



Crl.R.C (MD).Nos.488 and 489 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2024

PRONOUNCED ON : 05.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C (MD).Nos.488 and 489 of 2021

The State represented by its
The Deputy Director – II,
Industrial Safety and Health,
Trichy.

...Petitioner in both the Revisions

Vs.

M.Palaniyandi

...Respondent in both the Revisions

Prayer in both the Revisions: The Criminal Revision Cases filed under Section 397 read with Section 401 of Cr.P.C. to call for the records in S.T.C.Nos.14 and 13 of 2017 on the file of the Chief Judicial Magistrate Court, Karur, order dated 26.12.2017 and in C.A.Nos.116 and 117 of 2018 respectively on the file of the Additional Sessions Court/Fast Track Mahila Court, Karur, dated 28.02.2019 and set aside the same.



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For Petitioner : Mr. S.Vinoth Kumar,
Govt. Advocate(Crl.Side)– in both the RCs

Respondent : Mr.N.R.Elango, Senior Advocate for
Mr.V.Anandhamoorthy – in both the RCs

COMMON ORDER

These criminal revisions have been filed against the concurrent judgment of conviction and sentence passed by the learned Chief Judicial Magistrate, Karur, in S.T.C.Nos.14 and 13 of 2017 dated 26.12.2017, as confirmed by the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, in C.A.Nos.116 and 117 of 2018, respectively dated 28.02.2019.

2 The petitioner in both the revisions is complainant and the respondent is accused. It is the case of the complainant that the respondent is running a Factory, in which, in the primary crusher, large size stone was crushed into smaller one and the same were conveyed by beltconveyor. The



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said beltconveyor was not provided with handrails and railings on the open side of the walk-way. Therefore on 08.09.2016 at about 3.00 p.m., when the conveyor was in operation, one M.Balasubramanian, employee of the respondent, has fallen down into tail end pulley of the conveyor, due to which, his right hand was caught between conveyor belt and roller drum and then his body was dragged into the roller drum, which resulted in his death on the spot. The said accident came to the knowledge of the complainant through Malaimalr news paper on 09.09.2016 and hence the petitioner made inspection in the respondent's Factory on 10.09.2016 and it was found that the respondent/accused had violated the safety measures contemplated under the Factories Act, 1948, and the Tamil Nadu Factories Rules, 1950.

3 On noticing the violations of the mandatory provisions under the Factories Act, 1948, and the Tamil Nadu Factories Rules, 1950, by the occupier and Manager, P.W.1 lodged two complaints on 08.12.2016 under Section 105 of the Factories Act, 1948, before the learned Chief Judicial Magistrate, Karur, one is for contravention of Section 88 r/w Rule 96(1)(2),



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Section 112 r/w Rule 103 of the Factories Act, 1948, and Tamil Nadu Factories Rule, 1950 and the other complaint is for the offence under Section 6(1)(d) r/w Rule 4(1)(2)(3), Section 21(2) r/w Rule 53(1), Schedule XI Part A Item 2(3) r/w Section 7(A)(1)(2)(d) r/w Section 92 of the Factories Act, 1948, and Tamil Nadu Factories Rule, 1950, and the same were taken on file in S.T.C.Nos.14 and 13 of 2017 by the learned Chief Judicial Magistrate, Karur.

4 To prove the charges, the complainant was examined as P.W.1 and 15 documents were marked as Exs.P1 to 15. The trial Court, after trial and hearing the arguments advanced on either side, by judgments dated 26.12.2017, acquitted the accused/respondent from all the charges, against which, the complainant preferred appeals before the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, in C.A.Nos.116 and 117 of 2018. The learned Additional Sessions Judge, by judgments dated 28.02.2019, dismissed the appeals and confirmed the acquittal of the respondent/accused. Aggrieved over the concurrent judgments of acquittal, the complainant is before this Court, with the present criminal revision



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5 The learned Government Advocate (Crl.Side) for the petitioner would submit that the respondent is an occupier and Manager of the Factory, who has been arrayed as accused. The District Collector executed lease deed in favour of the accused and the license is covered under the provisions of “The Mines and Mineral Act”. The respondent obtained consent letter Ex.P9 from the Tamil Nadu Pollution Control Board to operate industrial plant, which will not absolve the accused from the criminal case registered against him, since he violated the provisions under the Factories Act, 1948, and the Tamil Nadu Factories Rules, 1950. The petitioner came to know about the death of the victim, which took place within the premises owned by the accused and hence made inspection, wherein, it found that the respondent violated the mandatory provisions under the Factories Act, 1948. Hence a show cause notice has been issued to the respondent by the authorities concerned constituted under the Factories Act, 1948. Both the Courts below have failed to consider the facts while they acquitting the accused.



