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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08-04-2025**

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP NO. 6418 of 2024

AND

CRL MP NO. 4732 OF 2024

Mr.Satyam Choudhary
S/o.Pooran Mal Choudary,
Director,
M/s.Instakart Services Private Limited(Grocery),
No.125, Orakkadu Village,
Thiruvallur District-600067

Petitioner(s)

Vs

Deputy Director
Industrial Safety and Health, Thiruvotriyur,
Chennai-600 019

Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C.,
to call for the records pertaining to CC No.740 of 2023 pending on the file
of the learned Chief Judicial Magistrate, Thiruvallur and consequently
quash the same.

For Petitioner(s): Mr.B.Neelesh Sundaram for
M/s.Nathan and Associates

For Respondent(s): Mr.A.Gopinath, GA(Crl.side)

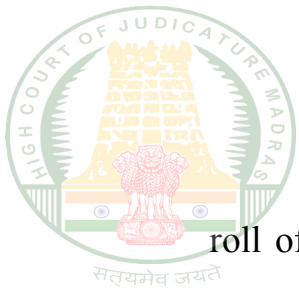


ORDER

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This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to CC No.740 of 2023 pending on the file of the learned Chief Judicial Magistrate, Thiruvallur and consequently quash the same.

2.The respondent filed a complaint against the petitioner for the offences punishable under Section 112, Section 61(1)(d)(9) and Section 62 of the Factories Act, 1948 (herein after referred to as "the Act"). As per Section 112 Rule 103 & Rule 77(4), "the Manager of every factory shall maintain a muster roll of all the workers employed in the factory in Form no.25 and the entries shall be made at the commencement of each period of work. When the petitioner's premise was inspected jointly by then Joint Director of Industrial Safety and Health and Deputy Director of Industrial Safety and Health, Thiruvottiyur, it was found that cold storage with 15,716.6 sq.feet area is used for storage and preservation of the food products like butter, cheese, yogurt and chocolates etc., with a man power of 282 workers and machineries. The petitioner failed to maintain muster



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roll of all the workers employed in the factory in Form no.25. Further, as per Section 61(1)(d)(9) Rule 79, there shall be displayed and correctly maintained in every factory in accordance with the provisions of subsection(2) of Section 108, a notice of periods during which adult workers may be required to work. On inspection, it was found that the petitioner failed to display in a conspicuous place both in English and Tamil about the notice of periods of work for adults. Further, the petitioner also failed to maintain a register of adult workers to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing the name of each adult worker in the factory, the nature of his work, the group, if any, as contemplated under Section 62 Rule 80 of the Factories Acts and Rules.

3.The learned counsel for the petitioner has raised the following grounds to quash the complaint viz, (i) there was a delay in lodgement of the complaint as contemplated under Section 106 of the Act; ii) the petitioner was served with only one show cause notice for alleged contraventions and without considering the reply filed by the petitioner, the respondent filed the complaint.



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4. According to the petitioner, there is no cold storage, and the petitioner is only maintaining a refrigerator for storage of perishables and therefore, there is no manufacturing process for the purpose of bringing it within the definition of 2(12) of the Act. In order to lodge a complaint, there must be a prior sanction from a Superior Officer. Without obtaining any prior sanction, the respondent initiated prosecution as against the petitioner. Though the petitioner submitted categorical reply to the show cause notice, the complaint does not even whisper about the explanation submitted by the petitioner and as such the respondent mechanically lodged a complaint and the same has been mechanically taken cognizance by the trial Court, that too after a lapse of two years.

5. Per contra, the learned Government Advocate for the respondent had filed a counter and submitted that due to Covid 19, there was a delay of few days in lodgment of complaint. The said delay was already condoned by the Hon'ble Supreme Court in the *suo motu* WP(Civil) No.3 of 2020 dated 23.03.2020, thereby extended the period of limitation. Section (2)(k)(VI) of the Factories Act defines 'manufacturing process' as any process for making,



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altering, repairing, ornamenting, finishing, packing, etc., treating or adapting any article or substance with a view to its use, sale, transport, delivery, or disposal. Therefore, for the alleged contraventions, the petitioner is liable to be punished under the Act.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondent and perused the materials available on record.

7. Admittedly, the complaint was filed beyond the period of 3 months from the date of show cause notice. It is relevant to extract the provision under Section 106 of the Act, which reads as under:

“106. Limitation of prosecutions.—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



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For the purposes 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.

