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Crl.R.C(MD)Nos.245 and 288 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Pronounced on : 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

**Crl.R.C(MD)Nos.245 and 288 of 2024
and
Crl.M.P(MD)Nos.2747 and 3314 of 2024**

1. C.R.Murali

... Petitioner in
Crl.R.C(MD)No.245 of 2024

2. Sandeep Nelamangala

... Petitioner in
Crl.R.C(MD)No.288 of 2024

Vs.

Assistant Director,
Industrial Safety and Health,
Dish,
Tirunelveli.

... Respondent in both Crl.RCs

PRAYER in Crl.R.C(MD)No.245 of 2024: This Criminal Revision Case has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.22084 of 2022 on 05.08.2023 by the Chief Judicial Magistrate, Tirunelveli and to discharge the petitioner in C.C.No.1966 of 2022 pending on the file of the Chief Judicial Magistrate, Tirunelveli.



Crl.R.C(MD)Nos.245 and 288 of 2024

PRAYER in Crl.R.C(MD)No.288 of 2024: This Criminal Revision Case has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.22083 of 2022 on 05.08.2023 by the Chief Judicial Magistrate, Tirunelveli and to discharge the petitioner in C.C.No.1963 of 2022 pending on the file of the Chief Judicial Magistrate, Tirunelveli.

For Petitioner : Mr.R.Anand
for Mr.M.Soban in both Crl.RCs

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side) in both Crl.RCs

COMMON ORDER

The Criminal Revision Case(MD)No.245 of 2024 is filed against the order of dismissal, dated 05.08.2023 passed in Crl.M.P.No.22084 of 2022 in C.C.No.1966 of 2022 on the file of the learned Chief Judicial Magistrate, Tirunelveli.

1.1. The Criminal Revision Case(MD)No.288 of 2024 is filed against the order of dismissal, dated 05.08.2023 passed in Crl.M.P.No.22083 of 2022 in C.C.No.1963 of 2022 on the file of the learned Chief Judicial Magistrate, Tirunelveli.



2.The brief facts of the case:

The petitioners in respective criminal revisions cases are the factory manager and occupier of the factory of Bosch Limited running at Plot No.B8 to B13, B15 and B16, SIPCOT Industrial Growth Centre, Gangaikondan, Tirunelveli. The respondent/complainant has filed the complaints U/s.41 Rule 61(E) of Factories Act, 1948 (Amended Act 1987 and Tamilnadu Factories Rules 1950) against the petitioners herein alleging that one Mrs.Ramya working as a permanent employee of the petitioners factory, had tried to clean the Fully Automatic Glue Stamping Machine on 08.02.2022 and due to its malfunctioning, she had sustained fracture in her right hand index finger and she took treatment, however, she could not fully fold or close her index finger after the incident. The complaints were taken on cognizance as C.C.Nos.1963 of 2022 and 1966 of 2022 against the respective petitioners.

2.1. At this stage, the petitioners have filed petitions U/s.245(2) of Cr.P.C. in CrI.M.P.No.22084 of 2022 in C.C.No.1966 of 2022 and CrI.M.P.No.22083 of 2022 in C.C.No.1963 of 2022 before the learned Chief Judicial Magistrate, Tirunelveli to discharge them from the complaints filed by the respondent u/s 41 Rule 61(E) of Factories Act,1948 (Amended Act 1987 and Tamilnadu Factories Rules 1950). The petitions were strongly objected by the respondent/complainant. After hearing both sides and after perusal of records, the trial court has dismissed the petitions



by its common order, dated 05.08.2023, passed in Crl.M.P.Nos.22083 and 22084 of 2022.

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3. Aggrieved by the said impugned order, the petitioners have come forward with these respective present criminal revision cases.

4. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the respondent.

5. The learned counsel appearing for the revision petitioners has mainly submitted that the alleged accident took place on 08.02.2022 and immediately that was informed by the petitioners to the respondent on 10.02.2022 by filing Form No.18 under Rule 96 of Factories Rules, 1950 wherein under column 5(a) and 10(a) the exact nature of incident was detailed and the same was received by the respondent. But, the respondent issued a show cause notice on 17.06.2022, i.e., after expiry of 127 days, to the petitioners and filed complaints on 11.08.2022, beyond the period of limitation. As per Section 106 of the Factories Act, the complaint U/s.41 Rule 61(E) of the Factories Act, 1948 (Amended Act 1987 and Tamilnadu Factories Rules 1950) has to be filed within three months from the date of knowledge. The respondent was given knowledge on 10.02.2022 itself, but the respondent issued a show cause notice and filed a complaint after expiry of



limitation period. Therefore, the complaints itself are barred by limitation and the trial court ought not to have taken cognizance of the complaints. Therefore, the petitioners have to be discharged. The trial Court failed to consider the fact that the complaints are barred by limitation and declined to discharge the petitioners. Therefore, the impugned order is liable to be set aside. Therefore, the criminal revision cases may be allowed. In support of his argument, the learned counsel for the petitioners has relied on the order of this court passed in Crl.O.P.Nos.23034 & 23035 of 2015 dated 19.08.2019.