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5.1 The trial Court given a finding that the respondent will not come under the definition of Factory as per the provisions of the Factories Act, 1948, and acquitted the respondent/accused, whereas the appellate Court found that the respondent company is a Factory, comes under the Factories Act, 1948, but, acquitted the accused on the ground of non examination of complainant and non recording of the complainant's sworn statement.

5.2 The lower appellate Court failed to consider that Section 200 Cr.P.C. is very clear that when the complaint is made in writing, the Magistrate need not examine the complainant. In the present case, the complainant filed complaint in writing before the Magistrate only in the official capacity and hence the question of examination of the complainant before the Magistrate does not arise. Therefore the finding of the lower appellate Court that non examination of complainant is fatal to the case of the complainant and acquitting the accused on that ground is perverse.



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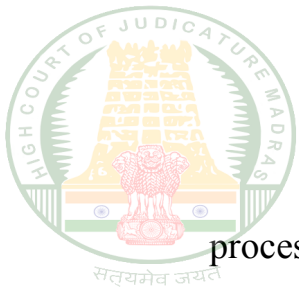


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WEB COPY 5.3 The trial Court has failed to look into the safety provisions contemplated under the Act, which has been violated by the respondent, which resulted in the workman fatal accident took place in the Factory of the respondent.

5.4 The accused company is a dangerous operations Factory, within the meaning of section 2(k), 85 and 87 of the Factories Act, 1948 along with Ex.P2 G.O.Ms.No.1248, Labour Department, dated 13.06.1988. The lower appellate Court has failed to consider the fact that the licensing authority under the Act is the Joint Director of Industrial Safety and Health (the Deputy Chief Inspector of Factories) only. As per the provisions of the Factories Act, 1948, handrails or railings should be provided on open sides of the walkway along the entire length of the belt to prevent workers from falling into the conveyor belt, whereas the accused in his Factory did not do so. The trial Court failed to note Section 85(1) of the Factories Act, 1948 and the Government Order Ex.P2, wherein it is declared that all or any of the provisions of this Act shall apply to any place where manufacturing



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process is carried on and the petitioner's Factory is manufacturing road material (Jalli), but without appreciating the above facts, the trial Court erroneously acquitted the accused observing that the respondent company is not a Factory.

5.5 The Tamil Nadu Factories Rule 95 Schedule XIX provisions applies to stone crushing operations being done in the Factory of the respondent/accused. The complainant/P.W.1 has categorically deposed that only after their inspection, they reached a conclusion that the accused herein alone is responsible for the accident and the death occurred in the Factory premises of the respondent.

5.6 Both the Courts below have failed to consider the above facts and erroneously acquitted the accused, which warrants serious interference of this Court.

6 The learned Senior Counsel for the respondent would submit that the revisions itself are not maintainable and the petitioner has miserably



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failed to prove that the Company runs by the respondent is a Factory falls under the Factories Act, 1948. Further the learned Senior Counsel relying on the decision of the *Hon'ble Supreme Court* reported in (2001) 2 SCC 496 in the case of *Lakshmani Stone Products and Ors vs. Union of India and Ors* contended that stone quarry although engaged also in cutting or chipping stones to appropriate sizes either manually or mechanically before marketing them is to be an establishment covered by the notifications dated 12.12.1977 and 19.02.1977 and not a Factory as alleged by the petitioner.

6.1 The learned Senior Counsel would further submit that the scope of revision is very limited and the Revisional Court cannot re-appreciate the evidence and give its finding and it can only see as to whether there is any perversity in appreciation of evidence by the Court below or not. Furthermore in criminal jurisprudence, especially, while dealing with the petition filed against the order of acquittal, when two views are possible, the Revision Court cannot take the other view and convict the accused. Further the revision itself is barred under Section 401(3) Cr.P.C. either on merits or by technicality. The appellate Court re-appreciated the

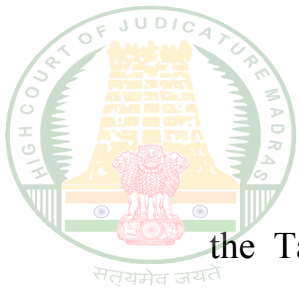


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evidence independently and given different reason for acquittal and therefore the revisions are liable to be dismissed.

7 Heard the learned Government Advocate(Crl.Side) appearing for the petitioner and the learned Senior Counsel for the respondent and perused the materials available on record.

