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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.12369 of 2023
and CrI.MP.No.7629 of 2023

S.M.Raja Vikkiran

...Petitioner/Accused

.Vs.

Joint Director (i/c)
Industrial Safety and Health
D.S.No.47/1, Block 6
Thiru vi.ka Industrial Estate
Guindy, Chennai-32.

.. Respondent/Complainant

(cause title as found in the complaint)

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.4842 of 2020, on the file of Chief Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : Mr.A.Ramesh
Senior Counsel
for Mr.G.R.Hari

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the proceedings

in C.C.No.4842 of 2020, on the file of Chief Metropolitan Magistrate, Egmore.



2.The case of the respondent is that on 29.2.2020, one Arun Chidambaram, was working as an operator in the second shift in the Anodizing Tank Area. At about 8.57 pm., the worker went near the degreasing tank. Unfortunately, he fell into the tank and suffered 90% burn injuries. He was rushed to the hospital but he succumbed to the injuries on 1.3.2020.

3.The respondent had filed two separate complaints for this incident – one against the occupier of the factory and the other against the manager of the factory. Insofar as the complaint that was filed against the occupier of the factory for offence under Section 33(1) r/w Rule 87, Rule 95 Schedule II Clause 9(3)(4) and (5) of the Factories Act in CrI.OP.No.29 of 2021, the proceedings were quashed by order dated 22.8.2022 on the ground that the complaint has been filed beyond the limitation period and the Court below has taken cognizance inspite of the bar under Section 106 of the Factories Act. The present quash petition has been filed by the manager of the factory.

4.The respondent has filed a counter. In the counter, it is stated that there was gross negligence in not keeping the work place under safety and as a result, the worker had died after sustaining 90% burns. This incident had taken place on 29.2.2020. The inspection was conducted by the concerned authority on 1.3.2020. The show cause notice was issued on 29.5.2020, calling upon the occupier and the manager as to why they should not be prosecuted. On 17.6.2020, a reply was received from the manager of the factory. Since the reply was not satisfactory, a



further intimation letter dated 23.6.2020 was issued. The sanction was granted on 30.6.2020 and based on the sanction, the complaint came to be filed.

5.The learned Government Advocate (Crl.Side) on instructions submitted that the complaint was initially filed on 15.9.2020. It was returned on the ground of certain defects on 20.10.2020. Thereafter, it was represented on 1.12.2020. The learned counsel submitted that an application under Section 473 Cr.PC was also filed and the Court below entertained the application and the delay was condoned and thereafter the Court below had taken cognizance of the private complaint. The learned Government Advocate (Crl.Side) therefore submitted that the present case is not barred by limitation under Section 106 of the Factories Act.

6.The learned Senior Counsel appearing on behalf of the petitioner submitted that the order that was passed in favour of the occupier in Crl.OP.No.29 of 2021, must enure in favour of the petitioner also, who is the occupier of the factory. The learned Senior Counsel submitted that even if an application had been filed under Section 473 Cr.PC., the same could not have been allowed without issuing notice to the accused person and hearing him. The learned Senior Counsel further submitted that the organization took the moral responsibility for the demise of the worker and a sum of Rs.10,00,000/- was paid by way of three demand drafts in favour of the father, mother and the wife of the deceased.



7. In the considered view of this Court, for the very same incident, the prosecution was launched both against the occupier and the manager of the factory by filing two independent private complaints. The complaint that was filed as against the occupier of the factory came to be challenged before this Court in Crl.OP.No.29 of 2021 and this Court by an order dated 22.8.2022 quashed the proceedings on the ground that the complaint itself is barred under Section 106 of the Factories Act.

8. The above ground that went in favour of the occupier of the factory, must also enure in favour of the manager of the factory. The learned Government Advocate (Crl.Side) explained this Court as to how the complaint was filed on time and the cognizance taken by the Court below by exercising its jurisdiction under Section 473 Cr.PC.

9. If the statement made by the learned Government Advocate (Crl.Side) is taken into consideration, it has to be seen as to how the Court below could have exercised its jurisdiction under Section 473 of Cr.PC, without issuing notice to the accused persons. This Court in the latest judgment in **Ranjith @ Ranjikumar v. Inspector of Police, Kulithalai** reported in **2024 1 MWN CrI.308** has categorically held that delay in filing the final report or the complaint can be condoned only after issuing notice to the accused persons and only after hearing the accused persons. Admittedly, this procedure has not been adopted in the present case.



10. The fact that the court below had entertained an application under Section 473 Cr.PC, clearly shows that the complaint per se was barred by limitation.

Therefore, the order that was passed in favour of the occupier of the factory by quashing the complaint on the ground of limitation, must equally apply to the manager of the factory also. There is no use in independently prosecuting the manager for the same incident when the very cognizance taken by the Court below is non-est in the eye of law.

11. Apart from the above reasoning, this Court also finds that the organization had taken the moral responsibility and had paid the compensation of nearly Rs.10,00,000/- to the family members. Therefore, it is not as if the family of the deceased were left high and dry in this case.

12. In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 Cr.P.C. Hence, the proceedings in C.C.4842 of 2020, on the file of Chief Metropolitan Magistrate, Egmore, is hereby quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

18.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
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N.ANAND VENKATESH.,J

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To

- 1.Joint Director (i/c)
Industrial Safety and Health
D.S.No.47/1, Block 6
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Guindy, Chennai-32.
- 2.Chief Metropolitan Magistrate,
Egmore.
- 3.The Public Prosecutor
High Court of Madras.

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