



Crl.O.P.(MD) No.4364 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2025

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.4364 of 2025

and

Crl.M.P.(MD) Nos.3090 & 3091 of 2025

S.Sivapriya

... Petitioner

Vs.

The State of Tamil Nadu rep. by
The Assistant Director,
Industrial Safety and Health Office
of Deputy Director,
No.11A/1, Vinayagar Nagar,
Opp. to District Court,
Near to Medicity Hospital,
Madurai - 625 020.

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records relating to the proceedings in S.T.C.No.6532 of 2024 on the file of the learned Additional Chief Judicial Magistrate, Madurai and quash the same.

For Petitioner : Mr.S.Venkatesh

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



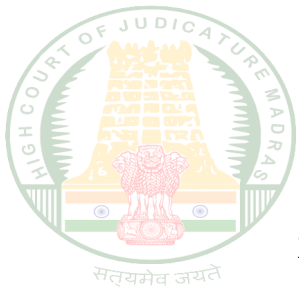
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ORDER

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This Criminal Original Petition has been filed seeking to quash the impugned complaint filed by the respondent in S.T.C.No.6532 of 2024 on the file of the learned Additional Chief Judicial Magistrate, Madurai, against the petitioner for the following offences:

- i. Sections 40(1)(2)(U) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 [hereinafter referred to as the “Act”] read with Rule 19 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2006 [hereinafter referred to as the “Rules”] read with Rule 183(q)(m) of the Rules [Penal Section 47(1) of the Act];
- ii. Sections 39(1) read with Section 62(1)(2)(zb) of the Act, Rule 210(1)(b) read with Rule 210(7) of the Rules [Penal Section 50(1) of the Act];
- iii. Section 40(1)(2)(o) of the Act read with Rule 178(a)(b) of the Rules [Penal Section 47(1) of the Act]; and
- iv. Section 40(1)(2)(o) of the Act read with Rule 42(7) of the Rules [Penal Section 47(1) of the Act].



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2. The allegation in the private complaint is that the petitioner is the landowner, who had constructed a godown in her property; that the construction was not carried out properly and was in violation of the provisions of the aforesaid Act and Rules; that the roof steel trusses collapsed due to rain and caused injuries to one of the workers; and that the petitioner, as the employer, is liable for the aforesaid violations, including failure to send the required forms under the Tamil Nadu Rationalisation of Forms and Reports under Certain Labour Laws, 2020, and for not providing safety lifelines, safety belts, helmets, and safety nets at the construction site.

3. The learned counsel for the petitioner would submit that the petitioner cannot be termed as an employer, as admittedly she had engaged one Mr.K.K.Rajkumar, a contractor, for the construction of the godown; that the respondent had prosecuted the said contractor in S.T.C. No.6533 of 2024 on the file of the learned Additional Chief Judicial Magistrate, Madurai, for the very same violations, and the said contractor had pleaded guilty to the charges and was sentenced to pay fine; that the impugned complaint seeking to separately prosecute the petitioner without disclosing the earlier complaint filed against the contractor is an abuse of



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the process of law and is therefore liable to be quashed. He would rely

upon the judgment of this Court in ***Mr.Sain Singh Rawat and others vs.***

Government of Tamil Nadu, rep. by the Joint Director of Industrial

Safety and Health, dated 26.04.2023, rendered in Crl.O.P.No.22336 of

2019, etc. batch.

4. Heard the learned Government Advocate (Criminal Side) for the respondent, who would confirm the fact that the contractor was prosecuted separately for the very same violations, and that the said contractor, K.K.Rajkumar, as stated above, was convicted and sentenced to pay fine on his admission of guilt.

5. This Court, in several cases, has held that there cannot be two different complaints in respect of the same violation: one against the person for whose benefit the construction is made and the other against the contractor. Section 2(1)(i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 defines “employer”, which reads as under:

2. Definitions. (1) In this Act, unless the context



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otherwise requires,-

(i) " employer", in relation to an establishment, means the owner thereof, and includes,-

(i) in relation to A building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor.

6. Once the contractor, who is deemed to be an employer, is prosecuted, there cannot be any separate prosecution against the owner on whose behalf the said construction is being carried out. This Court, in

Mr.Sain Singh Rawat's case referred to *supra*, has held as follows:

9. In the instant cases, a strange practice which is unknown to the Criminal Procedure Code has been adopted. Four different complaints have been filed for violation under Section 44 of the Act, showing four companies as 'Employers'. If it is the prosecution case



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that all of them are 'Employers', they have to be prosecuted in a single complaint, in which case, the exact role played by each of the Companies in the alleged violations would be revealed. However, filing independent complaints showing each of them as an 'Employer' alleging the very same violation is highly inappropriate, to say the least. Admittedly, BEPL has paid a fine and hence, the prosecution against the petitioners for the very same violation is an abuse of process of law. ...

11. As regards the violation of not registering with the authorities under the Act, it is seen that, admittedly BHEL did not employ building workers. Therefore, there is no necessity to register with the authorities concerned. Rule 26 of the Rules makes it clear that registration is required only if a building worker is directly employed by the employer. Since admittedly BHEL has not employed any building worker, registration is not required. It is also seen that BEPL has been prosecuted for the same violation and convicted. For all the above reasons, the impugned complaints are liable to be quashed.

7. The above observations squarely apply to the facts of the instant case. Hence, the impugned complaint against the petitioner is an abuse of the process of law and cannot be allowed to continue. Accordingly, the impugned proceedings is quashed.

8. In the result, this Criminal Original Petition is allowed.



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Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

Copy To:

- 1.The Additional Chief Judicial Magistrate,
Madurai.
- 2.The Assistant Director,
Industrial Safety and Health Office of Deputy Director,
No.11A/1, Vinayagar Nagar,
Opp. to District Court,
Near to Medicity Hospital,
Madurai - 625 020.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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