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Crl.O.P.(MD).Nos.18506 & 18507

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).Nos.18506 & 18507 of 2022

and

Crl.M.P.(MD).Nos.12437 & 12439 of 2022

Crl.O.P.(MD).No.18506 of 2022

Krishna Mahesh

...Petitioner

Vs.

State of Tamil Nadu,
Represented by
the Deputy Director-I,
Industrial Safety and Health,
Virudhunagar-626 001.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records of complaint dated 23.06.2022 in C.C.No.572 of 2022 pending on the file of the learned Chief Judicial Magistrate, Srivilliputhur and quash the same.

Crl.O.P.(MD).No.18507 of 2022

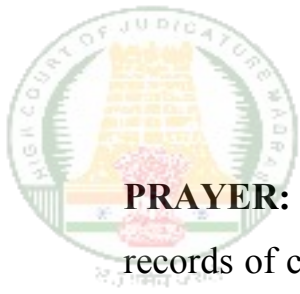
G.Arunachalam

...Petitioner

Vs.

State of Tamil Nadu,
Represented by
the Deputy Director-I,
Industrial Safety and Health,
Virudhunagar-626 001.

...Respondents



PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records of complaint dated 23.06.2022 in C.C.No.573 of 2022 pending on the file of the learned Chief Judicial Magistrate, Srivilliputhur and quash the same.

For Petitioners	: Mr.V.Prakash, Senior Counsel for M/s.Raman and Associates (In both petitions)
For Respondent	: Mr.S.Ravi, Additional Public Prosecutor (in both petitions)

COMMON ORDER

These quash petitions have been filed challenging the proceedings pending in C.C.Nos.572 of 2022 and 573 of 2022 on the file of the learned Chief Judicial Magistrate, Srivilliputhur.

2. The respondent filed a private complaint against the owner and the Manager of the Company on the ground that on 29.03.2021 at about 06.50 a.m., one Velumurugan, who was a Helper, working in the Factory had operated kneader-mixer machine and on completion of the auto-cycle, he poured the blend oil into the mixing chamber, at which point of time, the main ram came down automatically causing his right hand to get stuck between the main ram and the mixing chamber. This lead to a crush injury and a cut injury in his right hand. During that time, he held his left hand on the chamber for support and as a result, his forefingers except the thumb also got crushed.



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3. After the above incident, an inspection was conducted on 07.04.2022 and after inspection, a show cause notice dated 19.04.2022 was issued to the Company, calling upon their explanation on the ground that there was contravention of Section 21(2) read with Rule 53 Schedule VIII Clause 4 (1)(3), Section 21(2) Rule 53 and Schedule VIII Clause 6(2) and Section 88(1) read with Rule 96(2) of the Factories Act, 1948 and Tamil Nadu Factories Rules, 1950. On receipt of the show cause notice, a reply dated 16.05.2022 was given by the Company explaining their defence. In this reply, there was a specific mentioning regarding the medical treatment and the other medical bills that were settled on behalf of the injured and the salary that was paid to the injured person at the time when he was taking treatment. Thus, the Company took a stand that the entire incident had taken place only owing to the negligence on the part of the worker.

4. Ultimately, the respondent not being satisfied with the reply given by the Company sought for a sanction to prosecute the owner and the Manager of the Company and sanction was granted through proceedings dated 13.06.2022 by the Additional Director, Industrial Safety and Health, Madurai. Thereafter, the complaint came to be filed on 23.06.2022. Separate complaints were filed against the owner and the Manager and both those proceedings have been put to challenge in these quash petitions.



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5. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

6. The main ground that was urged by the learned Senior Counsel appearing on behalf of the petitioners are:

(a). The complaint is barred under Section 106 of the Factories Act, 1948 and

(b). The reply that was given to the show cause notice and the subsequent clarifications that were given by the Company was not even taken into consideration either at the time of granting sanction or at the time of filing the private complaint.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent by relying upon the counter-affidavit filed by the respondent submitted that the private complaint is not barred by limitation, since the inspection in this case had taken place on 07.04.2022 and the private complaint has been filed within three months thereafter. In order to substantiate his submission, the learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Apex Court in the case of *P.D.Jambekar Vs. State of Gujarat* reported in (1973) 3 SCC 524. He further submitted that the reply that was given by the petitioner was considered and it was



found to be not satisfactory and therefore, the private complaints were filed before the Court below against the petitioners for various offences under the Factories Act and Rules thereafter. He further submitted that the manner in which this accident had taken place is purely a question of fact and the same cannot be gone into in these quash petitions and the parties will have to be relegated to the Court below with a direction to complete the proceedings within a time frame.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The manner in which this accident had taken place is explained by the respondent in a particular manner and a defence is raised by the petitioners to the effect that the accident itself had taken place only due to the negligence of the worker. This issue is purely a question of fact and it cannot be gone into by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10. The main issue that was raised on the side of the petitioners is that the private complaint itself is barred by limitation under Section 106 of the Factories Act, 1948 and therefore, the Court below ought not to have taken cognizance of the private complaints.



11. In order to appreciate the above ground that has been raised on the side of the petitioners, this Court has to take note of the scope and ambit of Section 106 of the Factories Act, 1948. This issue was gone into in detail by this Court in Crl.O.P.(MD).Nos.23034 and 23035 / 2015 by an order dated 19.08.2019. The relevant portions are extracted hereunder.

“14. It will be relevant to consider at this stage as to whether the complaint is barred by limitation under Section 106 of the Factories Act.