8 Admittedly the petitioner made two complaints against the respondent before the Chief Judicial Magistrate, Karur, for violations of the provisions under the Factories Act, 1948. The victim met with an accident during the course of employment due to violations of the safety measures contemplated under the provisions of the Factories Act, 1948, by the respondent and died on 08.09.2016. The main contention of the petitioner is that even the accident was not informed to the competent authority by reporting under Form-18 and the petitioner came to know about the accident only through news reported in Malaimalar Newspaper on 09.09.2016 and thereafter made inspection in the Factory of the respondent and found violations of the provisions under the Factories Act, 1948, and



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the Tamil Nadu Factory Rules, 1950. Therefore show cause notice was issued, but there was no reply within the stipulated time and hence the petitioner filed two complaints, one is for violations of safety measures under the Act, which resulted in death of the victim, i.e. Section 6(1)(d) r/w Rule 4(1)(2)(3), Section 21(2) r/w Rule 53(1), Schedule XI Part A Item 2(3) r/w Section 7(A)(1)(2)(d) r/w Section 92 of the Factories Act, 1948, and Tamil Nadu Factories Rule, 1950, and the other one is for contravention of Section 88 r/w Rule 96(1)(2), Section 112 r/w Rule 103 of the Factories Act, 1948, and Tamil Nadu Factories Rule, 1950, before the learned Chief Judicial Magistrate, Karur.

9 It is an admitted fact that while the petitioner made inspection in the respondent's Factory on 10.09.2016, found the respondent utilising 516.5 horse power engine and recorded statements of employees, who were working and found the respondent was not maintaining the Muster Roll in Form-25 for all the employees as per Rule 103 of the Tamil Nadu Factories Rule, and ever after demanding the same by the petitioner, the respondent did not produce. The petitioner also collected the copy of FIR Ex.P10



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registered regarding the accident. Even till the filing of complaint, the respondent did not register his Factory and obtain license for the same by paying the prescribed fee through Demand Draft as per the Factories Act, 1948. The petitioner has stated that the respondent violated the provisions under the Factories Act, 1948, and Rules by not following the safety rules, not informing the accident, not submitting the prescribed Forms-18 and Form-25. Therefore the respondent committed offence under the Factories Act, 1948 and is liable to be punished for the above said deviations found in the respondent's factory under Section 92 of the Factories Act, 1948.

10 Even though the respondent's Factory did not fall under Section 2(m) of Factories Act, 1948, however, it is Factory under Section 85(1) of the Factories Act, 1948 r/w G.O.Ms.No.1248 dated 13.06.1998, which was also marked as Ex.P2. Though the trial Court failed to consider the above facts, the appellate Court re-appreciated the evidence and rightly concluded that the respondent's company is a Factory, but, however acquitted the respondent for different reason.



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11 The respondent admitted that he was running crushes unit with

less than 10 workers and six members were working on the date of inspection by the petitioner. Even though, during trial, the respondent denied the allegations of the petitioner, they have not taken defence of technicality that the respondent's company is not a Factory.

12 It is the main contention of the learned Senior Counsel for the respondent that the petitioner has no authority to take action against the respondent under the Factories Act, 1948, since the respondent unit was not registered under the Factories Act, 1948, and if at all they found any violations, they can only close the unit and they cannot fasten criminal liability and punish the respondent.

13 It is to be noted that even though the appellate Court given a finding that the complainant was not examined, which is fatal to the case of the petitioner, but rightly held that even though respondent's unit was not registered under the Act, a combined reading of Section 2(k) Section 85(1), 87(a), and Rules 95 Schedule XIX and 96(1) along with Ex.P2 undoubtedly

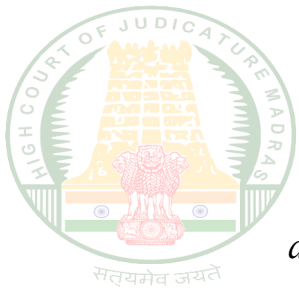


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the respondent unit is a Factory, which falls under the Factories Act, 1948, for the purpose of filing complaint under the provisions of the Factories Act, 1948, and the said finding of the appellate Court was not challenged by the respondent. Admittedly, the respondent is operating a crushing unit where larger stones are crushed into smaller ones. Furthermore, the machinery utilized in the factory includes a 516.5 horsepower engine and the machine crushes large stones into smaller ones, which are then conveyed by a belt conveyor. It is also evident that dangerous operations are involved; as such, the nature of the work falls under hazardous processes. Even though the petitioner contended that lesser than ten workmen have involved, Section 85(1) of the Factories Act, 1948, clearly states that when a manufacturing process is carried out with the aid of power, or is ordinarily so carried on, even with lesser than ten workmen, the place where they are working can still be notified as a factory. At this juncture, it would be useful to refer the relevant provisions of the Factories Act, which are as follows:

Section 2(k)(i)

