the factory and they have immediately initiated the proceedings against them, as such is not maintainable in law. If at all, any final order is passed with sufficient reason, it would enable the



petitioner to prefer an appeal under Sec.107 of the Act. Therefore, he prayed to quash the proceedings as such is vexatious one and the court below also erred in taking cognizance of the complaint, which is premature, since the complainant has not specifically responded to the reply submitted by the petitioners as to how offence still continues, as such is unacceptable one. In support of his contentions, he relied the ratio laid down in the authority reported in **2007 (4) L.L.N. 828** in the case of ***Inspector of Factories, Vellore vs. Showa Engineering Ltd., Sholinghur***, wherein this court in para 3 held as follows :-

“3. We are not able to accept the explanation offered by the respondent that the show cause notice dated 17 December 2003 is not a final order, which is quite contrary to the provisions of the Act and consequently on the alleged presumption that they want to drag on the proceedings and that the limitation of three months has lapsed, the prosecution launched against the petitioner in C.C.No.3 of 2003 is set aside.”

He further relied the ratio laid down in the authority reported in **2014 (3) MWN (Cr.) 86** in the case of ***K.Masthan Rao vs. State, rep. by***



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Inspector of Factories, First Circle, Vellore, wherein this court in para

52 held as follows :-

“52. As regard the other points canvassed, the 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 bona fides 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.”

He has also relied on the ratio laid down in the authority reported in **2016**

SCC Online Mad 27842 : 2017 LLR 291 in the case of **Soumitra Hazra**



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vs.
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The Inspector of Factories, 2nd Circle, Kancheepuram (E)

Chennai, wherein the Apex Court in para 5 held as follows :-

“5. From a reading of Sec.2(cb) of the Act, it is clear that the factory in question must be specified in the first schedule of the Act. According to the petitioner, Timken is not an industry which will fall within the definition of Sec.2(cb) of the Act, because they are into the manufacturing of ball bearings, of course, this is a disputed question of fact which cannot be gone into by this court in a petition under Sec.482 Cr.P.C. However, the complaints do not even disclose under which entry in the first schedule of the Act Timken falls, so as to attract Sec.2(cb) and the other penal provisions of the Act. It is fundamental for the authorities to state in a criminal complaint, this allegation, so that on the proof of it only, the Court can go into whether there is any violation of the clauses required under Sec.2(cb). In the private complaints filed by the public servant, the sworn statement is also not recorded.”

Furthermore, the petitioner's counsel would submit that though the reply to show cause notice given by the petitioners, it was not mentioned in the complaint. For that, he has relied on the ratio laid down by this court in ***Crl.O.P.No.29245 & 29246 of 2022 dated 30.08.2023*** in the case of



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Anurag Tibrewala vs. State rep. by Joint Director-II (Factory Inspector), Industrial Safety and Health, Chennai wherein in para 7, it was held as follows :-

“7. There is not even a mention in the complaint with regard to the reply that was given by the petitioner for the Show Cause Notice. This Court in Crl.O.P.Nos 23034 and 23035 of 2015, dated 19.08.2019, has dealt with a similar issue of not considering the reply given and it was held 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*



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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 propriety 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.

6. By way of reply, the learned Government Advocate (Criminal side) appearing for respondent would submit that on perusal of reply notice, the reason assigned by the factory was not satisfactory. Hence, the reply was given to them that their explanation was not satisfactory. Thereafter, they have registered the complaint, which is very well maintainable in law. If at all, the petitioners are aggrieved, they are entitled to prefer an appeal and the complaint lodged by them is no way preventing them from preferring an appeal. Accordingly, he prayed to dismiss these petitions as no merit.



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7. Considering the facts and circumstances of the case and on considering both side submissions, it reveals that immediately after the alleged accident, notice was issued by the respondent, for which explanation was given by the petitioners in a detailed manner including safety measures, which they have adopted. But the said reply was simply rejected as not satisfactory by the respondent without assigning any reason. As rightly pointed out by the petitioners' counsel as it is a non-speaking order. If at all, any reasonable order was passed, the same can be deemed as final order, against which, the petitioners are entitled to prefer an appeal. Since the notice given by the respondent has not contained any reasons, the petitioners have not preferred any appeal. Therefore, the reason assigned by the petitioners as such is maintainable. In the said circumstances, I am unable to accept the explanation offered by the respondent that the show cause notice dated 17.12.2003 is a final order, which is quite contrary to the provisions of the Act and consequently on the alleged presumption that they want to drag on the proceedings, in which the limitation of three months has lapsed. So, the prosecution launched charge sheets against the petitioners in C.C.Nos.43



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and 44 of 2022 are liable to be quashed. The authorities relied on by petitioner's counsel reported in (1) **2007 (4) L.L.N. 828** in the case of ***Inspector of Factories, Vellore vs. Showa Engineering Ltd., Sholinghur***, (2) **2014 (3) MWN (Cr.) 86** in the case of ***K.Masthan Rao vs. State, rep. by Inspector of Factories, First Circle, Vellore*** and (3) **2016 SCC Online Mad 27842 : 2017 LLR 291** in the case of ***Soumitra Hazra vs. The Inspector of Factories, 2nd Circle, Kancheepuram (E) Chennai***, are squarely applicable to the facts of instant case. Accordingly, these Criminal Original Petitions are allowed and the charge sheets initiated in C.C.Nos. 43 and 44 of 2022 on the file of Chief Judicial Magistrate, Tiruvallur are quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

30.01.2024

Index: Yes/No
Internet: Yes/No
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To

1. Deputy Director -II (Factory Inspector,
Industrial Safety and Health,
S.F.No.47/1, Block 6, Thiru Vi Ka Industrial Estate,



Crl.O.P.Nos. 7955 & 7958 of 2022

(Near Metro Rountana), Guindy, Chennai-600 032.

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2. The Public Prosecutor,
High Court, Madras.

T.V.THAMILSELVI, J.

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