



CRL.O.P.Nos.9735 & 9740 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.9735 & 9740 of 2023
and Crl.M.P.Nos.6368 & 6372 of 2023

Crl.O.P.No.9735 of 2023

Jayant Damodar Patil
M/s.Larsen and Toubro Ltd

.. Petitioner in both Crl,O,Ps.

Vs.

B.Bala Murugan

... Respondent in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petition is filed under Section 428 of Cr.P.C. to call for the records and to quash the complaint in C.C.Nos.322 & 323 /2022 on the file of the Chief Judicial Magistrate, Tiruvallur.



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For Petitioner : Mr.V.Karthik
(in Crl.O.P.No.9735/2023) Senior Counsel
for M/s.Aiyar and Dolia

For Petitioner : Mr.Jayesh B.Dolia
(in Crl.O.P.No.9740/2023) Senior Counsel
for M/s.Aiyar and Dolia

For Respondent : Mr.A.Gopinath
(in both Crl.O.Ps.) Govt.Advocate (Crl.side)

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records and to quash the complaint in C.C.Nos.322 & 323 /2022 on the file of the Chief Judicial Magistrate, Tiruvallur.

2. For two different set of contravenes, two complaints have been lodged as against the same petitioner by the same complainant, therefore, by this Common order both the cases are being disposed.



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Brief facts of the case are as follows:-

3. In Crl.O.P.No.9735 of 2023, the petitioner was a full-time Director of M/s.Larsen & Toubro Limited and he has been designated since 18.05.2020 as the Occupier of the Shipyard facility, located in Kattupalli, i.e. 40 k.m away from Chennai. M/s.BRS Enterprises which has been engaged by the Company for Shiplift Maintenance and docking support provisioning of Shiplift Support Services in order to render services, the said M/s.BRS Enterprises had engaged its own workers and deputed them to the site after due training on various aspects of the work. While so, M/s.BRS Enterprises has been deputing 12 number of workers for rendering the services under the contract entered into between the Company and the injured person, namely Mr.V.Sudhakar, who met with an accident on 31.12.2020 and immediately he was given first aid and admitted to Sugam Hospital , Thiruvotriyur for further treatment. All medical expenses of the injured including the prosthetic limb, besides paying the monetary compensation applicable for such injuries were borne by M/s.BRS Enterprises.



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4. It is the further case of the petitioner that the said accident was duly informed by the petitioner to the Joint Director of Industrial Safety and Health of the accident and requested time to file the Form-18 (Accident Report) on 04.01.2021. In pursuant to the said information, the petitioner was issued show cause notice dated 07.02.2022 by the Joint Director of Industrial Safety and Health as to why action should not be taken against the company under the Factories Act. It was alleged in the show cause notice that the petitioner had violated Section 41 Rule 61 F and Section 7(A)(2)(2) of the Factories Act,1948 by engaging the injured in casting boat work whereas he was employed as a contract worker by the Contractor only for the purpose of loading and unloading and that the injured had no adequate supervision or training in that work which had resulted in that accident.

5. Further, it is stated that the Company had violated Section 7(A)(1)(2) of the Factories Act by not ensuring the safety and welfare of the workers while they were at work also there was contravene under Section 41 G Rule 61M (1) to (5) of the Factories Act by not forming a



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safety committee with equal number of representatives of the management and workers. The safety committee meetings were not recorded and not produced to the authority. On receipt of the said show cause notice, the petitioner submitted detailed reply dated 01.04.2022 thereby refuting the allegations levelled against the petitioner. Further, without satisfying the explanation, the respondent filed a complaint and the same has been taken cognizance by the Trial Court in C.C.No.322 of 2022 for the offences punishable under Sections 41 Rule 61F, Section 7(A)(1)(2) and Section 41G Rule 61M(1) to (5) of the Factories Act .

