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Crl.R.C.No.1657 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1657 of 2024

and

Crl.M.P.No.13766 of 2024

Sriram Viji

Owner of Brakes India Private Limited,
Pulivalam Village, Ranipet District.

... Petitioner

Versus

State rep. by
The Deputy Director,
Industrial Safety and Health,
Vellore.

...Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure to call for the records in C.C.No.8 of 2024 pending on the file of learned Chief Judicial Magistrate, Ranipet District and to set aside the order dated 13.09.2024 passed in Crl.M.P.No.168 of 2024.

For Petitioner : Mr.S.Ashok Kumar, Senior Counsel
for Mr.V.Senthil Murugan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Revision Petition is filed to call for the records in C.C.No.8 of 2024 pending on the file of learned Chief Judicial Magistrate, Ranipet District and to set aside the order dated 13.09.2024 passed in Crl.M.P.No.168 of 2024.

2.The petitioner, who is an accused in C.C.No.8 of 2024, had filed a petition in Crl.M.P.No.168 of 2024 under Section 228 of Bharatiya Nagrik Suraksha Sanhita (in short 'B.N.S.S.') (Section 205 Cr.P.C.) seeking to dispense with the personal appearance of the petitioner/accused and the same was dismissed, against which, the present revision is filed.

3.The contention of the learned counsel for petitioner is that the petitioner was arrayed as an accused in the above case as occupier of the factory, namely, M/s.Brakes India Private Ltd. The petitioner is a frequent traveller for business purpose. The petitioner has to travel to Japan and



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Mexico for his proposed business itinerary. The petitioner has got factories in other parts of the country where he has to frequently visit. For that reason, the petitioner filed the above petition. Further, the petitioner filed a petition under Section 275 of BNSS (Section 252 of Cr.P.C.) in Crl.M.P.No.169 of 2024 requesting the Court to permit the petitioner to be represented by his counsel to answer the charges and the same is kept pending. On the other hand, the above impugned order has been passed, by which, the petitioner's prayer in Crl.M.P.No.169 of 2024 has become meaningless. He further submitted that in C.C.No.7 of 2024, the Manager of Brakes India Private Ltd., Ranipet was prosecuted and he pleaded guilty and the trial Court by order dated 09.08.2024, imposed the following sentences:

“In the result, the accused is found guilty under Section 252 of Cr.P.C. for the offences under Sections 33(1) r/w Section 92 of the Factories Act; and Section 88(1) of the Factories Act r/w Rule 96(1)(2) schedule 1(a) of Tamil Nadu Factories Rules and sentenced to pay a fine of Rs.25,000/- (Rupees Twenty Five thousand only) for the offence under Section 33(1) r/w Section 92 of



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the Factories Act and in default to undergo simple imprisonment for the period of three months and also sentenced to pay a fine of Rs.4,000/- (Rupees Four thousand only) for the offence under Section 88(1) of the Factories Act r/w Rule 96(1)(2) schedule 1(a) of Tamil Nadu Factories Rules punishable under Section 92 of the Factories Act and in default to undergo simple imprisonment for the period of three months. Total fine Rs.29,000/- ”

The fine was paid and a quietus was given to the issue.

4.The case against the petitioner is, for the same cause of action as occupier he is being prosecuted. In support of his contention, the petitioner relied upon the judgment of Hon'ble Apex Court in *Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd. and Others* reported in (2001) 7 SCC 401, more particularly to paragraph 16 and 17.

5.The learned Additional Public Prosecutor submitted that on 06.09.2023, in the factory, namely, M/s.Brakes India Private Ltd, an



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employee, namely, Krishnamoorthy died due to his fall into 1½ feet stagnated rain water. The petitioner not taken proper steps as occupier to have an hazardous free environment. Hence, for the violation of Section 7(A)(1) and (2) r/w 33(1) of Factories Act, the Manager of the said factory as well as the petitioner as occupier have been prosecuted. Two complaints were filed, one against the Manager in C.C.No.7 of 2024 and another against the petitioner in C.C.No.8 of 2024. The Manager not contested, pleaded guilty and fine of Rs.29,000/- imposed in C.C.No.7 of 2024, which the Manager paid on 09.08.2024. As regards the petitioner, the petitioner was evading service and later with great difficulty service was completed. The petitioner thereafter failed to appear before the Lower Court but engaged an Advocate and filed a petition under Section 205 Cr.P.C. even at the first instance. Further, the petitioner also showed his inclination to plead guilty similar to Manager in C.C.No.7 of 2024. The trial Court dismissed the petition filed under Section 205 Cr.P.C. in Crl.M.P.No.168 of 2024. He further submitted that petitioner's



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credentials, travel itinerary and requirement approval through various factories is not seriously disputed. He further submitted that the respondent has got no serious objection for allowing the petition. The petitioner to be represented by his counsel, since the petitioner had shown inclination to plead guilty and pay fine.

6.Considering the submissions made on either side and on perusal of the materials, this Court finds that the order passed in Crl.M.P.No.168 of 2024 is not sustainable. It is seen that petitioner as occupier is being prosecuted for the same cause of action. Already prosecution was launched against the Manager in C.C.No.7 of 2024, who already pleaded guilty and trial Court imposed fine condition. In any event, the trial Court already imposed fine against the Manager. Hence, the trial Court cannot take a divergent view as against the petitioner/occupier. The petitioner, an occupier of the factory has to take care of other factories and his business commitments. As occupier he cannot be expected to be omnipresent in all



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places. Further, the petitioner had also shown his inclination to plead guilty and pay the fine amount. In view of the judgment of the Hon'ble Apex Court in the case of *Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd. and Others*, wherein the Apex Court had permitted accused in summon case technical in nature to be represented by his counsel to answer charges even to plead guilty. Hence, the order passed by the trial Court in Crl.M.P.No.168 of 2024 dated 13.09.2024 is set aside and the trial Court is directed to permit the petitioner to be represented by his counsel. The trial Court to pass appropriate orders in Crl.M.P.No.169 of 2024 without further delay.

7. With the above directions, the Criminal Revision Case is allowed.

Consequently, connected criminal miscellaneous petition is closed.

01.10.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order

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Note: Issue order copy on 04.10.2024.



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M.NIRMAL KUMAR, J.

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To

- 1.The Deputy Director,
Industrial Safety and Health,
Vellore.
- 2.The Chief Judicial Magistrate,
Ranipet District.
- 3.The Public Prosecutor,
High Court, Madras.

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