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Crl.O.P.Nos.25893, 25903, 25910, 25923 & 25926 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14 / 11 / 2024
Delivered on	28 / 01 / 2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.Nos.25893, 25903, 25910, 25923, 25926 of 2024 &
Crl.M.P.Nos.14417, 14418, 14422, 14424, 14426, 14427, 14431, 14432,
14433 & 14434 of 2024

Mr.S.Suresh	... Petitioner in Crl.O.P.No.25893 of 2024
Mr.N.Pandiyan	... Petitioner in Crl.O.P.No.25903 of 2024
Mr.N.Pandiyan	... Petitioner in Crl.O.P.No.25910 of 2024
Mr.N.Pandiyan	... Petitioner in Crl.O.P.No.25923 of 2024
Mr.S.Suresh	... Petitioner in Crl.O.P.No.25926 of 2024
Vs.	
The State Rep. by Deputy Director, Industrial Safety and Health, Cuddalore.	... Respondents in all Criminal Original Petitions

Prayer in Criminal Original Petitions: Criminal Original Petitions are filed under Section 528 of the BNSS, to call for the records and quash the complaint in C.C.No.393 of 2024, C.C.No.292 of 2024, C.C.No.395 of 2024, C.C.No.396 of 2024 and C.C.No.389 of 2024 respectively, on the file of the learned Chief Judicial Magistrate, Cuddalore.



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For Petitioners in
all Crl.O.Ps

: Mr.S.Ravi
Senior Advocate
For M/s.Ravi Law Chambers

For Respondent in
all Crl.O.Ps.

: Mr.S.Sugendran
Additional Public Prosecutor

COMMON ORDER

The petitioner in Crl.O.P.Nos.25893 of 2024 and 25926 of 2024, viz., Suresh, who is an Occupier in EID Parry (India) Ltd., Cuddalore, seeks to quash the complaints in C.C.Nos.393 of 2024 and 389 of 2024 on the file of the learned Chief Judicial Magistrate, Cuddalore. The petitioner in Crl.O.P.Nos.25903 of 2024, 25910 of 2024, and 25923 of 2024, viz., Pandiyan, who is a Manager in EID Parry (India) Ltd., seeks to quash the complaints in C.C.Nos.292 of 2024, 395 of 2024, and 396 of 2024 respectively, on the file of the learned Chief Judicial Magistrate, Cuddalore.

2. Since the questions involved in all these criminal original petitions are one and the same, they were heard together and disposed of by this common order.



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3. The brief facts, in a nutshell, are as follows:

3.1. The petitioner in CrI.O.P.Nos.25893 of 2024 and 25926 of 2024, who is an Occupier, and the petitioner in CrI.O.P.Nos.25903 of 2024, 25910 of 2024, and 25923 of 2024, who is a Manager are part of EID Parry (India) Limited, a company engaged in the business of Sugar and Nutraceuticals with sugar plants in Tamil Nadu, Karnataka, and Andhra Pradesh.

3.2. According to the petitioners, the factory employs 860 workers and maintains strict compliance with safety regulations as specified under the Factories Act, 1948. The factory provides safety drills, qualified safety officers, protective personal equipment, and training to ensure a safe working environment. While being so, on 14.02.2024, the Joint Director, ISH, Cuddalore, inspected the factory and issued a Show Cause Notice calling for certain explanations. According to the petitioners, they have responded to this notice with a detailed explanation.

3.3. Despite the petitioners complying with the discrepancies found in the inspection, the Joint Director conducted another inspection and issued another Show Cause Notice regarding the absence of certain certificates, non-maintenance of safety measures, and non-maintenance of the attendance register of laborers. Some incidents that allegedly occurred on different dates



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were submitted by the petitioners, while submitting Form No.18, the Report of Accident including Dangerous Occurrence. For better understanding of the case, some of the nature of injuries caused to the workers are as follows:

(i) On 12.12.2023, S.Jayamoorthy, a worker in the petitioner-company, was engaged in dismantling the scaffolding. While removing a scaffolding pipe from a height of approximately 5 meters, his right finger got stuck between the clamp and the pipe, resulting in a cut injury to the tip of his right hand's ring finger.

(ii) On 31.01.2024, Silwaraja, a contract worker, was working when a hydra was moving from the ETP (Area-2 Fabrication Yard near the CO2 Plant) through the main road. The guide rope got struck in the left front tire. While the victim tried to remove the guide rope, he lost his balance and fell down. Meanwhile, the vehicle started to move over his right leg, resulting in an injury to his right thigh.

