



CRL OP(MD). No.6647 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 11.03.2024

CORAM

THE HON'BLE MR.JUSTICE M. DHANDAPANI

CRL OP(MD) No.6647 of 2022

and

CrI.M.P.(MD) No.4588 of 2022

1.Chacko Purackal Thomas,
Occupier, TATA Coffee Ltd.,
Vaigai Dam, Periyakulam Road,
Jayamangalam Post,
Periyakulam Taluk,
Theni-625 603.

2.P.Satyakam Senapati,
Manager, TATA Coffee Ltd.,
Vaigai Dam, Periyakulam Road,
Jayamangalam Post,
Periyakulam Taluk,
Theni-625 603.

... Petitioner/Accused 1 & 2

Vs

State rep. by
The Deputy Director,
Industrial Safety & Health,
Theni.

... Respondent/ Complainant



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PRAYER :- Criminal Original Petition file under section 482 of Cr.P.C.,
to call for the records pursuant to the charge sheet filed by the respondent
in C.C.No.30 of 2021 on the file of the Chief Judicial Magistrate, Theni.

For Petitioners : Mr.G.Karthikeyan
Senior Counsel
for Mr.P.Subbiah

For Respondent : Mr.S.Manikandan
Government Advocate (Criminal side)

ORDER

Challenging the charge sheet filed by the respondent in C.C.No.30 of 2021 on the file of the Chief Judicial Magistrate, Theni, for the contravention under Sections 28 and 92 of the Factories Act, the present quash petition has been filed by the petitioner.

3. The case of the petitioners is that the petitioners' factory premises is situated at Vaigai Dam, Periyakulam Road, Jayamangalam Post, Periyakulam Taluk, Theni District. On 22.09.2020, while one Electrician Tahriq Mohammed and fitters namely, P.Murugaraja and C.Velmurugan were attending the lift repair work, the rope by which the lift cabin was fixed with the lift got severed and lift cabin fell down from

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the height of 36 feet due to which the said Thariq Mohammed and Murugaraja were grievously injured and the said Murugaraja died in the hospital at 4.00 p.m, on the same day. Immediately after the accident, the respondent issued a show cause notice in which the petitioners had given a suitable reply and without considering the detailed reply with annexures filed in support of the reply given by the petitioners, the respondent mechanically filed a complaint under Section 92 of the Factories Act before the learned Chief Judicial Magistrate, Theni, in C.C.No.30 of 2021. Challenging the same, the present petition has been filed by the petitioners.

4. The learned Senior Counsel would submit that the petitioners fixed the lift as per Section 28 of the Factories Act for the benefit of the factory employees and they also entered into Annual Maintenance Contract with the lift Company. Though the Act provides for maintenance once in six months, they have properly maintained the lift by carrying out the maintenance work once in 15 days through the Annual Maintenance Contract with the Lift Company. However, on the particular date, it is informed that the lift was not properly functioned and



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the same was intimated to the Annual Maintenance Contractor. Before the arrival of the mechanic, in order to prevent the damages, the said employees were preparing for some precaution work, however, the rope by which the lift cabin was fixed with the lift got severed and lift cabin fell down and accident occurred due to which one person lost his life and another person sustained grievous injuries. The petitioners placed all the relevant materials before the respondent, however, the respondent mechanically filed the complaint without considering the same. This act of the respondent for non consideration of the reply given by the petitioners vitiates the entire prosecution case and accordingly, this petition is to be allowed. In support of his contention, the learned Senior Counsel laid down the judgment of this Court reported in **2015(1) LW (Cri) 254 [K.Masthan Rao v. State]** and accordingly, he prayed for allowing this petition.

5. Per contra, the learned Government Advocate (Criminal side) filed the counter affidavit in which it reads as follows:

“3. I humbly submit my averments as below regarding the petitioner affidavit The above Factory was inspected by the Joint



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Director of Industrial Safety and Health, Dindigul on 23.09.2020

a inspection report along with show cause notice issued to occupier and Manager of the Factory on the following contravention noticed during inspection.

Occupier

Factories act 1948 and Tamilnadu Factories Rule 1950

- 1. Section 28(1)(i)(ii) Section 41 Rule 61F Section 7 A (1)(2)*
- 2. Section 28 (1) (a) (ii) Rule 55 (1)*

Manager

Factories Act 1948 and Tamilnadu Factories Rule 1950

- 1. Section 28(1) (a)(i) (ii) Section 41 Rule 61F*
- 2. Section 28 (1) (a) (ii) Rule 55 (1)*

Contravention - 1

- 1. The Goods lift limit switch was not maintained in good conditions and not as stipulated in the Act.*
- 2. The maintenance work of the Goods lift was not carried by the trained persons.*
- 3. The workers were allowed to do with unsafe method of work resulting in accident.*
- 4. The management not ensured the safe working environment and safe working condition during the maintenance work of the Goods lift.*

Section 28(1) (a) (i) (ii) of the Factories Act states that Hoists and lifts (1) In every factory



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(a) Every hoist and lift shall be -

(i) of good mechanical construction, sound material and adequate strength.

