



Crl.O.P.No.16724 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**Crl.O.P.No.16724 of 2025**  
**Crl.M.P.Nos.10441 & 10442 of 2025**

Krishna Mahesh

... Petitioner

Vs.

State represented by

Dy.Director of Industrial Safety and Health-II,  
Kancheepuram, Chennai.

... Respondent

**PRAYER :** Criminal Original Petition filed under Section 528 of BNSS 2023, pleaded to set aside the daily order dated 13.05.2025 passed by the Chief Judicial Magistrate, Chengalpet in Unnumbered Criminal miscellaneous petition in CC.No.234 of 2024 now pending on the file of Chief Judicial magistrate Chengalpattu, and direct the learned Chief Judicial magistrate to take on file Criminal miscellaneous petition filed by the petitioner under section 101 of Factories Act and decide the same on merits.

|                |   |                                                                            |
|----------------|---|----------------------------------------------------------------------------|
| For Petitioner | : | Mr.Anand Gopalan Assisted by<br>Mr.T.S.Akash for<br>M/s.Advit Law Chambers |
| For Respondent | : | Dr.C.E.Pratap<br>Government Advocate<br>(Criminal Side)                    |



CrI.O.P.No.16724 of 2025

WEB COPY

## **ORDER**

The Criminal Original Petition is filed challenging the order passed by the learned Chief Judicial Magistrate, Chengalpattu, in unnumbered Criminal Miscellaneous Petition in C.C.No.234 of 2024.

2.Heard Mr.Anand Gopalan, the learned counsel appearing on behalf of the petitioner and Mr.C.E.Prathap, the learned Government Advocate (Criminal side) appearing on behalf of the respondent.

3.It can be seen that the petitioner herein had made an application under Section 101 of the Factories Act, 1948 with the following prayer:-

*"It is therefore, humbly prayed that this Hon'ble Court by invoking Section 101 of the Factories Act, 1948, may be pleased to substitute K Gnanamurugam, Deputy Manager - Operations who has taken responsibility for the irregularities in the place of the petitioner, discharge the petitioner and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."*

4.In this regard, it is the contention of the petitioner that it is only the second



Crl.O.P.No.16724 of 2025

respondent in the petition who is responsible and ought to be substituted in the place of the petitioner. It can be seen that under certain circumstances Section 101 of the Factories Act, 1948, lays down the procedure for the same and Section 101 is extracted hereunder for ready reference:-

*101. Exemption of occupier or manager from liability in certain cases.—Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court—*

*(a) that he has used due diligence to enforce the execution of this Act, and*

*(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence:*

*Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on*



Crl.O.P.No.16724 of 2025

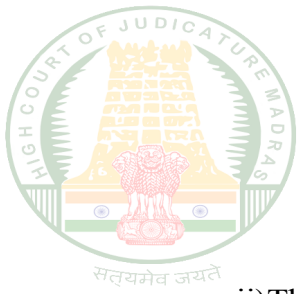
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*oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:*

*Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offenders cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.*

5. Therefore, when there is a provision for filing such application without mentioning any reasons, the trial Court ought not to have rejected as not maintainable. As a matter of fact, the said application has to be taken on file and notice should be issued to the parties and then decide accordingly. This Court is not expressing any opinion whatsoever on the merits of the application and whether the petitioner will be entitled to for the relief which will be decided only by the trial Court. In view thereof, this Criminal Original Petition is disposed of in the following terms:-

i) the order dated 13.05.2025 shall stand set aside in as much as it rejects the unnumbered Criminal Miscellaneous Petition in C.C.No.234 of 2024.



CrI.O.P.No.16724 of 2025

WEB COPY

ii)The learned Chief Judicial Magistrate, Chengalpattu, is directed to number the said application, issue notice to the parties therein and thereafter decide the same in accordance with law as expeditiously as possible.

iii)During the consideration of this application the presence of the petitioner before the trial Court is dispensed with on condition that the counsel should file an application under Section 317 of the Code of Criminal Procedure.

6.Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

**05.06.2025**

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To

- 1.Dy. Director of Industrial Safety and Health-II,  
Kancheepuram, Chennai.
- 2.The Chief Judicial magistrate Chengalpattu,
- 3.The Public Prosecutor,  
High Court of Madras.

5/7



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Crl.O.P.No.16724 of 2025

**D.BHARATHA CHAKRAVARTHY, J.**

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CrI.O.P.No.16724 of 2025

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