(iii) On 07.02.2024, Azagarsamy, a contract worker, was engaged in cane hooking and de-hooking activity in the cane carrier. While performing his duty, he suddenly fell from a height of 3 meters due to physical imbalance. In this accident, the victim's right knee got injured. Immediate first aid was given at the OHC and he was recommended to Abirami Hospital for further treatment, where they found a fracture in his right knee.

(iv) On 18.03.2024, Mr.Nigaz, a contract worker, was involved in the conveyor roller replacement activity. During that time, he climbed on the counterweight to place a chain block weighing around 5 kg. While climbing, he unfortunately placed



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his right leg on the counterweight roller, which started moving. As a result, he lost his balance and slipped, causing his right leg to get stuck between the roller and the belt. He was rescued and given first aid at the petitioner's Occupational Health Centre and then moved to Abirami Hospital, Cuddalore for further treatment, where a fracture in his right leg bone was noticed.

3.4. According to the petitioners, they duly responded to this notice as well. However, the Joint Director, ISH, ignored the compliance and rejected the Explanation Letter, proposing to initiate action against the petitioners. The Joint Director forwarded the Proposal Report to the Additional Director, Industrial Safety and Health, Trichy, without giving the petitioners an opportunity to be heard, constituting a serious abuse of process and indicating malafide intention.

3.5. Upon receipt of the Proposal Report, the Additional Director, Industrial Safety and Health, Trichy, sanctioned legal action against the petitioners for alleged violations. Despite the fact that the petitioners had already duly complied with the provisions of law and that no violation of the Contract Labor Act and T.N. Contract Labour Rules was committed by the Petitioners, the respondent filed the complaints in C.C.No.393 of 2024, C.C.No.292 of 2024, C.C.No.395 of 2024, C.C.No.396 of 2024, and C.C.No.389 of 2024 before the learned Chief Judicial Magistrate, Cuddalore, to



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punish the Petitioners. To quash the said complaints, the petitioners are before this Court.

4. The learned senior counsel for the petitioners advanced the following arguments to quash the impugned orders,

4.1. The complaints are clearly barred by limitation. According to Section 106 of the Factories Act, a complaint must be made to the Magistrate within three months from the date on which the alleged commission of the offence came to the knowledge of the Inspector. In these matters, the respondent was aware of the incident on an earlier date, yet the complaints were filed after the permissible period of limitation. The specific case-wise limitations are as follows:

4.1. (a) For Crl.O.P.No.25893 of 2024 and Crl.O.P.No.25910 of 2024, the petitioners submitted Form 18 Reports for accidents involving Mr.S.Jayamoorthy on 04.12.2023, Mr.Silwaraja on 02.02.2024, Mr.Azhagarsamy on 08.02.2024, and Mr.Nigazh on 20.03.2024. However, the respondent delayed inspecting the factory until 14.02.2024 and 26.03.2024. Despite these inspections, the respondent did not promptly acknowledge the Form 18 Reports or take any action. However, the respondent filed complaints in C.C.Nos.393 of 2024 and 395 of 2024 only on 21.06.2024, well past the prescribed deadlines, thereby violating Section 106 of the Factories Act.



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4.1. (b) For Crl.O.P.No.25903 of 2024, the petitioner submitted a Form 18 Report for an accident involving Mr.Sivasankaran on 24.01.2024. The respondent inspected the factory late, on 14.02.2024, despite receiving the report on 29.01.2024. The complaint in C.C.No.292 of 2024 was filed on 06.05.2024, beyond the three-month limit, violating Section 106 of the Factories Act.

4.1. (c) For Crl.O.P.No.25923 of 2024 and Crl.O.P.No.25926 of 2024, the petitioners submitted Form-II Certificates of Registration under the Contract Labour Act on 14.09.2023. The respondent inspected the factory late, on 14.02.2024 and 26.03.2024. No immediate action was taken, and the complaints in C.C.No.396 of 2024 and C.C.No.389 of 2024 were filed on 21.06.2024, long after the deadline of 14.12.2023, violating Section 27 of the Contract Labour Act. He would further submit that Section 27 of the Contract Labour Act, 1970, is in pari-materia to Section 106 of the Factories Act, 1948.