(ii) properly maintained and shall be thoroughly examined by a competent person atleast once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

Rule 61 F of the Act states that

61 F Method of work- *No process or work shall be carried on in any factory in such a manner as to cause risk of bodily injury.*

Section 7A (1)(2) of the Act states that

7A. General duties of the occupier, - (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section(1), the matters to which such duty extends, shall include -

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;



e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Since the occupier and Manager bide not adhered to the above provision of law which resulted in an accident causing death and an injury they were prosecuted before the Court by law.

Contravention-2

The Goods lift was not certified by a competent person for its safe operation once in six months and register in form 30 mentioning the details of the test was not maintained till the date of inspection.

The management in its reply has stated that the lift was last certified on 07.11.2019 valid up to 06.05.2020 and due to Covid could not got it certified in time and based on this reply the above contravention was leniently viewed by the then Joint Director of Industrial Safety and Health, Dindigul and was set aside from prosecution.

4. I humbly submit the following observation on the reply of the management.

In the management reply to the above contravention it is stated that the above Goods carrying lift of capacity 1000 kg which was installed in 2006 and 14 years old they had Annual Maintenance Contract with M/s Hephzi elevators, Bangalore and it was last tested by them on 31.08.2020 and limit switch was found working which is contrary to truth. Since the report of service provider has not stated about the functioning of the limit switch of the lift (ref. encl.3) It is also noticed from the reply that only after the occurrence of the accident they have replaced the limit switch (ref. encl. 6A) and replaced the damaged rope (ref. encl.5) which has caused the accident.



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The goods carrying lift was only examined by the competent person on 07.11.2019 valid up to 06.05.2020 only. After the accident only it was certified for its safe operation on 01.10.2020 as admitted by the management on its reply. (the Goods carrying lift was operated without valid certificate for its safe operation for the period 07.05.2020 to 30.09.2020 which period the accident occurred which is contravention under Sec.28(1)(a) ii of the Act)

Documents such as form 35 of factories act that Murugaraja and Tariq Mohammed are trained person were not attached in the reply. The training details (ref. encl.7) does not provide any training relevant to lift maintenance

The management in its reply states that the Annual Maintenance Contract (AMC) team needed two days to come to site to attend the break down. Instead of curtaining the area of work until they come had meddled the repaired lift to set it right using its maintenance team who are not trained in lift maintenance.

The management also admit in its reply that the lift steel wire rope was damaged and it ought not had tried to alter the position of the damaged lift using its maintenance team not trained in lift maintenance and ought have waited for the lift AMC person to rectify the defects in the damaged lift.

The management also admit in its reply that only upon the occurrence of the accident on 22.09.2020 had appointed a dedicated safety officer on 25.09.2020 only (ref.encl.15 of reply).”

6. Heard the learned counsel appearing on either side and perused the materials available on record.



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7. The fact in the present case is not in dispute. Admittedly, The first petitioner is the occupier and the second petitioner is the Manager of the first petitioner. Both are coming under the definition of Section 92 of the Factories Act and it is alleged that on 22.09.2020 at about 3.00 p.m, in the petitioners' factory premises, while the workers are engaged at work, the lift was suddenly fell down due to which one employee namely, Mugugaraja lost his life and another employee sustained grievous injuries. Immediately, the Joint Director of Industrial Safety and Health, Dindigul, inspected the factory premises and issued the show cause notice to the Occupier and Manager of the Factory. Pursuant to which the petitioners submitted the reply with regard to the Annual Maintenance Contract entered with the Lift Company, who has been conducting the maintenance work once in 15 days. The learned Senior Counsel vehemently contended that though the required maintenance is once in six months as per the Factories Act whereas the petitioners are regularly maintaining the lift once in 15 days and the said incident was not occurred due to human error. Though such contention may be attractive, however, the fact remains that a person died and another one sustained grievous injuries. The another contention of the learned Senior



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Counsel that though the petitioners sent the reply and produced all the materials before the authority concerned, the non-consideration of the said reply is fatal to the prosecution case. In support of his contention, he relied upon the judgment of this Court stated supra. Perusal of the said decision, it is made clear that the factory was under construction in that case, but in the case on hand, the petitioners factory is running and due to alleged improper maintenance of the Lift, the said accident had occurred. However, all those issues are to be argued at the time of trial before the trial Court. Since rendering any observation may adversely affect the entire case of the petitioners, this Court is not inclined to express any opinion in this case. Accordingly, this Court is not inclined to interfere the complaint filed by the respondent herein.

8. For the reasons aforesaid, this Court finds no ground or scope to quash C.C.No.30 of 2021, pending on the file of the learned Chief Judicial Magistrate, Theni. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.



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9. The learned Senior counsel appearing for the petitioners would submit that this Court may consider to dispense with the personal appearance of the petitioner before the Court below. Taking into consideration the request as made by the learned Senior counsel for the petitioners, the appearance of the petitioners before the trial Court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days.

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Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To
1. The Deputy Director,
Industrial Safety & Health,
Theni.

2. The Chief Judicial Magistrate,
Theni.

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M.DHANDAPANI. J

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