6. The complaint in C.C.No.323 of 2023 has been filed against the petitioner under Section 41(B) (4) read with Section 2(cb) 1 Schedule Item 29 of the Factories Act, 1948, alleging that the petitioner had not drawn up an upto date on site emergency plan and has not sent such plan for the approval of the respondent. Further, contravene under Section 7A(3) and 41C, Section 112 Rule 62-O(1)(c)(4) read with Section 2(cb) I Schedule Item 29 of the Factories Act, thereby large amount of hazardous chemicals are used in the manufacturing process and there was no



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medical officer for every additional thousand workers or part thereof with specified qualifications, one nurse, one dresser-cum-compounder and one sweeper cum ward boy throughout the working period and the particulars of the appointment of the factory medical officers was not furnished. Further, it was alleged contravention under Section 41-B(2) read with Section 7-A(3) and Section 112 and Rule 62-B(1(4) (5)(6)(7), the occupier has not prepared a written statement of the policy in respect of health and safety of workers at work.

7. The learned Senior Counsel appearing for the petitioner submitted that Section 106 of the Factories Act it is clearly mentioned that prosecution must be alleged within a period of three months from the date of knowledge of the Inspector and no Court has to take cognizance of the complaint filed after the period of three months. Therefore, the Trial Court has opined while taking cognizance, the accident was happened on 31.12.2020 and the same was duly informed by the petitioner vide letter dated 04.01.2021 under Form-18 to the Joint Director of Industrial Safety and Health.

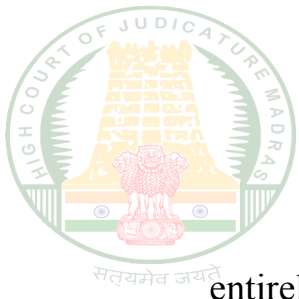


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8. The learned Senior Counsel for the petitioner further submitted that explanation submitted by the petitioner was not considered by the respondent and hence the complaint has been filed on 04.05.2022 before the Chief Judicial Magistrate. In the complaint, nowhere mentioned about the explanation submitted by the petitioner there was absolutely no contravene to attract any of the offence under Factories Act. The Manager of M/s.Larsen and Toubro Limited already filed quash petition before this Court in Crl.O.P.No.27129 of 2022 dated 14.03.2024 to quash the proceedings in C.C.No.324 of 2024 on the file Chief Judicial Magistrate, Tiruvallur and the said petition was allowed .

9. The learned Public Prosecutor appearing for the respondent submitted that the accident was informed on 04.01.2021 to the Joint Director of Industrial Safety and Health. Thereafter, the petitioner was issued show cause notice on 07.02.2022 and the complaints have been filed by the respondent vide @/886-I/2022 and @/886-II/2022 dated 02.05.2022. The delay had occurred only due to COVID-19 as per Section 106 of the Factories Act, the date of intimation of the accident is



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entirely from the date on which the alleged commission of the offence come to the knowledge of an Inspector. The commission or omission of an offence can be determined by an Inspector only on the date of inspection of concerned factory premises. During inspection process only, the commission or omission of an offence under the Act can be determined. Though the accident was intimated on 04.01.2021, but the complaints have been filed on 04.05.2022 within the period of limitation. Therefore, both the complaints are not barred by limitation .

10. It is relevant to extract the provisions under Section 106 of the Factories Act, as follows:-

“Section 106(Limitation Prosecution) of the Factories Act :-

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 of disobeying a written order made by an Inspector, complaint thereof may be made within six months



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of the date on which the offence is alleged to have been committed.”.