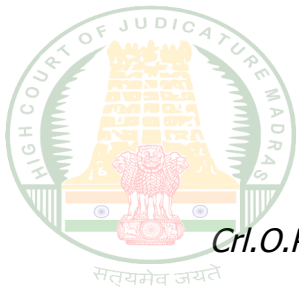
4.1. (d) The learned senior counsel further submits that although the respondent knew of the incidents on an earlier date, the complaints were filed only after the expiry of the three-month period, thereby violating the stipulated limitation period under Section 106 of the Factories Act. Section 106 of the Factories Act, 1948, mandates that no court shall take cognizance



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of any offence under this Act unless a complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Inspector. This provision is intended to ensure that any alleged violations are promptly brought before the court and addressed without undue delay. In the present matters, the respondent's delay in filing the complaints beyond the three-month timeframe stipulated by Section 106 renders the complaints time-barred and invalid. Therefore, the learned senior counsel argues that the proceedings in C.C.No.393 of 2024, C.C.No.395 of 2024, C.C.No.292 of 2024, C.C.No.396 of 2024, and C.C.No.389 of 2024 should be quashed on the ground of limitation. In support of his contentions, the learned senior counsel has referred to the judgment of this Court in **V.P. Ponnusami Vs. State**, reported in 1996 (2) MWN (Cr.) 333.

4.2. The learned senior counsel further submitted arguments to quash the complaints, stating that the complaints have been filed by the respondent in violation of the principles of natural justice. The complaints were filed without considering the case of the petitioners and the reply filed by the petitioners, and without providing proper reasons. Additionally, the respondent sent a proposal requesting the Additional Director, IH, Trichy to take action against the petitioners, which clearly establishes a perversion of justice. In support of his contention, the learned senior counsel has relied on the judgment in the case of **Ajay Sanghi vs. State of Tamil Nadu in**



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CrI.O.P.No.7972 of 2022, in which, the learned Judge relied on the decision given in the case of **K.Masthan Rao vs. State, Rep. by Inspector of Factories, Vellore**, reported in 2014 (3) MWN (Cr.) 86.

4.3. The learned senior counsel further submits that the complaints are not maintainable, as the respondent has not arrayed the company as a party in the complaints filed before the Chief Judicial Magistrate, Cuddalore. Without including the company as a party, the complaints are fundamentally flawed and deserves to be quashed. In support of his contention, the learned senior counsel referred to the case of **Dilip Hariramani vs. Bank of Baroda**, [MANU/SC/0611/2022].

4.4. The learned senior counsel would contend that the complaint filed by the respondent is contrary to the decision pronounced by this Court in the case of **D.Sanjiv Kumar vs. State of Tamil Nadu**, reported in MANU/TN/1759/2023. This Court held that unless the complainant provides details about the show cause notice, the reply, the defects identified, the defects rectified, and the defects not rectified, it would not be possible for the learned Chief Judicial Magistrate to apply his mind and take the case on file. The non-mentioning of the show cause notice, the reply, and other relevant details amounts to non-application of mind, which vitiates the prosecution process. Therefore, the complaints do not meet the legal requirements, making them invalid and should be dismissed.



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4.5. The learned senior counsel submitted that the incidents occurred due to the faults committed by the workers themselves. In this regard, the learned senior counsel advanced the following arguments to quash the complaints:-

4.5.(a) Insofar as Mr.Azhagarsamy is concerned, the learned senior counsel argued that the respondent failed to notice that he was provided with proper PPE/protective gear by the petitioner. Despite this, Mr.Azhagarsamy did not wear the PPE during the hooking work, which was due to his own negligence and failure to abide by the instructions given by the petitioner and the contractor. Consequently, the petitioner cannot be held liable for the accident caused to Mr.Azhagarsamy, as the petitioner did not act in violation of Section 41 R or Section 61-A of the Factories Act.

4.5.(b) Insofar as Mr.S.Jayamoorthy is concerned, the learned senior counsel pointed out that the respondent failed to recognize that he was provided with PPE and protective gloves by the petitioner. The accident resulting in Mr.Jayamoorthy's right hand ring finger tip cut injury was sustained due to his own negligence and failure to follow the instructions given by the petitioner to wear the provided PPE. The respondent alleged that the petitioner had contravened Section 41 R and 61F of the Factories Act, which fall under Chapter IV of the Act. However, the learned senior counsel



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clarified that the explanation following the above provision to Section 92 does not include within its purview injuries caused to the phalanges of the hand or foot. Hence, serious bodily injury as per the provision would not include any injuries to the phalanges of the hand. Therefore, the tip cut injury caused to the right finger of Mr. Jayamoorthy does not fall within its ambit, and the respondent ought not to have filed the present complaint against the petitioner.