(k) “manufacturing process” means any process for— (i) making,



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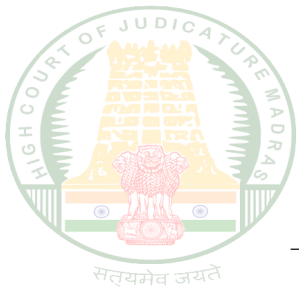
altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

Section 85(1)

“85. Power to apply the Act to certain premises.—(1) The State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that— (i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or “

Section 87(a)

87. Dangerous operations.—Where the State Government is of opinion that any 1 [manufacturing process or operation] carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the 1 [manufacturing process or operation] is carried on



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— (a) specifying the 1 [manufacturing process or operation] and

WEB COPY declaring it to be dangerous;

Rule 95 Schedule XIX

1. Application: This Schedule shall apply to all factories or parts of factories in which manipulation of stone or any other material containing free silica is carried on. This shall include the manufacturing process pertaining to Stone Crushers, Gem and Jewellery, Slate Pencil Making, Agate Industry, Cement Industry, Potter and Glass Manufacturing.

Rule 96(1)

96 Notification of accidents (1) when any accident or dangerous occurrence specified in the schedule occurs in a factory the manager of the factory shall forthwith send notice thereof by telephone, special messenger or telegram to the Inspector and the Chief Inspector;

In view of the above legal provisions, the contention of the learned Senior Counsel that the respondent company is not a Factory, is not acceptable and the respondent violated the mandatory provisions of the Factories Act, 1948.



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It is seen that the appellate Court confirmed the acquittal of the respondent on two grounds one is non examination of the complainant by the Magistrate and non recording of sworn statement of the complainant and the other reason is that the petitioner does not have any authority to take action against the respondent under the Factories Act, 1948.

15 The lower appellate Court failed to understand Section 105 of the Factories Act, 1948 and Section 200 Cr.P.C. and misconstrued the law, which resulted in acquittal of the respondent, who in fact committed offence under the Factories Act, 1948. Section 105 of the Factors Act enable the petitioner to file a complaint against the respondent before the Magistrate and better understanding the same is extracted hereunder:

“105. Cognizance of offences.—(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector. (2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.”



WEB COPY 16 Therefore the petitioner is the competent authority to initiate criminal action for violations of safety measures contemplated under the Factories Act, 1948, and the Tamil Nadu Factories Rules. Further it is useful to refer Section 200 Cr.P.C., which reads as follows.

“200. Examination of complainant - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.



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17 Therefore it is clear that when the complaint is reduced to writing and signed by the complainant, the Magistrate need not examine the complainant. In this case, the complaint was in writing, which was given by P.W.1 while discharging official duty for violation of statutory provisions under the Factories Act, 1948. Therefore mere non examination of the complainant is not fatal to the case of the complainant and the decision referred to by the appellate Court reported in *2017 MWN (Cr.)197 in the case of Soumitra Hazra vs. The Inspector of Factories*, is not applicable to the facts of the present case on hand. Hence in the present case, the Magistrate shall determine whether the complainant has established its case through the documents produced by the complainant, which are only official documents.

18 From Ex.P11 the Postmortem report of the deceased, Ex.P10 FIR, and Exs.P6 to 8, the statements recorded from the employees of the respondent's Factory, clearly show that the victim died during the course of employment under the respondent, due to non providing of safety measures. The respondent has not proved contra to the complainant's case that they



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followed mandatory provisions under the Factories Act, 1948 and given
reply to the show cause notice.

19 In view of the above observations, this Court finds there is perversity in appreciation of evidence and legal provisions by both the Courts below and the appellate Court misconstrued the statutory provisions under Section 200 Cr.P.C. Further the decision referred to by the learned Senior Counsel for the respondent is not applicable to the facts of the present case on hand.

20 Therefore this Court is inclined to set aside the concurrent judgment of both the Courts below acquitting the respondent. However, this Court being a Revisional Court, cannot convict the respondent, since the revisions are being filed against the order of acquittal, as per Section 401(3) Cr.P.C., which reads as follows:

“401. High Court's powers of revision

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.”



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WEB COPY 21 Therefore both the order and judgment of the trial Court and the appellate Court are hereby set aside and the matter is remitted back to the appellate Court. The appellate Court is directed to re-hear the matter and reverse the findings of the trial Court, keeping in mind the views and observations expressed by this Court in these revisions and dispose of the appeals in accordance with law.

22 With the above observations and directions, these Criminal Revision Cases are disposed of.

05.03.2025

Index : Yes/No
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To

1. The Chief Judicial Magistrate Court, Karur.
2. The Additional Sessions Court/Fast Track Mahila Court, Karur.
3. The Public Prosecutor, High Court of Madras.

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P.VELMURUGAN, J.,

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**Pre-Delivery Order in
Crl.R.C (MD).Nos.488 and 489 of 2021**

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