



CRL OP(MD)No.14791 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04.01.2024

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THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL OP(MD)No.14791 of 2020
and
Crl.M.P(MD)Nos.7000 and 7001 of 2020

V.R.Jayakumar

... Petitioner

Vs

The State represented by
Deputy Director (B.O.C.W)
Industrial Safety and Health Department,
No.11/A/1, Vinayakar Nagar,
Opposite District Court Campus,
K.K.Nagar, Madurai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the original complaint in S.T.C.No.2388 of 2020 dated 20.03.2020 on the file of the Chief Judicial Magistrate, Madurai and quash the same.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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ORDER

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Challenging the private complaint filed by the Deputy Director, Industrial Safety and Health Department, Madurai, in STC No.2388 of 2020 before the learned Chief Judicial Magistrate, Madurai,, against the present petitioner, for the offences punishable under Sections 39(1) and 62(1)(2)(2b) r/w Rule 210(1)(a)(b) and 210(2) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'the Act') and Section 50(1) IPC, the present Criminal Original Petition is filed.

2. The brief facts of the case of the prosecution in a nutshell, are as follows:-

The petitioner a School teacher engaged the services of one M.Sakthivel, a Mason for constructing a house in his land in Samayanallur, Madurai District and also allegedly entered into an unregistered construction agreement on 13.06.2019. Accordingly, Sakthivel and other workers started constructing a building in the land belonging to the petitioner. On 23.12.2019 at about 03.45 p.m. one



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R.Sivasakthi, aged 26 years got electrocuted, while removing the centering sheet and he died on the spot. Hence, a case in Crime No.450 of 2019 was registered by the Special Sub Inspector of Police, Samayanallur Police Station, on 23.12.2019 for the offences punishable under Sections 337 and 304(A) IPC against the petitioner and Sakthivel (Mason). The legal heirs of the deceased Sivasakthi filed a petition under the Workmen Compensation Act in E.C.No. 62 of 2020 before the Labour Court, Madurai, in which, a compensation of Rs.8,66,120/- was awarded to them and the present petitioner was directed to pay the said amount. In the civil miscellaneous appeal filed against the said orders, by the present petitioner, an order of stay was granted on condition that the present petitioner should pay a sum of Rs.4,50,000/-. Subsequently, the Deputy Director, Industrial Safety and Health Department, filed a private complaint in STC No.2388 of 2020 before the Chief Judicial Magistrate, Madurai, for the offences as stated above against the present petitioner. Aggrieved over the same, the present criminal original petition is filed by the petitioner.



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3. Mr.V.Kannan, learned counsel appearing for the petitioner contended that when the petitioner had already paid more than 50% of the compensation amount, he cannot be held liable for criminal prosecution and that in the private complaint in STC No.2388 of 2020, the contractor had not been shown as a party respondent. His further contention is that the petitioner being the owner of the land had entrusted the construction work to the contractor, namely, M.Sakthivel, who had employed several persons. According to him, the contractor can alone be held responsible for not taking any precautionary measures and the owner cannot be fastened with criminal liability. It is his further submission that as per Rule 210 of the Act, the owner has reported the accident to the nearest police station, based on which, an FIR was registered. His next contention is that Industrial Safety and Health Department had directly issued summons to him which is against the Act. Therefore, the complaint filed by the Deputy Director, Industrial Safety and Health Department, should be quashed.

4. Per contra, Mr.R.M.Anbunithi, learned Additional Public Prosecutor for the respondent contended that as per the Act, the owner is



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also liable and that Sakthivel is only a Mason and not a Contractor. His further contention is that the said Sakthivel had given a statement before the police that he was working under the present petitioner as a Meistry. He as well as his team were working under the present petitioner directly and therefore, the criminal complaint against the owner of the land is perfectly in order. He also draw the attention of this Court to the summons issued by the learned Chief Judicial Magistrate, Madurai, dated 13.07.2020 and contended that the Department had not issued summons and on the contrary, on filing of the private complaint, the learned Chief Judicial Magistrate alone had sent summons to the present petitioner. He therefore prayed for dismissal of the present petition.

5. The main contention of the petitioner is that he had engaged one Sakthivel as a Contractor and that all the workmen were working under him and therefore, he cannot be fastened with criminal liability. At this juncture, it is relevant to extract Section 2 (i) of the Act:-

*2(i) employer", in relation to an establishment,
means the owner thereof, and includes,-*

*(i) in relation to a building or other construction
work carried on by or under the authority of any*



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department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

6. A reading of the above Section clearly shows that an employer also includes the owner and the Contractor and therefore, the petitioner cannot claim that he has been unnecessarily roped in. The statement given by the said Sakthivel before the Deputy Director, Industrial Safety and Health Department also prima facie shows that around 15 persons (including the mason Sakthivel) were working under the present petitioner/owner of the building.



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7. In such circumstances, I do not see any reason to quash the private complaint filed by the Deputy Director, Industrial Safety and Health Department, in STC No.2388 of 2020. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

04.01.2024

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

- 1.The Deputy Director (B.O.C.W)
Industrial Safety and Health Department,
No.11/A/1, Vinayakar Nagar,
Opposite District Court Campus,
K.K.Nagar, Madurai.
- 2.The Chief Judicial Magistrate,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA,J.

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