8. Thus it is clear that 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 the Inspector. It is mandatory on the part of the respondent to lodge the complaint within three months from the date of any such contravention alleged to have been committed by the petitioner. Admittedly, the respondent and the other officers concerned made an inspection of the petitioner's factory on 26.06.2021. In pursuant to the said inspection, the petitioner was issued with a show cause notice on 14.07.2021 alleging irregularities in the occupational standards of the Company. Therefore, the respondent had knowledge about the contraventions as early as on 26.06.2021 since on the very same date, an



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inspection report was submitted and accordingly, the petitioner was issued with a show cause notice dated 14.07.2021. Therefore, in compliance to Section 106 of the Act, the respondent ought to have filed the complaint for the alleged contraventions, within a period of 3 months from the date of inspection, namely, on or before 26.09.2021. But the respondent filed the complaint only on 01.10.2021. When the respondent was able to conduct the inspection and issue show cause notice, the respondent cannot take shelter under the order passed by the Hon'ble Supreme Court, to extend the period of limitation. Therefore, the present complaint is hopelessly barred by limitation under Section 106 of the Act.

9. Further, on receipt of the show cause notice, the petitioner submitted a detailed reply on 26.06.2021. It was also duly received by the respondent. However, before initiation of prosecution, the respondent did not even whisper about the explanation submitted by the petitioner in the complaint. In this regard, it is relevant to rely upon the judgment of a Division Bench of this Court in the case of the “*Inspector of Factories, Vellore Vs. Showa Engineering Ltd, Sholinghur*” reported in 2007 (4) L.L.N.828. The relevant portion is extracted herein under:

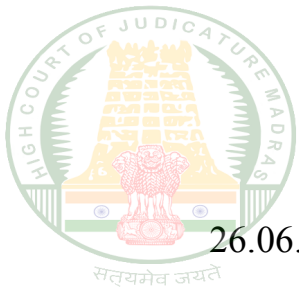


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"2....Therefore, in view of not considering the explanation submitted by the Manager and the writ-petitioner, dated 8 January 2003 and 22 January 2003 respectively, launching the prosecution mainly on the ground that they have to launch the prosecution within a period of three months from the date of knowledge of the accident is illegal, contrary to the provisions of the Factories Act and detrimental to the interest of the petitioner as they have lost the right of appeal provided under the statute and they also have a right to seek time to comply with the lapses pointed out during the inspection by the Inspector and the limitation starts date instead of 90 days from the date of knowledge of the accident. Therefore, the order is set aside"

10.The above cited judgment is squarely applicable to the case on hand and as such the prosecution launched by the respondent beyond three months period contrary to the provisions of the Factories Act and detrimental to the interest of the petitioner as they have lost the right of appeal provided under the statute and they also have a right to seek time to comply with the lapses pointed out during the inspection by the Inspector. Further, on receipt of the show cause notice, the petitioner filed a reply on



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26.06.2021, but unfortunately, it was not even considered and discussed in the complaint lodged by the respondent and it is settled that non-consideration of the reply would provide occasion for filing an appeal under Section 107 of the Act and any prosecution launched in denial of such right would have to be nipped in the bud.

11. The learned counsel for the petitioner vehemently contended that the petitioner's Company is not coming under the meaning of 'Factory' since the petitioner company is not involved in any manufacturing of food products like butter, cheese, yogurt and chocolates etc. The term “Factory” has been defined under Section 2(m) of the Act which reads as follows:

“2(m) “factory” means any premises including the precincts thereof— (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is



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being carried on without the aid of power, or is ordinarily so carried on,— but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)], or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Explanation I—For computing the number of workers for the purposes of this clause all the workers in different groups and relays] in a day shall be taken into account;

Explanation II.—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;”

12. Admittedly, the petitioner's Company is not engaged in the business of manufacturing or processing of eatables. The petitioner's premises is used only to store perishables since it is primarily a logistics company which delivers groceries to the customers through *e-commerce* application with the help of delivery partners. However, on inspection, the respondent considered the petitioner's premises as a 'Factory' since the petitioner's premises had 'cold storage facilities' and as such it requires



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registration as 'Factory' under the Act. On perusal of the reply submitted by the petitioner, it is revealed that all the products are stored in the premises of the petitioner by using a refrigerator and not a cold storage. Therefore, there is no manufacturing process in respect of the products, which are kept in the cold storage. Preservation of such special commodities is no way connected with any manufacturing process. The premises of the petitioner's Company cannot be treated as 'Factory' within the meaning of Section 2(m) r/w Section 2(k)(6) of the Act and in view of the above, the question of duties of the petitioner and the default of the same does not arise.

13. Therefore, the entire prosecution launched as against the petitioner cannot be sustained and is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the complaint in CC No.740 of 2023 pending on the file of the learned Chief Judicial Magistrate, Thiruvallur is hereby quashed. Consequently, connected miscellaneous petition is closed.

08.04.2025

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Index:yes/no

Neutral citation:yes/no



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G.K. ILANTHIRAIYAN.J.,
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To

The Chief Judicial Magistrate,
Tiruvallur

2. Deputy Director
Industrial Safety and Health, Thiruvotriyur,
Chennai-600 019

3. The Public Prosecutor,
High Court,
Madras

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