6. The learned Government Advocate (Criminal Side) appearing for the respondent has submitted that the alleged incident happened on 08.02.2022, but the Joint Director of the respondent made inspection and submitted remarks on 18.05.2022, so the show cause notice and complaints are well within the limitation period, as held by the Hon'ble Supreme Court in **P.D.Jambekar /v/ State of Gujarat case** reported in **1973 AIR SC 309**. He would further submit that the complaints filed against the petitioners and the same were taken on cognizance by the trial Court are the cases to be tried as summary trial cases. There is no provision for discharge in the summary trial cases. Therefore, the petitions for discharge could not be entertained, and these criminal revisions filed against the dismissal of discharge petitions are also not entertainable.



7. In reply, the learned counsel for the petitioners submitted that if the revision is found to be not maintainable on some other ground, it would be open to the High Court to treat the same as a petition filed under Section 482 of Cr.P.C. in order to do justice in the case and relied on ruling reported in **(2024) 4 SCR 308** in the case of **“Vipin Sahni and Anr. /v/ Central Bureau of Investigation”**.

8. On hearing both and on perusal of records, it is clear that the trial Court has taken cognizance as C.C.Nos.1963 of 2022 and 1966 of 2022 against the respective petitioners U/s.41 Rule 61(E) of Factories Act, 1948 (Amended Act 1987) and Tamilnadu Factories Rules 1950 and the same are pending. At this stage, the learned counsel for the petitioners submitted that the petitioners filed the petition U/s.245(2) of Cr.P.C., to discharge them on the ground that the complaints are barred by limitation, but the trial Court erroneously dismissed the petitions. The learned counsel for the respondent argued that these cases to be tried under the classification of summary trial procedure and there is no provision for discharge in such nature of case. There is no dispute that the cases in hand are summons procedure cases as the penal provision under Section 92 of the Factories Act, the offence is punishable with imprisonment for a term which may extend to Two Years or with fine which may extend to Rs.One lakh or with both. Trial of summons cases is covered by Chapter XX of the Code of Criminal Procedure, which does not contemplate a stage of discharge like Section 239 of Cr.P.C., which



provides for a discharge in a warrant case. No petition U/s. 245(2) of Cr.P.C. for discharge is entertainable in summons cases. Moreover, it is the well settled position of law by the Full bench of the **Hon'ble Supreme Court in Adalat Prasad /v/ Rooplal Jindal and Others (2004) SCC (Cri) 1927** that no petition for discharge would lie in a summons case. The same is followed in catena of cases, and this Court has also dealt with the same nature of case in **Crl.R.C.No.1057 of 2016 (R.Pari vs. Sreeprakash) and Crl.R.C.No.1241 of 2004 (Subramani vs, K.Babu)**. Therefore, in summon cases discharge petition will not lie and hence, the learned Chief Judicial Magistrate has no power to entertain the petition for discharge filed by the petitioner. However, that petition was dismissed by passing the impugned order. The present criminal revision cases were filed U/s.397 of Cr.P.C. against the order of the trial Court. When there is no provision for discharging the accused on petition for discharge in summons case, these criminal revision cases filed U/s.397 of Cr.P.C. are not maintainable.

9. At this juncture, the learned counsel for the petitioners submitted that the High Court can treat these revisions as petition filed under Section 482 of Cr.P.C. by relying on ruling **(2024) 4 SCR 308**, which is not acceptable. On perusal of the ruling **(2024) 4 SCR 308**, the respondent Investigating Agency approached the Hon'ble Allahabad High Court U/s.482 of Cr.P.C. to set aside the discharge order passed in favour of the accused, which was declined as there is a specific



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provisions for revision under Sec.397 of Cr.P.C. is available. It is also clearly held therein that the reverse analogy may not apply in all cases and it would not be open to the High Court to blindly convert or treat the petition U/s.482 of Cr.P.C. or 397 of Cr.P.C. Therefore, I am of the considered view that these criminal revision cases have no merit and the same are liable to be dismissed. However, the petitioners are at liberty to file petitions for quash.

10. In the result, these Criminal Revision Cases are dismissed with liberty to file quash petitions and the Registry is hereby directed to return the original papers to the petitioners. Consequently, the connected Miscellaneous Petitions are closed.

29.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Chief Judicial Magistrate,
Tirunelveli.
- 2.Assistant Director,
Industrial Safety and Health,
Dish,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre - Delivery Orders made in
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and
Crl.M.P(MD)Nos.2747 and 3314 of 2024**

29.04.2025