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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.19398 and 19401 of 2023
and Crl.MP.Nos.13044 & 13045 of 2023

Thiru.Ness N.Wadia
S/o.Thiru Nusli N.Wadia
Occupier
M/s.Thay Mudi Tea Factory
The Bombay Burmah Trading Corporation Ltd.,
SF No.17/3, Anaimalai Hills Village
Mudis Post, Valparai Taluk
Coimbatore District-642 117.

...Petitioner/Accused
in Crl.OP.No.19398 of 2023

Thiru Mehran
S/o.Thiru Suhail Ahmed
Manager
M/s.Thay Mudi Tea Factory
The Bombay Burmah Trading Corporation Ltd.,
SF No.17/3, Anaimalai Hills Village
Mudis Post, Valparai Taluk
Coimbatore District 642 117.

...Petitioner/Accused
in Crl.OP.No.19401 of 2023

Vs.

The State rep.by its
Deputy Director
Industrial Safety and Health
Pollachi.

... Respondent/Complainant
in Both Crl.OPs



Common Prayer: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.Nos.687 and 690 of 2023, pending on the file of the learned Chief Judicial Magistrate, Coimbatore and quash the complaint and all further proceedings pending before the Court.

For Petitioner
In Crl.OP.No.19398 of 2023

: Mr.Srinath Sridevan
Senior Counsel
for Mr.S.Ashok Kumar

In Crl.OP.No.19401 of 2023

: Mr.Abudu Kumar Rajarathinam
Senior Counsel
for Mr.V.Johnson Yuvaraj

For Respondent
(in Both Crl.OPs)

: Mr.A.Gopinath
Government Advocate (Crl.Side)

COMMON ORDER

The issue involved in both these petitions are common and hence, they are taken up together, heard and disposed off through this common order.

2.In Crl.OP.No.19398 of 2023, the occupier of the factory has challenged the proceedings in C.C.No.687 of 2023, pending on the file of the Chief Judicial Magistrate, Coimbatore. In Crl.OP.No.19401 of 2023, the manager of the factory has challenged the proceedings in C.C.No.690 of 2023, pending on the file of the Chief Judicial Magistrate, Coimbatore.



3. Heard Mr. Srinath Sridevan, learned Senior Counsel for petitioner in CrI.OP.No.19398 of 2023, Mr. Abudu Kumar Rajarathinam, learned Senior Counsel for petitioner in CrI.OP.No.19401 of 2023 and Mr. A. Gopinath, learned Government Advocate (CrI.Side) appearing on behalf of the respondent.

4. The respondent has filed a complaint before the Court below on the ground that the occupier of the factory had violated Section 7A(1)(2)(a)(c) and Section 41 of the Factories Act r/w Rule 61F of the Tamil Nadu Factories Rules. This allegation was made against the petitioner on the ground that the petitioner being the occupier of the factory did not ensure sufficient safety measures and as a result, on 20.12.2022 at about 6.45 am., a workman named Ramasamy attempted to shut the door of ball breaker machine during its operation and the fan blade of the ball breaker machine came in direct contact with the right hand of the workman and as a result, he sustained serious injuries. A show cause notice dated 30.1.2023, was issued in this regard to the occupier. On receipt of the same, the occupier gave a reply dated 18.2.2023 stating that he is residing in Mumbai and he is not involved in the day-to-day affairs of the plant and that the incident had taken place due to the negligence on the part of the said Ramasamy. However, the medical expenses were borne by the Company and he had recovered well. The petitioner also stated that there is sufficient safety in the work place and the provisions of the Factories Act, 1948, have been complied with.



5.The manager of the factory was also issued with the show cause notice dated 30.1.2023. As per this show cause notice, he is said to have violated Section 41 of the Factories Act r/w rule 61F and Section 83 r/w rule 87 of the Factories Act, 1948. As per the show cause notice, the manager did not ensure proper safety in the work place. That apart, he did not properly maintain the register of leave with wages and it was not produced at the time of inspection. On receipt of this show cause notice, the manager of the factory gave a detailed reply dated 17.2.2203 by meeting each and every violation that was alleged in the show cause notice.

6.The respondent was not satisfied with the reply given by the occupier and the manager and hence, proceeded to file two independent complaints against the occupier and the manager and these complaints have been put to challenge in these criminal original petitions.

7.Individual counter affidavits have been filed in both these petitions. The respondent has explained as to how the occupier and the manager have violated the provisions of the Act and as a result, a serious incident had taken place in the factory in which one Ramasamy was injured in his right hand. The respondent has taken a stand that the occupier and the manager must face the prosecution and whatever defence is available, can be taken only before the Court below. The respondent has also justified filing two independent



complaints against the occupier and the manager and has sought for the dismissal of both these petitions.

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8.This Court has carefully considered the submissions made by the learned Senior Counsel appearing in these petitions and also the learned Government Advocate (Crl.Side) appearing on behalf of the respondent and the materials placed on record.

9.The trigger for the issuance of show cause notice was the incident that had taken place in the factory on 20.12.2022. The workman named Ramasamy had attempted to shut the door of ball breaker machine when the fan was running and as a result, his right hand came in contact with the fan blade and he sustained injury in his right hand palm. The petitioners have produced the material before this Court wherein, the said Ramasamy was enquired by the police immediately after the incident and he had stated that the entire incident had taken place only due to his negligence. That apart, it was also brought to the notice of this Court that he was given treatment and he fully recovered and he continues to work in the same plant belonging to the company. Apart from the other submissions that were made by the learned Senior Counsel appearing for the petitioners, the main ground of attack was that a reply was given by both the occupier and the manager for the show cause notice that was issued by the respondent and that this reply was not even taken into consideration or



mentioned in the complaint and the complaint has been straight away filed based on the allegations that were made in the show cause notice. In view of the same, it was contended that the complaint itself is unsustainable. To substantiate this submission, the order passed by this Court in CrI.OP.Ns.17833 and 17837 of 2014, dated 14.8.2019, was relied upon. By relying upon this order, it was submitted that where a reply has been given to the show cause notice, if the same is not taken into consideration and the complaint is filed by the authority, the complaint itself becomes unsustainable on the ground of non application of mind.

10. For proper appreciation, paragraph 17 in the order that was relied upon is extracted hereunder:

*17. 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



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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



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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 re-presented 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 re-presented i.e., on 30.09.2013. There is no explanation forthcoming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented 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”.

11.A careful reading of the reply that was given by both the occupier and the manager shows that they have met each of the allegations made against them by providing an answer and these answers were not even taken into consideration at the time of filing the complaint. The complaint that has been filed by the respondent is a mere reiteration of the show cause notice that was issued to the occupier and the manager. This clearly shows that there was non application of mind while lodging the complaint even without considering the reply given for the show cause notices.

12.In the light of the above discussion, it is not necessary for this Court to consider the other grounds that were raised and it will suffice to interfere with



the proceedings on the ground that the reply that was given to the show cause notice was not considered and hence, the complaint suffers from non-application of mind. In view of the same, the continuation of the complaint against the petitioners will result in an abuse of process of law which requires the interference of this Court in exercise of its jurisdiction u/s. 482 of Cr.PC.

13.In the result, the proceedings in C.C.Nos.687 and 690 of 2023, pending on the file of the learned Chief Judicial Magistrate, Coimbatore, is quashed and both the criminal original petitions stands allowed. Consequently, connected miscellaneous petitions are closed.

15.02.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

- 1.The Deputy Director
Industrial Safety and Health
Pollachi.
2. Chief Judicial Magistrate, Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras.
Madras.



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N. ANAND VENKATESH, J.

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