4.5.(c) Insofar as Mr.Silwaraja is concerned, the learned senior counsel argued that the respondent failed to observe that the petitioner provided safe means and access to all its workmen within the factory premises. The accident suffered by Mr.Silwaraja was due to his own negligence by holding onto the guide rope in front of a moving Hydra Vehicle, which is an unsafe act. This act of holding onto the guide rope of a moving Hydra Vehicle was unnecessary and not required to be performed by the workman. Therefore, the accident was a result of Mr.Silwaraja's own actions and not a violation committed by the petitioner. Additionally, the learned senior counsel noted that the accident occurred on Arugunam Road, a public road over which the petitioner had no control. In its explanation letter dated 29.05.2024, the petitioner stated that they had opened a new gate for the movement of materials. The respondent failed to substantiate the nexus between the injury suffered by the workman and the alleged violation committed by the



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petitioner, ignoring the compliance made by the petitioner. Therefore, the complaint filed by the respondent is vexatious, not maintainable, and ought to be quashed.

4.5.(d) Insofar as Mr.Nigaz is concerned, the learned senior counsel asserted that the respondent failed to recognize that the accident occurred due to Mr.Nigaz's lack of attention and negligence. He unnecessarily placed his foot on the moving counterweight roller without due attention, lost physical balance, slipped, and fell, resulting in an injury to his right leg bone. Thus, the petitioners have not violated the provisions of the Factories Act and T.N. Factories Rules. The respondent, without proper reason and application of mind, initiated prosecution against the petitioners on frivolous grounds, claiming that Mr.Nigaz did not report for duty for some days and that the accident was a serious occurrence.

5. The learned Additional Public Prosecutor appearing for the respondent submits that periodic accident reports were received from the petitioner factory. Following the receipt of Form 18 reports, the respondent inspected the factory concerning the challenges made in CrI.O.P.Nos.25893, 25910, 25926, and 25923 of 2024. Subsequently, a show cause notice was issued to the petitioners on 14.02.2024. However, as no proper reply or response was received from the petitioners, the respondent conducted



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another inspection on 26.03.2024 and issued a second show cause notice on 07.05.2024, noting that the petitioners had violated certain provisions of the Factories Act, 1948, and the Tamil Nadu Factories Rules, 1950. Since the petitioners' response to the second show cause notice was also unsatisfactory, it was rejected. Hence, the decision was made to file complaints before the Chief Judicial Magistrate for the offenses committed under the Factories Act. Accordingly, the Joint Director forwarded a proposal dated 04.06.2024 to initiate action against the petitioners, which was approved by the Additional Director of Industrial Safety and Health, Trichy, through an order of sanction dated 14.06.2024. Regarding the challenge in CrI.O.P.No.25903 of 2024, the learned Additional Public Prosecutor submits that the respondent initially conducted an inspection on 14.02.2024 and issued a show cause notice on 05.03.2024. As the reply filed by the petitioner was not satisfactory, the Joint Director proposed initiating action against the petitioner for alleged violations of the Factories Act, 1948, and the Tamil Nadu Factories Rules. This proposal, forwarded on 02.04.2024, was also approved by the Additional Director of Industrial Safety and Health, Trichy, who sanctioned the initiation of legal action against the petitioner before the competent jurisdiction through an order dated 03.05.2024. As such, the learned Additional Public Prosecutor submits that, based on the appreciation of the facts and the periodic complaints reported from the factory, a complaint was made. He further submits that despite the respondent calling



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for an explanation, the petitioner did not respond properly, leading to the initiation of legal action against the petitioners. The respondent, without contesting the case before the trial court where they could raise their contentions, instead filed this criminal original petitions with the intention to avoid trial and prolong the proceedings. Therefore, it is stated that the petitioners can raise their defense before the trial court. Hence, the learned Additional Public Prosecutor prays for the dismissal of the criminal original petitions.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The petitioners, the Occupier and Manager of EID Parry (India) Ltd., submitted Form 18 reports following several workplace accidents that resulted in injuries to workers while they were performing their duties at the factory. The respondent conducted inspections and issued show-cause notices, raising concerns regarding safety measures and compliance with regulations. According to the petitioners, they provided detailed replies to these notices, addressing the issues raised and outlining the corrective actions taken. However, the respondent rejected these replies, deeming them unsatisfactory, despite the petitioners' adherence to the prescribed procedures. As a result, the respondent initiated legal action against the petitioners by filing complaints before the Chief Judicial Magistrate.



