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Crl.O.P.No.9171 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2026

CORAM:

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

Crl.O.P.No.9171 of 2023
and Crl.M.P.Nos.5947 & 5948 of 2023

D.Sanjiv Kumar,
S/o. Dinesh Prasad Singh,
Occupier,
Tamil Nadu Waste Management Ltd.,
(Now RE Sustainability IWM Solutions Ltd)
Plot No.5 to 15, 28-33,
Sipcot Industrial Complex,
Gummidipoondi – 601 201.

..Petitioner(s)

Vs

State of Tamil Nadu
Rep by its
The Joint Director-II, (Industrial Inspector)
Industrial Safety and Health,
S.F.No.47/1, Block No.6,
Thiru. Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032.

..Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in the private complaint in C.C.No.140 of 2022 pending on the file of Chief Judicial Magistrate, Thiruvallur and quash the same.



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For Petitioner(s):

Mr.L.Murali Krishnan

For Respondent(s):

Mr.A. Gopinath

Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the proceedings in C.C.No.140 of 2022 pending on the file of the learned Chief Judicial Magistrate, Thiruvallur, thereby taken cognizance for the offences punishable under Sections 6(1) Rule 3(5)(6), 38(3) Rule 61(11)(e)(f) and 31(2) Rule 56(7) (9) r/w Rule 56B of the Factories Act, 1948 (hereinafter referred to as “the Act”) and Tamil Nadu Factories Rules 1950 as against the petitioner.

2. The respondent lodged a private complaint as against the petitioner alleging that on 28.11.2020 at 15.30 hours, the respondent conducted inspection at the petitioner’s factory and found some irregularities under Section 6(1) Rule 3(5)(6), Section 38(3) Rule 61(11)(e)(f) and Section 31(2) Rule 56(7)(9) r/w Rule 56B of the Act and Tamil Nadu Factories Rules 1950. Thereafter, the respondent issued show cause notice dated 26.12.2020 thereby calling upon the explanation from the petitioner. On receipt of the same, the petitioner also sent their explanation on 31.01.2021. Without being satisfied by

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the same, the respondent lodged complaint before the learned Chief Judicial Magistrate, Thiruvallur. The said complaint was taken cognizance by the trial Court and summons were issued to the petitioner. To quash the said proceedings, the petitioner filed the present quash petition.

3. The learned counsel appearing for the petitioner submits that the complaint does not disclose contraventions of any of the Sections mentioned in the complaint. Therefore, the petitioner is not liable to be punished for the offence under Section 92 of the Act. Further entire allegations averted in the complaint did not disclose prima facie material to constitute any offence or make out a case as against the petitioner. The petitioner was issued with show cause notice for which he had issued reply. However, the show cause notice and reply were not even mentioned in the complaint and it shows that without even applying mind, the respondent had lodged complaint. After lodgement of complaint, the trial Court put up rubber stamp order and took cognizance without stating any reasons. In support of his contention, he relied up the judgment of this Court in ***Crl.O.P.No.23034 of 2015*** dated ***19.08.2019*** in the case of ***L.Ganesh Vs. The State of Tamilnadu.***



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4. Per contra, the learned Government Advocate appearing for the respondent submitted that the petitioner contravened the Sections 6(1) Rule 3(5)(6), 38(3) Rule 61(11)(e)(f) and 31(2) Rule 56(7)(9) r/w Rule 56B of the Act and Tamil Nadu Factories Rules 1950 and as such he is liable to be punished under Section 92 of the Factories Act. As per Section 105 of the Act, there is no word private complaint has been incorporated. As per Sub Clause (1) to the Section 105 of the Act, no Court shall take cognizance of any offence under this Act except on complaint by or with previous sanction in writing of an inspector. He further submits that if the complainant is the public servant and if the complaint is made in writing, the trial Court need not examine him to take cognizance. Therefore, the trial Court rightly had taken cognizance on the complaint lodged by the respondent. Even assuming that the trial Court without examining the complainant and without application of mind had taken cognizance, these are only technical defects and it can be corrected after examining the document and averments made in the complaint. Hence it would not vitiate the entire complaint. The respondent has carried out a complaint inspection in a diligent manner and after deep application of mind issued show cause notice and thereafter lodged complaint. Though the petitioner submitted reply, it was not satisfactory in nature and as such, the

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respondent lodged complaint. Mere non mentioning of show cause notice and reply does not amount to non application of mind by the respondent.

4.1. He further submits that as per Section 2 sub Clause (n) of the Act, occupier means the person who has ultimate control over the affairs of the factory and also under Section 7 sub Clause (l) of the Act, 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 all particulars. Therefore, the ground raised by the petitioner cannot be considered now and it can be considered only during trial before the trial Court. Hence, he prayed to dismiss the present petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the records, the points for considerations are as follows :-

(1) Whether the cognizance taken by the Trial Court is in accordance with law?

(2) Whether the cognizance was taken by the Trial Court without



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applying its mind for the simple reason that the respondent failed to avert about the show cause notice and reply submitted by the petitioner?

(3) Whether the cognizance was taken by the Trial Court through rubber stamp order and whether the same can be sustainable?

7. On perusal of the records, it is revealed that though the petitioner was served with showcause notice and also he submitted reply, but there is no whisper about the showcause notice and reply. Further the respondent failed to give reason as to why the reply submitted by the petitioner was found to be non-satisfactory. That apart, all the defects as pointed out by the respondent have been fulfilled by the petitioner. It shows the non-application of mind by the respondent while filing the complaint to prosecute the petitioner for the contravention. In this regard, it is relevant to rely upon the judgment of this Court reported in **2014 (3) MWN (Cr.)86** in the case of **K.Masthan Rao Vs.**

State rep. By Inspector of Factories, First Circle, Vellore, as follows :-

“27. As pointed out earlier, the form 3A intimating notice of change of Deputy Chief Engineer, minutes of the Canteen Advisory Committee meeting, minutes of Safety Committee meeting, the report of examination of cranes, ropes, etc., building stability certificate were all forwarded to the respondent/complainant as well as the head of department.



