



Crl.O.P(MD).No.19677 of 2019

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.19677 of 2019

and

Crl.M.P(MD).Nos.11477 & 1478 of 2019

1.Varatharaju

2.Surya

3.Malaisamy

... Petitioners / Accused Nos.1 to 3

Vs.

1.The State represented by
The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District.
(In Crime No.70 of 2016)

... 1st Respondent / Complainant

2.Manoch Kingu

... 2nd Respondent / Defacto
Complainant

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in P.R.C.No.20 of 2019 on the file of the Judicial Magistrate Court No.II, Sattur and quash the same as illegal as against the petitioners / A1 to A3.

For Petitioners

: Mr.S.Vignesh Shanmugam
for M/s.Ajmal Associates



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For R1 : Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)
For R2 : No Appearance

ORDER

This criminal original petition has been filed to quash the charge sheet in P.R.C.No.20 of 2019 on the file of the Judicial Magistrate Court No.II, Sattur.

2.The case of the prosecution is that the defacto complainant and his brother-in-law by name, Santhosh Kumar Yadav, whose native place is Madevi Village, Kattikar District, Bihar was working as employee under the first petitioner's concern namely, “ Arathana Grafts”, which is a factory for manufacturing papers situated at Peryampatti Village, Nalli Post, Sattur Taluk, Virudhunagar District. On 22.03.2016, as per the instructions made by the petitioners, the above said Santhosh Kumar Yadav, Thallukumar Bishra and Bharathkumar Pandey were cleaning the devastate Paper Overhead Septic Tank. At that time, due to foul smell emanated from the tank, they fell into the said tank successively. Thallukumar Bishra had died on the spot and the Santhosh Kumar Yadav had died at hospital and another employee Bharathkumar Pandey was



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saved with injuries. Hence, the second respondent lodged a complaint, based on which, a case in Cr.No.70 of 2016 registered for the offence under Section 174 of Cr.P.C., Upon completion of investigation, the first respondent filed the final report, which was taken on file in P.R.C.No.20 of 2019 by the Judicial Magistrate Court No.II, Sattur. 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 meanwhile, the first respondent also registered the case in Cr.No.70 of 2016 for the offence under Section 174 of Cr.P.C., On the basis of the report of the Inspector of Factories, an enquiry was conducted and imposed a sum of Rs.1,00,000/- as per the order of the Chief Judicial Magistrate, Srivilliputtur in C.C.Nos.642 & 641 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.



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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 offences under Sections 304(2) and 308 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.

6.Admittedly, the accident took place due to the negligence of the petitioners and due to which, unfortunately, two persons died and one person suffered grievous injuries. The Inspector of Factories submitted a report stating that an enquiry conducted by the Chief Judicial Magistrate, Srivilliputtur in C.C.Nos.642 & 641 of 2019 against the petitioners, in which, the petitioners found guilty and paid penalty of Rs.1,00,000/- as per the order of the Chief Judicial Magistrate, dated 07.09.2019. The first respondent has also laid charge sheet before the Judicial Magistrate Court No.II, Sattur in P.R.C.No.20 of 2019 for the offences under Sections 304(2) and 308 of IPC.



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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 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”.



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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 1 & 2 have found guilty and punished in C.C.Nos.642 & 641 of 2019 by the Chief Judicial Magistrate 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.

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 P.R.C.No.20 of 2019 on the file of the Judicial Magistrate Court No.II, Sattur is quashed. Consequently, the connected miscellaneous petition is closed.

19.06.2024

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

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A.A.NAKKIRAN, J.

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To

- 1.The Judicial Magistrate Court No.II,
Sattur.
- 2.The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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