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8.1. The primary contention raised by the learned senior counsel for the petitioners in challenging the Calender cases is that the complaints are barred by limitation. According to the petitioners, no court can take cognizance of any offence under the Factories Act, 1948, unless the complaint is made within three months from the date the commission of the offence came to the knowledge of the Inspector. According to the petitioners, in all five cases, they submitted Form 18 reports following workplace accidents or relevant certifications. However, the respondent delayed in conducting inspections and filed complaints after the statutory deadlines.

8.2. In Crl.O.P.Nos.25893 and 25910 of 2024, the petitioners submitted reports for accidents involving Mr.Jayamoorthy (04.12.2023), Mr.Silwaraja (02.02.2024), Mr.Azhagarsamy (08.02.2024), and Mr.Nigazh (20.03.2024). Despite these submissions, the respondent delayed inspections until February and March 2024 and filed complaints on 21.06.2024, well after the prescribed period. In Crl.O.P.No.25903 of 2024, the petitioner submitted the report on 29.01.2024 for an accident that occurred on 24.01.2024. The respondent inspected on 14.02.2024 and filed the complaint on 06.05.2024, beyond the three-month limit. Similarly, in Crl.O.P.Nos.25923 and 25926 of 2024, the petitioners submitted the required certificates on 14.09.2023. However, the inspections took place only in February and March 2024, and



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complaints were filed in June 2024, after the statutory deadline of 14.12.2023.

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8.3 The petitioners contend that the limitation period for filing the complaints should commence from the date of submission of Form 18 reports. On the other hand, the respondent argues that the limitation period should start from the date of inspection, and since the inspections were conducted within the permissible timeframe, the complaints were filed within the period allowed by law. However, this Court does not delve into the submissions raised by both the petitioner and the respondent regarding limitation and will adhere to the provisions of the Act. Section 106 of the Factories Act, 1948, related to limitation of prosecution, is extracted hereunder:

"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.*

[Explanation: *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.]



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Section 106 specifies a three-month limitation period from the date knowledge of the offence is obtained by the Inspector. The proviso, however, provides a six-month limitation period for cases of disobedience of written orders issued by an Inspector. The petitioners claim that the complaints are time-barred due to the reports being submitted, but the respondent did not act promptly. Conversely, the respondent argues that timely inspections and show-cause notices were issued within the allowable period.

8.4. The respondent contends that after the initial inspection and issuance of a show-cause notice, subsequent inspections were carried out due to the petitioners' failure to rectify the issues. Additional show-cause notices were issued, and complaints were filed in accordance with the legal timelines.

8.5. In CrI.O.P.Nos.25893 and 25926 of 2024, the petitioners submitted Form 18 reports for accidents involving several individuals. Following inspections, show-cause notices were issued. However, the petitioners failed to address the issues, prompting further inspections and subsequent notices. Complaints were filed on 21.06.2024, within a period of six-months.



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8.6. Similarly, in Crl.OP.No.25903 of 2024, after the petitioner submitted the Form 18 report, the respondent issued a show-cause notice following an inspection. The petitioner's failure to address the issues led to the filing of a complaint on 06.05.2024, within six months from the date of the offence.

8.7. In Crl.O.P.Nos.25923 and 25926 of 2024, after inspections in February and March 2024, show-cause notices were issued, and complaints were filed in June 2024, within the six-month limitation period.

8.8. It is also important to note that, in Crl.O.P.Nos.25893 and 25926 of 2024, the respondent issued a letter dated 04.06.2024 to the occupier, stating that the response to the earlier notice dated 07.05.2024 had not been received. Similarly, in Crl.O.P.Nos.25903, 25910, and 25923 of 2024, letters dated 05.03.2024 and 07.05.2024 indicated that certain details requested by the respondent had not been provided by the manager.

8.9. The key issue is whether the petitioners can claim that the complaints are time-barred without first complying with the show-cause notice and submitting the required documents. Under Section 106 of the Factories Act, when an offence involves disobeying a written order issued by



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an Inspector, the proviso to this section allows for the filing of a complaint within six months from the date of the alleged offence. This provision specifically addresses situations where an offence consists of failing to comply with a written direction given by an Inspector. It is for the trial court to determine whether the petitioners' argument that the limitation period should be three months from the date the Inspector gains knowledge of the offence holds, or whether the six-month period provided under the proviso applies in cases of disobedience to a written order. The trial court must assess the facts of the case, including the timeline of events such as submissions, inspections, and any actions taken, to establish when the offence came to the knowledge of the Inspector. The petitioners may raise the defence of limitation during the trial, but it is ultimately up to the trial court to decide which limitation period is applicable based on the facts presented.