11. In support of his contention, the learned Public Prosecutor has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***P.D.Jambekar vs. State of Gujarat*** reported in (1973) 3 SCC 524, it has been held as under :-

“6. It was argued on behalf of the appellant that when the report conveyed the information about the accident, the Inspector should have enquired into it with reasonable promptness and as Section 106 prescribes a period of only three months, from the date of the knowledge of the commission of the offence for filing a complaint the Inspector ought not have waited for a period of 6 months for making the inquiry. It was argued that if an Inspector were to come to know of an accident, he cannot wait till such time as he choose to make the inquiry and then say that he came to know of the commission of an offence under the Act as a result of the inquiry and thus postpone at his whim the starting point of limitation. There can be no doubt that if the Inspector had conducted the inquiry earlier, he would have come to know of the commission of the offence earlier. But our attention was not drawn to any provision in the Act or the rules framed under the Act which obliged the Inspector to conduct an inquiry



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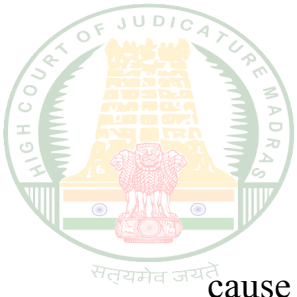


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within any specified period after the receipt of the report into the cause of accident. And in interpreting a provision in a statute prescribing a period of limitation of a proceeding, questions of equity and hardship are out of place.

8. 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 me the date on which, the Inspector would or ought to have acquired knowledge of the commission of the offence had he been diligent, the starting point of limitation , especially where, as here the statue does not provide for an inquiry into the accident muchless the period with which the inquiry has to be made. It is only in the jurisprudence of Humpty Dumpty that we can equate the “ date on which the alleged offence came to the knowledge of an Inspector “ with the date on which the alleged offence ought to have come to his knowledge. We think that the High Court was right in its conclusion”.

12. The learned Public Prosecutor further submitted that insofar as non consideration of the explanation submitted by the petitioner, the petitioner's factory was inspected on 05.02.2022 and thereafter show



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cause notice was issued to the petitioner on 07.02.2022 in both complaints for the contraventions noticed during inspection and received only on 23.03.2022. Thereafter, a reply to the show cause notice on 01.04.2022. After considering the reply, the petitioner was informed for further legal action for those unrectified contraventions clearly indicating that a serious accident in the factory has happened which caused a “permanent disability” to the worker. Therefore, the reply submitted by the petitioner is not accepted .

13. Accordingly, the complaint has to be lodged within the period of three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector and as such no court can take cognizance of the complaint after the period of three months from the date of knowledge of the accident. The provision says that where the offence consist of disobeying a written order made by an Inspector, complaint can be made within six months from the date on which, the offence is alleged to have been committed.



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14. In the case on hand, the accident was occurred and taken place on 31.12.2020. Subsequently, the intimation about the accident by way of Form-18 was submitted on 04.01.2021 to the office of Joint Director of Industrial Safety and Health. Therefore, the respondent office had knowledge about the accident as early as on 04.01.2021. However, the petitioner was issued show cause notice only on 07.02.2022 and the same was received by the petitioner on 24.03.2022 by citing contravention under Section 41 Rule 61 F and Section 7(A)(1)(2), Section 41G Rule 61M (1) to (5) of the Factories Act, 1948. However, on receipt of the said show cause notice, the petitioner submitted detailed reply dated 01.04.2022. In the meanwhile, the petitioner's premises was also inspected on 05.02.2022 . Thereafter, the complaints have been lodged on 02.05.2022. Therefore, the complaints are clearly barred by limitation and the Trial Court ought not to have take cognizance on the complaints lodged by the respondent.

15. That apart, already the petitioner had paid compensation to the



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injured and there is no other claim from the petitioner.

16. In view of the above, this Court finds that the complaints lodged by the respondent cannot be sustained and accordingly, they are liable to be quashed.

17. These criminal original petitions stand allowed and the proceedings initiated in C.C.Nos.322 & 323 on the file of Chief Judicial Magistrate, Tiruvallur are hereby quashed. Consequently, connected miscellaneous petitions are closed.

13.03.2025

Neutral citation : Yes/No
Speaking/non-speaking order

kkd

To

The Chief Judicial Magistrate,



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Tiruvallur.
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G.K.ILANTHIRAIYAN, J.

kcd

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