15. Useful relevance can be placed to the judgment of the Hon'ble Supreme Court in J.J.Irani & Another referred supra. The relevant portions of the judgment is extracted hereunder :

“10. There is no dispute about the meaning of the term “commission of the offence” or “knowledge,” hence the question is essentially: when did the Inspector come to know of the commission of the offences? Section 106 of the Act reads as follows: “Section 106: Limitation of prosecution: No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of



disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

[Explanation: - For the purpose of this section -

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.]”

13. The High Court accepted that the starting point for limitation was the date of knowledge of the commission of offence but took the view that in the present case the date of accident and the date of knowledge of the commission of the offence are different. The High Court relied on the decision of this Court in P.D. Jambekar v. State of Gujarat, (1973) 3 SCC 524, in which this Court observed as follows:

“As Section 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, we find it difficult to read the section so as to make the date on



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15. *We have heard the matter and considered the issue at length and we find ourselves unable to uphold the reasoning of the High Court. Jambekar's case (supra), is of no assistance in deciding the present case. In that case this Court accepted that from a reading of the report of the incident it was difficult for anyone to come to the conclusion that an offence under Section 21(1)(iv)(c) has been committed. The Inspector's statement that the report did not convey to him any knowledge that the offence was committed was accepted and this Court concluded that the Inspector did not acquire the knowledge of the 'commission of the offence' when he received the report. The case before us is entirely different. Here the Inspector was himself part of the team, which conducted the preliminary inquiry between 5th and 6th March, 1989. As observed earlier, the inquiry is a detailed investigation going into all aspects of the occurrence. In these circumstances it is not possible to hold that the Inspector of Factories, who undertook a detailed inquiry into the accident along with the Chief Inspector of Factories, remained ignorant that the offences in question have been allegedly committed. It is proper to assume that an officer, conducting an investigation, comes to know what has happened, that being the only purpose of the investigation.*



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16. It is clear from the above judgment, that the limitation has to be calculated either from the date of commission of the offence or from the date on which it came to the knowledge of the concerned authority. The complaint must be filed within three months from the date on which the offence came to the knowledge of the concerned authority. Beyond that, a Court cannot take cognizance of any offence punishable under the Act.”

12. This Court while going into the scope of Section 106 of the Factories Act, 1948, relied upon the judgment of the Hon'ble Apex Court in **J.J.Irani** case. This judgment in turn had taken note of the earlier judgment that was relied upon by the learned Additional Public Prosecutor in **P.D.Jambekar case** referred supra. After having referred to the above judgment, the Hon'ble Apex Court had given the above ruling.

13. In the instant case, the incident came to the knowledge of the concerned authority as early as on 30.03.2021 after Form-18 was filed after the accident. The inspection itself was conducted only in April 2022 and the show cause notice was given only on 19.04.2022. The show cause notice itself has been given beyond the period of limitation. The complaint came to be filed much later on 24.06.2022. Thus, the complaint is clearly barred by limitation and the Court below ought not to have taken cognizance of the complaint.



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14. The next issue touches upon the reply that was given by the petitioners for the show cause notice and the subsequent clarifications given and which has not have been taken into consideration either at the time of granting sanction or at the time of filing the complaint.

15. The above issue was also dealt with in the order passed by this Court in Crl.O.P.(MD).Nos.23034 and 23035 of 2015, dated 19.08.2019. The relevant portions are extracted hereunder:

*“18. The petitioners have given a detailed reply for the Show Cause Notice issued by the respondent. This reply has not been taken into consideration either at the time of granting sanction or at the time of filing of the complaint. This Court has already held that where a reply has been given to the Show Cause Notice, the said reply has to be considered and dealt with at the time of filing of the complaint, failing which, the complaint itself becomes unsustainable on the ground of non application of mind. Useful reference can be made to the judgment of this Court in **K.Masthan Rao .Vs. State, rep. by Inspector of Factories, First Circle, Vellore reported in 2014 (3) MWN (Cr.) 86**. The relevant portions of the judgment is extracted hereunder:*

“27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability



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certificate were all forwarded to the respondent/complainant as well as the head of department. Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of



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the proprietary of the explanations offered. 28. In terms of Rule 102 of the Tamil Nadu Factory Rules, 1950, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply. 29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further



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explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-presented i.e., on 30.09.2013. There is no explanation forth coming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was represented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind.”

16. This Court took into consideration the earlier judgment of this Court and held that where a detailed reply has been given to the show cause notice and subsequent clarifications have also been sought for, the same has to be specifically dealt with both at the time of granting sanction and at the time of filing the complaint, failing which the complaint itself becomes un-sustainable on the ground of non-application of mind. There is absolutely no reference to the stand that was taken by the petitioners in the reply and the respondent has merely confirmed their stand that was taken in the show cause notice which ultimately ended as a private complaint. Such procedure adopted by the respondent is illegal and it requires the interference of this Court.

17. This Court wanted to satisfy itself as to whether the worker who was injured in the accident was properly taken care by the Company. The answer is found in the reply that was given by the Company for the show cause notice. It is



seen that at the time of giving the reply, the Company had incurred nearly a sum of Rs.17,48,246/- towards various expenses. Hence, the Company did not leave the worker in lurch and he was properly taken care and in fact, after the worker was discharged, he continued to work in the Company.

18. In the light of the above discussion, this Court comes to the conclusion that the complaint itself is an abuse of process of law and the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

19. In the result, the proceedings in C.C.Nos.572 and 573 of 2022 on the file of the learned Chief Judicial Magistrate, Srivilliputhur, are hereby quashed and both these Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

03.12.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non Speaking Order
TSG
To
1.The Chief Judicial Magistrate,
Srivilliputhur.
2.The Deputy Director-I,
Industrial Safety and Health,
Virudhunagar-626 001.



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N.ANAND VENKATESH, J.

TSG

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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