8.10. In conclusion, given the mixed questions of law and fact involved in this case, this court cannot quash the proceedings solely based on the issue of limitation at this stage. It is for the trial court to make a determination after a thorough examination of the evidence presented by both parties.

9.The next contention raised by the learned counsel for the petitioners is the violation of the principles of natural justice. A perusal of the record



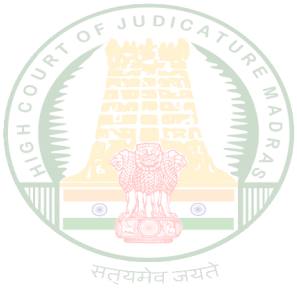
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reveals that the petitioners were indeed provided with the opportunity to respond to the show-cause notices. However, in the two criminal original petitions (Crl.O.P Nos. 25923 and 25926 of 2024), the petitioners only failed to respond to the show-cause notices altogether. Furthermore, in Crl.O.P.No.25903 of 2024, although the petitioner's response to the show-cause notice was deemed unsatisfactory by the respondent, a detailed reply was subsequently provided by the respondent. Further, in two of the six criminal original petitions (Crl.O.P.Nos. 25893 and 25910 of 2024), one of the six issues raised in the show-cause notices was accepted by the respondent. For better appreciation, the show-cause notice raised and the reply given by the petitioners, along with the acceptance by the respondent, are extracted hereunder:

"Crl.O.P.No.25923 of 2024 & Crl.O.P.No.25910 of 2024

5. பிரிவு 88(1)(3) விதி 96 (6)

மேற்படி தங்களது தொழிற்சாலையில் 02.12.2023 அன்று முற்பகல் 11.20 மணியளவில் ஏற்பட்ட விபத்தினால் காயமடைந்த திரு.ஜெயமூர்த்தி (வயது 37) த.பெ.சுப்ரமணி என்ற கட்டுமான தொழிலாளர் விபத்து நடந்த 21 தினங்களுக்குள் பணிக்கு திரும்பாத நேர்வில் விபத்து நடந்து 28 தினங்களுக்குள்ளும், அத்தொழிலாளர் பணிக்கு திரும்பும் வரை ஒவ்வொரு 15 தினங்களுக்கு ஒருமுறையும் கடலூர், தொழிலக பாதுகாப்பு மற்றும் சுகாதார இணை இயக்குநருக்கு சமர்ப்பிக்கப்பட வேண்டிய 18B ன் படியான அறிக்கை தங்களால் சமர்ப்பிக்கப்படவில்லை. இது மேற்படி சட்டப்பிரிவு மற்றும் விதியின் கீழ் முரணாகும்."



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5. Section 88(1)(3) Rule 96 (6):

"As per Section we must submit the Form 18B once in every fortnight, where in this regard the same was not submitted as per requirement. Since we held in another fatal accident there was delayed in submission for Form 18B. At present were adhering the time limit for submission for Form 18B for the recent incident."

"இனம் 5 தொடர்பாக விபத்திற்கான விபரங்கள்
தற்சமயம் உரிய காலத்தில் பெறப்படுவதால் அப்பதில்
ஏற்றுக்கொள்ளப்பட்டது."

Considering that the petitioners had the opportunity to address the issues raised and were given ample time to submit their replies thoroughly, it cannot be argued that the principles of natural justice were violated. When sufficient opportunity was provided to the petitioners and show cause notices were issued, to which replies were submitted by the petitioners, and those replies were not accepted by the respondent, they cannot claim that the Joint Director forwarded the Proposal Report to the Additional Director, Industrial Safety and Health, Trichy, without giving the petitioners an opportunity to be heard. It is not the case that the respondent passed an order without issuing a show-cause notice. Rather, in these cases, after receiving Form 18, the respondent conducted inspections, and initially, a show-cause notice was issued. However, as the necessary rectifications were not carried out, another



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show-cause notice was issued. The petitioners submitted a reply to this second notice, but the respondent was not satisfied with the response.

Therefore, the procedures and formalities set out by the respondent were followed before taking any action. The ground raised by the petitioners regarding the violation of natural justice is not valid, and in light of the due process followed, it must be rejected. Consequently, the petitioners' contention regarding the violation of natural justice lacks merit and is hereby rejected.

