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CRL.O.P.No.22737 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.22737 of 2023
and CrI.M.P.Nos.15917 & 15920 of 2023

Jason Samuel
Manager,
TVS Motor Company Limited,
Post Box No.4, Hosur,
Krishnagiri District – 635 109.

... Petitioner

Vs.

Government of Tamilnadu,
Deputy Director,
Industrial Safety and Health,
Hosur.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in S.T.C.No.3017 of 2022 pending on the file of the learned Chief Judicial Magistrate, Krishnagiri and quash the case as against the petitioner/accused for alleged offences U/s.51, 52, 54, 65(2) and 65(3)(iii)(iv).

For Petitioner : Mr.A.Ramesh, Senior Counsel
For Mr.R.Ashwin

For Respondent : Mr. R.Vinothraja
Government Advocate (CrI. Side)



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ORDER

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This petition has been filed to quash the proceedings in S.T.C.No.3017 of 2022 on the file of the learned Chief Judicial Magistrate, Krishnagiri, thereby taken cognizance for the offences punishable under Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Factories Act, 1948, (hereinafter referred to as “the Act”) as against the petitioner.

2. The respondent filed complaint for the contravention of Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Act, alleging that on 07.10.2022, an inspection was carried out in the petitioner's company and it was found that the workmen employed in the company are not working in accordance with Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Act. On the inspection report, the petitioner was served with show cause notice dated 18.10.2022 and on receipt of the same, the petitioner's company submitted reply on 04.11.2022. Without satisfying the same, the respondent filed the present complaint.

3. The learned Senior Counsel appearing for the petitioner submitted that though the petitioner submitted a belated reply for the show cause notice, it was before the lodgement of the complaint and the explanation submitted by the petitioner was not even considered by the respondent while lodging the



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complaint. On receipt of the complaint, the trial Court mechanically had taken cognizance without stating any reason. The complaint did not even whisper about the explanation submitted by the petitioner. Hence, he prayed to quash the entire proceedings.

4. The respondent filed a counter and the learned Government Advocate (Crl. Side) appearing for the respondent submitted that there are violations under Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Act. After receipt of the inspection report, the petitioner was duly served with show cause notice dated 18.10.2022. However, the petitioner failed to give any reply notice within the stipulated time. In fact, further notice was also served on the petitioner on 14.11.2022, thereby informing about the proposal for prosecution for the violation. Thereafter, the sanction for prosecution was obtained on 01.12.2022 and filed the complaint on 29.12.2022. Therefore the question of discussion about the explanation submitted by the petitioner for the show cause notice, in the complaint does not arise. Further the ground raised by the petitioner can be considered only before the trial Court during the course of the trial.

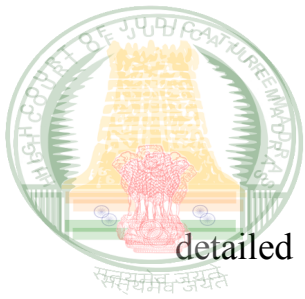


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5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On inspection, the respondent found that there are violations under Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Act viz., the workmen were made to work for more than 48 hours per week and they were made to work for more than 9 hours in a day and the same were in violation under Section 54 of the Act. Further no workmen shall be allowed to work overtime 7 days continuously and it is in violation of Section 65(3)(iv) of the Act. Further normal working hours along with the overtime working hours shall not exceed 60 hours per week. However, the petitioner has been violated the same and it is in contravention of Section 65(3)(iii) of the Act. Further the workmen in the petitioner's company were allowed to work on the first day of the week viz., on Sunday and further no holidays were provided to the workmen, who were allowed to work on Sunday either on 3 consecutive days before or after the first day of week, on which the workmen were made to work. It is in clear violation under Section 52 of the Act.

7. On receipt of the show cause notice, the petitioner submitted



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WEB COPY detailed reply on 04.11.2022 and the same was also duly received by the respondent. The Joint Director, Industrial Safety and health, Hosur, issued show cause notice to the petitioner. On perusal of the reply, it is revealed that for every violation, there was a categorical explanation submitted by the petitioner and there was no violation as alleged by the respondent.

8. On perusal of the complaint impugned in this petition, nothing whispers about the reply submitted by the petitioner dated 04.11.2022. The complaint was filed only on 29.12.2022 i.e., after the period of 1½ months from the date of the receipt of the reply. It is not the case of the respondent that the petitioner failed to submit any reply. Even according to the respondent, the petitioner submitted reply belatedly. On perusal of the complaint, it does not whisper about the explanation/reply submitted by the petitioner and whether it is satisfactory or not and if satisfactory to prosecute the petitioner.

