



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.19985 of 2023
and Crl.MP.Nos.13565 & 13566 of 2023

1.M/s.A.S.Shipping Agencies Pvt.Ltd.,
Represent by its Director Lalit Beriwal
Old No.55/ New No.113
Armenian Street
Chennai 600 001.

2.Shri.Lalit beriwal
Director
M/s.A.S.Shipping Agencies Pvt.Ltd.,
113, Armenian Street
Chennai 600 001.

...Petitioners/Accused 1 & 2

.Vs.

Union of India
Rep.by Shri.S.Shiva Kumar
The Assistant Director (safety)
Inspectorate Dock Safety
Government of India
Ministry of Labour and Employment
Anchor gate building
III Floor, Rajaji Salai
Chennai 600 001.

.. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connected to C.C.No.866 of 2021, on the file of XVI Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.S.Ramachandran

For Respondent : Mr.N.Ramesh
Senior Panel Counsel

ORDER

WEB COPY

This petition has been filed challenging the proceedings before the Court below in C.C.No.866 of 2021, pending on the file of XVI Metropolitan Magistrate, George Town, Chennai.

2. When the matter came up for hearing on 11.9.2023, this Court passed the following order:

Notice to the respondent returnable by four weeks. Private notice is also permitted.

2. The main ground that was urged by the learned counsel for the petitioners is that the alleged incident had taken place on 29.12.2019 and whereas the complaint itself came to be filed only on 19.03.2021 and it was contended that the complaint is barred by limitation. To substantiate the same, the learned counsel relied upon section 14(2) of the Dock Workers (Safety, Health and Welfare) Act, which specifically provides that the maximum imprisonment is for a term of six months and consequently, the complaint ought to have been filed within a period of one year, failing which, it will be barred under section 468(2) of Code of Criminal Procedure.

3. A prima facie case has been made out for grant of an interim order and hence, there shall be an order of stay of proceedings in CC.No.866 of 2021 on the file of the XVI Metropolitan Magistrate, George Town, Chennai for a period of four weeks. The presence of the petitioners is dispensed with, for a period of four weeks.

4. Post this case after four weeks. 11.09.2023



3. When the matter was taken up for hearing today, counter affidavit of the respondent has been filed.

4. Heard Mr.S.Ramachandran, learned counsel for the petitioners and Mr.N.Ramesh, learned Senior Panel Counsel appearing on behalf of the respondent.

5. It is seen from the earlier order passed in CrI.OP.No.18516 of 2021, dated 17.10.2023 that the proceedings insofar as the co-accused is concerned, was quashed on the ground that the complaint itself has been filed after the period of limitation. The relevant portions are extracted hereunder:

9. Section 17(3)(b)(iii) of the Act says about the limitation, which is extracted hereunder :- "17. Provisions relating to Jurisdiction:-

(1).....

(2).....

(3)

(b) in the case of an offence punishable with imprisonment

(i) within one year from the date of the offence ; or

(ii) where the commission of the offence was not known to the Inspector within one year from the first day on which the offence comes to the knowledge of the Inspector; or

(iii) where it is not known by whom the offence was committed, within six months from the first day on which the identity of the offender is known to the Inspector."

Accordingly, the first respondent ought to have lodged complaint within a period of one year from the date of offence. If the offence was not known to the Inspector, within a period of one year whenever the offence comes to the knowledge of the Inspector. The complaint has to be filed within a period of one year from the date of

knowledge. In the case on hand, the first respondent was duly



informed about the accident on 30.12.2019 itself. Whereas the complaint was filed only on 19.03.2021. Therefore, it is clearly barred by limitation.

10. The first respondent filed counter and it revealed that that due to Covid-19, the complaint was lodged belatedly and as such the delay can be condoned as per the order dated 10.01.2022, passed by the Hon'ble Supreme Court of India in suo motu writ petition in Suo Motu W.P.(C)No.3 of 2020. It is held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. The relevant portion is extracted hereunder :-

"2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No. 665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:



i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) No. 3 of 2020; and ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020; and

iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned Counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed Under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for



instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

11. Subsequently, the Hon'ble Supreme Court of India clarified above decision in the judgement reported in (2021) 12 SCC 1 in the case of S. Kasi vs. State through Inspector of Police, Madurai, that while considering the default bail under Section 167(2) of Cr.P.C., the limitation cannot be extended since the denial of compulsive bail to the accused will definitely amount to violation of his fundamental right under Article 21 of the Constitution of India. No accused is deprived of his valuable right as contemplated under Section 167 (2) of Cr.P.C.

12. Therefore, the order passed by the Hon'ble Supreme Court of India in the Suomuto Writ Petition (C).No.3 of 2020, never meant to curtail any provisions of the Code of Criminal Procedure or any other statute which was enacted to protect the personal liberty of a person. Hence, the judgement cited by the learned counsel appearing for the first respondent is not applicable to the case on hand. However, on the other grounds as stated above, the complaint lodged by the first respondent is not sustainable as against the petitioners and it is liable to be quashed.

6.The learned Senior Panel Counsel for the respondent submitted that in the instant case, the petitioners have been arrayed as A3 and A4. They are the employers of the fork lift operator A5 to whom they assigned the work. The fork lift operator, who was employed did not have a valid license and he operated the same in a negligent manner resulting in the accident.

7.The fact that this Court had already interfered with the proceedings insofar as A1 and A2 are concerned on the ground of limitation and the same must also enure in favour of the petitioners who have been arrayed as A3 and A4. The issue



of limitation is common for all the accused persons and hence the petitioners cannot be treated differently. That apart, the order passed by this Court in CrI.OP.No.18516 of 2021 has also become final.

8.In the light of the above discussion, the proceedings in C.C.No.866 of 2021, on the file of XVI Metropolitan Magistrate, George Town, Chennai, is quashed even insofar as the petitioners are concerned and accordingly, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

12.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
kp

To

1.Union of India
Rep.by Shri.S.Shiva Kumar
The Assistant Director (safety)
Inspectorate Dock Safety
Government of India
Ministry of Labour and Employment
Anchor gate building
III Floor, Rajaji Salai
Chennai 600 001.

2.XVI Metropolitan Magistrate
George Town, Chennai.



WEB COPY



8

N.ANAND VENKATESH.J.

kp

CRL.O.P No.19985 of 2023

12.03.2024