10. The next contention raised by the learned counsel for the petitioners is that the complaints filed by the respondent are not maintainable because the company has not been arrayed as a party.

10.1. In support of the said contention, the learned senior counsel has relied upon the judgment in ***Dilip Hariramani vs. Bank of Baroda*** [MANU/SC/0611/2022]. At this juncture, it would be useful to relevant provisions of the Factories Act, which deal with matters relating to the Occupier and Manager, and Rule 96 of the Tamil Nadu Factories Rules, 1950, which deals with the role of the manager when any accident occurs.

7. Notice by occupier.—

(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—(a) the name and situation of the factory;



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(b) the name and address of the occupier;(bb)the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;

(c) the address to which communications relating to the factory may be sent;

(d) the nature of the manufacturing process—

(i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and

(ii) to be carried on in the factory during the next twelve months in the case of all factories;

(e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;

(f) the name of the manager of the factory for the purposes of this Act;

(g) the number of workers likely to be employed in the factory;(h)the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;

(i) such other particulars as may be prescribed.

(2) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1)at least thirty days before the date of the commencement of work.

(4) Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.



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(5) During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

7A. General duties of the occupier - Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

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 forth with send notice thereof by telephone, special messenger or telegram to the Inspector and the Chief Inspector:

10.2. Section 7 of the Factories Act mandates that the Occupier must notify the Chief Inspector with details of the factory's operations, including the name and address of the Manager, the manufacturing processes, and other relevant information. This notice must be given at least fifteen days before the factory begins operations. This establishes that the Occupier holds the primary duty to fulfill legal requirements and maintain communication with the authorities. Section 7A of the Factories Act mandates that the occupier has a duty to ensure, as far as is reasonably practicable, the health, safety, and welfare of all workers while they are at work in the factory. This responsibility includes taking all necessary precautions to safeguard the well-being of every worker and to maintain a safe working environment at all times.



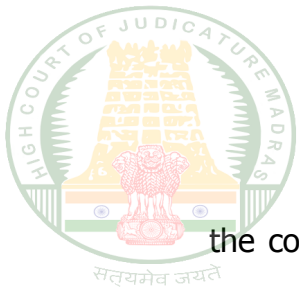
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10.3. Additionally, if a new Manager is appointed, the Occupier is required to notify the Chief Inspector within seven days. Section 7(5) further clarifies that if no Manager has been designated, the Occupier assumes the role of the Manager for the purposes of the Act. Hence, the Occupier is directly responsible for managing the factory or ensuring that the management is in compliance with the law.

10.4. Rule 96 of the Tamil Nadu Factories Rules, 1950, mandates that in the event of an accident or dangerous occurrence as specified in the schedule, the manager of the factory must immediately notify the Inspector and the Chief Inspector. This notification should be made vide telephone, special messenger, or telegram to ensure quick communication and appropriate action.

10.5. In view of the above, the company, as the entity that is the Occupier, is not required to be added as a party in complaints regarding violations under the Act. The legal responsibility falls on the Occupier (and Manager, if appointed), not the company per se. The Occupier is duty-bound to send the required details to the authorities, and the company's role as the occupier is sufficient to fulfill the statutory obligations under the Act. Therefore, there is no necessity for the company to be added as a party to



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the complaint, as the obligations are specifically placed on the Occupier and Manager, who are responsible for ensuring compliance with the provisions of the Factories Act.

10.6. Hence, the judgment cited by the learned senior counsel for the petitioners is not applicable to the present case. The case cited by the petitioners pertains to Section 138 of the Negotiable Instruments Act, which deals with the dishonor of cheques and the specific requirement of naming the company as a party. In contrast, the present case concerns alleged workplace accidents under the Factories Act. In this case, the complaints were filed against the petitioners for alleged violations of safety procedures and failure to follow statutory requirements under the Factories Act, rather than issues relating to financial transactions. The procedural dissatisfaction raised here relates to the failure to follow due process for workplace accidents, including non-compliance with safety regulations, and does not hinge on the inclusion of the company as a party in the same manner as in cases under Section 138 of the Negotiable Instruments Act. The issues in this case concern procedural matters related to the filing of complaints, inspections, and the issuance of show-cause notices, which are distinct from the legal framework and requirements under the Negotiable Instruments Act. Therefore, the petitioners' reliance on the ***Dilip Hariramani*** case is not applicable, and the argument that the complaints are not maintainable due to



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the company's non-inclusion as a party cannot be sustained in this context.