9. In this regard it is relevant to rely upon the judgment of this Court reported in **(2014) 3 MLJ (Crl.) 523** in the case of **K.Mastan Rao Vs. The State** which held as follows :-

“28. In terms of Rule 102 of the Tamil Nadu Factory



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Rules, 1950, the Occupier, Owner or Manager of a factory shall furnish information to an inspector for the purpose of satisfying himself whether any of the provisions of the Act have been complied with or whether any order of the Inspector has been carried out and any demand of such information, if made during the course of an inspection, shall be complied with forthwith or if made in writing, shall be complied with within seven days of receipt thereof. Thus, the rule contemplates an opportunity for compliance. If the respondent/complainant has pointed out certain contraventions and if the contraventions exist, the contravener is bound to comply with within seven days. The case on hand is slightly different in the sense that the petitioners have submitted their explanations showing cause in respect of the allegations made in the show cause notice. In such circumstances, the respondent/complainant cannot ignore the reply to the show cause notice and proceed to lodge the complaint, as if he has not received any reply.

29. As noticed above, there is no reference to the reply submitted by the petitioner. The complaint was signed by the respondent on 20.06.2012 and filed before the Court on 21.06.2012, presumably not in full form and appears to have been returned and re-presented on 30.09.2013. In the interregnum, the petitioner has been given the replies dated 16.04.2012 and 31.05.2012. That apart, the further explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-



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presented i.e., on 30.09.2013. There is no explanation forthcoming as to why the complaint which was presented on 21.07.2012 was returned and as to why the complaint was re-presented after more than one year. Therefore, this Court has no hesitation to hold that the complaint is vitiated on account of total non-application of mind.”

The above judgment is squarely applicable to the case on hand and this Court has no hesitation to quash the complaint impugned in this petition and it cannot be sustained on the ground of non-application of mind.

10. Insofar as the taking cognizance of the complaint is concerned, the trial Court has passed an order of taking cognizance as follows:

“Records perused. Prima facie case made out. Case taken on file against the accused for the offence under Sections 51, 52, 54, 65(2) and 65(3)(iii)(iv) of the Factories Act, 1948,”

Consequently, the trial Court issued summons to the accused. The trial Court is required to examine the nature of the allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. The trial Court is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

11. In the case on hand, the trial Court did not even record any sworn



statement and there is no whisper about the perusal of the document produced by the respondent before taking cognizance. The Hon'ble Supreme Court of India in the case of ***Pepsi Food Ltd Vs. Special Judicial Magistrate*** reported in ***(1998) 5 SCC 749***, held as follows :-

“27. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

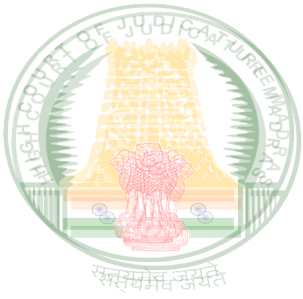
12. Further, the order of issuance of process is not an empty formality.



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The trial Court is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. When the trial Court came to the conclusion that there is prima facie case as against the accused, the trial Court ought to have stated the reasons to come to such opinion. The words used under Section 204 of Cr.P.C., viz, “sufficient ground for proceeding” which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis to proceed as against the accused and formation of such an opinion is to be stated in the order itself. Therefore, the order of taking cognizance itself is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case as against the accused.

13. As stated supra, in the case on hand, there is absolutely no reason stated by the trial Court while taking cognizance on the complaint lodged by the respondent as against the petitioner. Therefore, the impugned proceeding cannot be sustained and is liable to be quashed.



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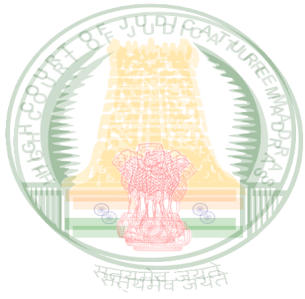
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14. Accordingly, the impugned proceedings in S.T.C.No.3017 of 2022 on the file of the learned Chief Judicial Magistrate, Krishnagiri, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

07.04.2025

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

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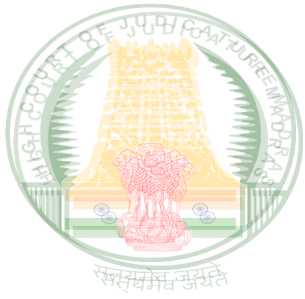


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To

1. The Chief Judicial Magistrate,
Krishnagiri.
2. The Deputy Director,
Government of Tamilnadu,
Industrial Safety and Health,
Hosur.
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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Crl.M.P.Nos.15917 & 15920 of 2023

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