



Crl.O.P(MD).No.2058 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD)No.2058 of 2020

and

Crl.M.P(MD).No.1030 of 2020

1.Samiyapillai

2.Vengadesh

3.Ganesan

... Petitioners / Accused Nos.1 to 3

Vs.

1.The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
(Crime No.410 of 2018)

... 1st Respondent / Complainant

2.Vijay Razak

... 2nd Respondent / Defacto
Complainant

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings of Crime No.410 of 2018 on the file of the first respondent police and quash the same.

For Petitioners

: Mr.A.Balakrishnan

For R1

: Mr.K.Sanjai Gandhi,

Government Advocate (Crl.Side)

For R2

: No Appearance



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ORDER

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This criminal original petition has been filed to quash the impugned FIR in Crime No.410 of 2018 on the file of the first respondent police.

2.The case of the prosecution is that first petitioner is the HR Manager, second petitioner is the Unit Supervisor and the third petitioner is the Owner of the Kumaran Fish Nets Private Ltd., Company. The second respondent and his brother Ajay Razak were working in the above said Company for the past 7 years. On 31.10.2018, at about 04.20 p.m, while they were in work at Mono Ex-Doder Unit Machine, accident was happened in the factory and as such, the brother of the second respondent died. Hence, the second respondent lodged a complaint, based on which, a case in Cr.No.410 of 2018 registered for the offence under Section 304(A) of I.P.C., Challenging the same, the present petition has been filed.

3.The learned counsel for the petitioners would submit that on the date of occurrence, the Deputy Inspector of Factory submitted a report alleging that he has taken cognizance as per the Factories Act. In the



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meanwhile, the first respondent also registered the case in Cr.No.410 of 2018 registered for the offence under Section 304(A) of I.P.C., On the basis of the report of the Inspector of Factories, an enquiry was conducted and imposed a sum of Rs.25,000/- and Rs.35,000/- respectively on the first petitioner and another person as per the order of the Chief Judicial Magistrate, Kanyakumari District, in C.C.No.92 of 2019. When the Inspector of Factories initiated proceedings under the Factories Act, the first respondent police has no authority to initiate criminal proceedings. It amounts to double punishments and as such, he prays for quashing of the criminal proceedings.

4.Per contra, the learned Government Advocate (Crl.side) for the first respondent submitted that due to the negligence of the petitioners alone, the accident took place, in which, two persons died and one person suffered grievous injuries. Therefore, they are liable to be punished for the offence under Section 304(A) of IPC. Hence, he prays for dismissal of this petition.

5.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the first respondent.



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6. Admittedly, the accident took place due to the negligence of the petitioners and due to which, unfortunately, the brother of the second respondent died. The Inspector of Factories submitted a report stating that an enquiry conducted by the Chief Judicial Magistrate, Kanyakumari District, in C.C.No.92 of 2019 against the petitioners, in which, the petitioners found guilty and paid penalty as per the order of the Chief Judicial Magistrate. The first respondent has also filed an FIR in Crime No.410 of 2018 for the offence under Section 304(A) of IPC.

7. The learned counsel for the petitioners has relied upon the judgment of this Court in ***Manoharan Vs. State of Tamil Nadu*** reported in ***2012 (2) MWN (Cr.) 335***, wherein it has been held that:-

“7. Now, on the basis of the complaint given by one Govindaraj, on the same day, a case in Crime No. 365 of 2009 has been registered for the offence under Sections 338 and 304-A IPC by the respondent police and after the completion of investigation, charge sheet has been filed against the petitioners and the same has been taken cognizance in C.C.No.63 of 2010 and pending before the learned Judicial Magistrate No.V, Trichy.



8.The point now raised by the petitioner is that the occurrence has been taken place within the factory premises and on information, enquiry has been conducted and the Deputy Chief Inspector has filed a complaint against the occupier and the Manager of the Factories under the Factories Act. Since the complaint under the Factories Act have been disposed of the proceedings under the Penal Code, which is a general provision of law is not sustainable.

9.At this juncture, it is appropriate to consider the decision in **Ashwini Kumkar Singh and another Vs. State of Jharkhand, 2007 LLR 866**, wherein, in Paragraph No.7, it has been held as follows:-

“Para 7: The law is settled in the various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. I find that when the complaint case has been instituted vide C/2 No. 5211/05 under Special law (Factories Act, 1948), the continuation of the criminal prosecution against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable. In both the statutes viz., under Section 304-A, Indian Penal Code (general law) and under Section 92 of the Factories Act, 1948 the sentence prescribed to the convict is similar but with additional fine to the extent of Rupees One Lakh in the Special Act to the



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Occupier and in this manner the extent of find is more severe in special law and both cannot proceed at a time. The criminal prosecution of the petitioners, therefore, under Indian Penal Code is unsustainable.

10.Considering the above said decision, two proceedings will not be sustainable for the same cause of action / same incident. In the present case, since to 15 to 2009 filed under the Factories Act have been disposed of and the first petitioner herein and one Narasimha Rao were convicted and they paid the find amount, the continuation of the criminal proceedings against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable”.

8.The above said judgment is squarely applicable to the case on hand. The two proceedings will not be sustainable for the same cause of action/same occurrence. In the present case, under the Factories Act, the petitioners have found guilty and punished in C.C.No.92 of 2019 by the Chief Judicial Magistrate, Kanyakumari District dated 19.11.2018 and paid penalty. Therefore, the continuation of the criminal proceedings as against the petitioners for the offence prescribed in general law of Indian Penal Code is unsustainable.



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9. In view of the above, this court is of the considered opinion that the criminal proceedings cannot be sustainable as against the petitioners. Accordingly, this Criminal Original Petition is allowed and Crime No. 410 of 2018 on the file of the first respondent police, is quashed. Consequently, the connected miscellaneous petition is closed.

19.06.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

dss

To

1. The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN, J.

dss

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