In conclusion, the argument that the company needs to be added as a party to the complaint is not supported by the provisions of the Factories Act, as the statutory duties fall on the Occupier and Manager, who are individually responsible for compliance.

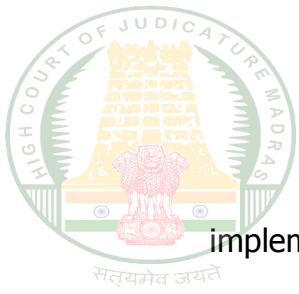
11. Another submission made by the learned senior counsel is that the complaints filed by the respondent are contrary to the decision in ***D.Sanjiv Kumar vs. State of Tamil Nadu*** (MANU/TN/1759/2023), where this Court held that for a complaint to be valid, the complainant must provide details about the show-cause notice, the reply, the defects identified, the defects rectified, and the defects not rectified. According to the petitioners, the failure to mention such details in the complaint amounts to non-application of mind, thereby vitiating the prosecution process. However, the petitioners' contention is not sustainable. At the time of cognizance, it is not necessary for the Court to have all the detailed answers to the questions raised in the show-cause notices or the replies provided by the petitioners. The primary issue at the stage of taking cognizance is whether a *prima facie* case has been made out based on the facts and the documents presented by the complainant, which in this case includes the submissions of Form 18 reports, the inspections, and the show-cause notices. The judgment in ***D.Sanjiv Kumar*** pertains to the necessity of detailed information being available for a Magistrate to decide



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whether a case can proceed after the filing of a complaint. However, at the cognizance stage, the Court need only assess if there is a *prima facie* case, and further detailed examination of the show-cause notices and replies is generally part of the trial process. Thus, the principles established in ***D.Sanjiv Kumar*** are not applicable in this context, as the issue of whether a detailed analysis of the show-cause notice and reply is necessary arises later in the trial process, not at the time of taking cognizance. Therefore, the complaints filed in this case are valid, and the petitioners' contention that the complaints should be dismissed on this basis is rejected.

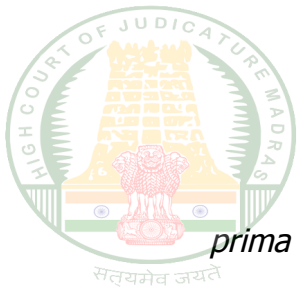
12. The final submission made by the learned senior counsel for the petitioners is that the accidents occurred due to the negligence of the employees themselves, and therefore, the petitioners should not be held liable for these incidents. The petitioners argue that they provided the necessary Personal Protective Equipment (PPE) to the workers, and the accidents resulted from the workers' failure to use the equipment properly or their involvement in unsafe practices. However, this argument does not fully address the statutory responsibilities of the petitioners under the Factories Act, which is specifically designed to ensure the welfare and safety of workers. While the petitioners' position regarding employee negligence is noted, it is crucial to recognize that the Factories Act imposes clear and stringent duties on employers to maintain a safe working environment,



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implement necessary safety measures, and provide adequate training and supervision to employees. The mere provision of PPE is insufficient if the petitioners have not taken adequate steps to ensure its use and enforce safety protocols. The Factories Act mandates that employers not only provide protective equipment but also ensure that the work environment is free of hazards and that proper safety measures are followed consistently. As mentioned earlier, Section 7A of the Factories Act requires the occupier to ensure, as far as is reasonably practicable, the health, safety, and welfare of all workers while they are at work in the factory. The employer's obligations include monitoring employee compliance with safety standards and taking corrective actions when necessary. At this stage, the question of whether the petitioners have fulfilled their obligations under the Factories Act is a matter for the trial court to determine, after recording evidence. The trial court is best positioned to assess the facts, evidence, and arguments presented by both parties and decide whether the petitioners have complied with the legal safety requirements. Hence, the petitioners' request to quash the complaints is rejected, and the matter will proceed for further examination by the trial court, which will consider all relevant evidence and make a determination based on the merits of the case.

13. In view of the above, the Criminal Original Petitions seeking to quash the complaints are dismissed, as the trial court has found sufficient



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prima facie materials to take cognizance of the matter and has taken the case on file. Hence, the trial court shall proceed to examine the case on its merits. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No

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To

- 1.The Chief Judicial Magistrate,
Cuddalore.
- 2.The Deputy Director,
Industrial Safety and Health,
Cuddalore.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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Pre Delivery Order in
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25923, 25926 of 2024 &
Crl.M.P.Nos.14417, 14418, 14422, 14424,
14426, 14427, 14431, 14432, 14433 & 14434 of 2024

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