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Crl.R.C.Nos.1780 & 1810 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.Nos.1780 & 1810 of 2024
and Crl.M.P.Nos.14863, 14633, 14861 & 14635 of 2024

F.MOHAMED NIZAM ... Petitioner in both CRL RCs

Vs.

THE DEPUTY DIRECTOR
INDUSTRIAL SAFETY AND HEALTH,
CUDDALORE DISTRICT. ... Respondent in both CRL RCs

Common Prayer: Criminal Revision Petition is filed under Section 397 & 401 of Cr.P.C. to set aside the order dated 29.08.2024 made in Crl.M.P.Nos.537 & 536 of 2022 in C.C.No.309 & 308 of 2021 on the file of Chief Judicial Magistrate Court, Cuddalore and to allow the above Criminal Revision Petitions.

In both CRL RCs

For Petitioner : Mr.T.S.Baskaran
For Respondents : Mr.S.Udaya Kumar

COMMON ORDER

The revision challenges the dismissal of the discharge petitions filed by the petitioner, mainly on the ground that the respondent have not



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obtained sanction from the appointing authority, under Section 197 of Cr.P.C. for prosecuting the petitioner.

2. The trial court dismissed the said petition on the ground that the points raised by the petitioner on merits have to be adjudicated only during trial and hence the petition is not maintainable.

3. The petitioner is facing trial in two cases for the offences under Sections 6(1) & Rule 7(1)(2)(3) & Rule 12B(5), Section 31 Rule 56B & Rule 56(7)(9) and Section 7(1) Rule 12B(3)(4) of Factories Act 1948 Amended Act 1987 & T.N. Factories Rule 1950.

4. The learned counsel for the petitioner would submit that the petitioner was working as Senior Agricultural Officer of Bio-fertilizer Production unit in Semmandalam, Cuddalore; and that since he is a public servant, the respondent, while prosecuting him for the aforesaid offence, ought to have obtained sanction. The learned counsel relied upon the judgments of this Court reported in **2021 SCC online Mad 14934** in ***R.Janani Soundarya v. Deputy Director, Industrial Safety***



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and Health-I and Masthan Rao vs. State Rep.by Inspector of

Factories reported in *2014 (3) MLJ (Crl) Mad 523*, in support of his submissions.

5. The learned Government Advocate (crl.side), per contra, submitted that the discharge cannot be allowed since no sanction is required under Section 197 Cr.P.C. as the petitioner is removable by the Director of Agriculture, as he is the appointing authority and not the State Government.

6. Heard the learned counsel for the petitioner as well as learned Government Advocate (crl.side) and perused the records.

7. Taking into consideration the above submissions, this court is of the view that admittedly the petitioner was appointed by the Director of Agriculture and therefore the removing authority is the Director of Agriculture. In order to claim protection under Section 197 of Cr.P.C., a public servant must be removable by the State Government or the Central Government. In the judgments cited by the learned counsel for the



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petitioner, the accused therein were removable either by the State Government or Central Government. Hence, the decisions relied upon by the learned counsel for the petitioner would not be applicable to the facts of the present case. Hence, this Court is of the view that no sanction is required to prosecute the petitioner under Section 197 of Cr.P.C.

8. The other submissions on merits can be adjudicated only before the trial court. Therefore, this court is not inclined to entertain these revisions. However, liberty is given to the petitioner to raise all the grounds before the trial court, in accordance with law. At this juncture, it is reported by the learned counsel for the petitioner that the petitioner is now employed at Cuddalore and hence his appearance before the trial court may be dispensed with.

9. Considering the above submission that the petitioner is employed at Cuddalore, this court is of the view that his appearance before the trial court may be dispensed with. Accordingly, the appearance of the petitioner before the trial court is dispensed with



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unless the trial court requires his presence for the progress of the trial.

The petitioner may file an affidavit of undertaking that he would not dispute his identity and would cross examine the witnesses through his counsel named in the affidavit.

10. Accordingly, both the Criminal Revision Petitions are dismissed confirming the order dated 29.08.2024 made in Crl.M.P.Nos.537 & 536 of 2022 in C.C.Nos.309 & 308 of 2021 on the file of Chief Judicial Magistrate Court, Cuddalore. Consequently, connected Crl.M.P Nos.14633, 14861, 14635 & 14863 of 2024 are closed.

09.12.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order

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To

1.The Chief Judicial Magistrate Court,
Cuddalore

2.The Deputy Director
Industrial Safety and Health,
Cuddalore District.



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SUNDER MOHAN, J.

rgt

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