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Thereafter, on 28.09.2012, another representation was made enclosing copy of the building stability certificate issued by the competent person and simultaneously requesting the Chief Inspector of Factories to nominate recognised persons for signing them stability certificate. Despite all these factual submissions, the complaints have been filed by the respondent verbatim repeating the allegations made in the show cause notice. Surprisingly, there is no reference to the explanations submitted by the petitioners and as to how the petitioners have not complied with the deficiencies pointed out, as to how the same stand rectified and such other matters. In the show cause notice dated 09.04.2012, it has been stated that on 22.03.2012, an inspection was conducted in the factory and the deficiencies, which were noticed in the course of inspection, were listed out as serial nos. 1 to 16 and the petitioners were called upon to explain as to why, prosecution should not be initiated against them by giving them seven days time to submit their explanation in writing, failure to avail the opportunity would be considered that there is no explanation to offer and without further notice, action would be taken. Therefore, the respondent/complainant being a statutory authority having provided for an opportunity to the petitioner to show cause ought to have considered the correctness of the propriety of the explanations offered.



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



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explanations dated 12.07.2012 and 28.09.2012, were submitted much prior to the date on which, the complaint was re-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”.

Thus it is clear that the complaint shall contain all materials to the averments.

8. Admittedly, on receipt of the complaint from the respondent, the Trial Court had taken cognizance through rubber stamp order without stating any reason whether the Trial Court was satisfied with the report filed by the respondent or not. Though the petitioner was served with showcause notice and thereafter he had sent a reply, the respondent failed to refer the show cause notice and reply submitted by the petitioner in the complaint. It shows the malafide intention of the respondent while lodging the complaint. Further the Trial Court had taken cognizance by putting rubber stamp order without stating any satisfactory reason to take cognizance on the complaint lodged by the respondent. In this regard, it is relevant to rely upon the judgment in ***Crl.O.P.No.7347 of 2017*** dated ***17.11.2021*** in the case of ***A.T.Kannan Vs. The State***, as follows:-

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“8. Yet another submission made by learned Government Advocate (Crl.side) that, as the trial has already commenced, the Court cannot exercise the power under Section 482 Cr.P.C, has no legs to stand and the issue is no longer res integra as the Apex Court in **Kamlesh Kumar Vs. State of Bihar and another** reported in (2014) 2 SCC 424 held that when the complaint is barred under law even after the trial has commenced, the Court can exercise power under Section 482 Cr.P.C. It is also relevant to note that besides violation of Sections 42 and 47 of the Act, the very complaint is filed beyond the period of limitation. However, the learned Magistrate, without noticing the fact that complaint has been filed beyond the period of limitation, has mechanically taken the complaint on file and took cognizance. While taking cognizance of the complaint on file, the learned Judicial Magistrate has to look into the provisions of the law and find out whether the complaint is filed within a period of limitation as provided in the special Statute, but that has not been done. Further, on perusal of the very complaint and the seal it comes to light that learned Magistrate has just affixed the seal as TOF', denoting only 'Taken on File'. In a routine manner, the rubber stamp has been used mechanically to show that the complaint was taken on file. That itself indicate that Judicial Magistrate has not applied his mind while reading the complaint and provision of law and has not come to a definite conclusion as to whether the complaint is within



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the time or not. Such act of the learned Judicial Magistrates have been condemned by this Court in various judgments. Despite the same, judicial officers are using the rubber seal and taking cognizance of the complaint without even verifying the period of limitation or Statute. It is nothing but a clear abuse of process of law. Such an attitude should be hereafter stopped by the Judicial Magistrates. Though this Court has ample power to call for an explanation, this Court keeping in view of the long duration of the period between the taking of cognizance and now, is of the view that it will suffice to direct the Director, Tamil Nadu State Judicial Academy to sensitize the Judicial Magistrates in this regard during the regular training programme.

With the above observations, this petition is allowed and the case in S.T.C.No.1935 of 2014 is quashed.”

9. Therefore, cognizance taken by the Trial Court in the case itself is non est in the eye of law. Unfortunately, the Trial Court has passed rubber stamp order without assigning any reason. The distinction exists between an order of taking cognizance and an order of issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may not only apply its mind as to whether on the basis of the allegations made in the complaint and the statements made by the complainant and his witnesses, a prima facie case



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has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the penal statute for issuance of process for alleged commissions of the offences vis-a-vis, the allegations made. Therefore, a person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Trial Court ought to have issued process and it cannot be issued merely because the accused is unlikely to result in a conviction. The word sufficient ground for proceedings appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. Therefore, if no reason is stated while taking cognizance, the order of taking cognizance itself is liable to be set aside. In fact, the Hon'ble Supreme Court of India and this Court have deprecated the practice of taking cognizance through rubber stamp order. Taking cognizance is a judicial act which requires application of mind. Therefore, the practice of taking cognizance through rubber stamp cannot be sustained and is liable to be set aside.



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10. In view of the above discussions, the impugned proceedings in

C.C.No.140 of 2022 pending on the file of the learned Chief Judicial Magistrate, Thiruvallur, is hereby quashed as against the petitioner and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

10.03.2026

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

To

1. The Chief Judicial Magistrate,
Thiruvallur.

2. The Joint Director-II, (Industrial Inspector)
Industrial Safety and Health,
S.F.No.47/1, Block No.6,
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3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

rts

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