

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 31.08.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.7828 of 1998

P.Thangapandian

... Petitioner

Vs.

1. The Registrar,
High Court,
Madras 600 104.
 2. The Assistant Registrar,
(Rules) High Court,
Madras 600 104.
 3. The Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Chepauk, Chennai 600 005.
 4. The Chief Inspector of Factories,
Office of the Chief Inspector of Factories,
Chepauk,
Chennai 600 005.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, call for the records of the first respondent circular in his proceedings No.Roc.No.386/94/RR dated 14.09.1995 and quash the same.

For Petitioner : Mr.P.Chandsekar

For Respondents: Mr.A.Edwin Prabhakar
Government Advocate

O R D E R

This writ petition is filed challenging the circular issued by the first respondent the Registrar, High Court, Chennai, dated

14.09.1995. As per the said impugned circular, the first respondent, while referring to the decision of the full court of the High Court, and considering that the penalty for violation of any offence under Factories Act has been enhanced to Rs.1 lakh and in view of the said enhancement, the Judicial Magistrate cannot levy a fine beyond Rs.5,000/-, passed a resolution directing the Chief Judicial Magistrates to withdraw the cases pending under the Factories Act and filed before the amendment came into existence in which the punishment to be imposed is beyond the competency of Judicial Magistrates.

2. The writ petitioner, who is working as a Factory Manager of M/s.Standard Fire Works Ltd., Thayalpatti via, Sivakasi, Virudhunagar District, states that in respect of offence punishable under the Factories Act, 1948, which is a Central Act, Section 105 (2) contemplate that no court below that of a Presidency Magistrate or Magistrate of First Class shall try any offence punishable under the said Act.

3. According to the petitioner, when once the said Section 105(2) stands in tact even as on date, the impugned circular by transferring the cases in respect of offence under Factories Act from the court of First Class Magistrate to Chief Judicial Magistrate on the ground of pecuniary jurisdiction namely the quantum of fine is unlawful.

4. It is also the case of the petitioner that under Section 112 of the Factories Act, 1948, the State Government is empowered to make rules providing for any matter under the Act. According to the petitioner, it is at the most the State Government which can make any rules even if it relates to the procedure for the purpose of transferring cases from the First Class Magistrate to the Chief Judicial Magistrate. In the absence of such rules framed by the State Government, the first respondent High Court has no power to withdraw cases from the courts of First Class Magistrate to that of the Chief Judicial Magistrate.

5. The petitioner challenges the impugned order also on the ground that by withdrawing the cases to the file of the Chief Judicial Magistrates on the basis that the fine to be imposed in respect of offence under the Factories Act is enhanced to Rs.1 lakh only with the presumption that all cases filed under the Factories Act, 1948, will result in conviction and fine.

6. The first respondent has filed the counter affidavit. It is the case of the first respondent that under Section 94 of the

Factories Act, 1948, which was amended by Section 20 of the Act, 1987, with effect from 01.12.1987, has enhanced the imprisonment in respect of offence punishable under Section 92 of the said Act, to 3 years or with a fine not less than Rs.10,000/- which may extend upto Rs.2 lakhs. When this enhancement of penalty was informed by the Chief Inspector of Factories to the High Court and inasmuch, it is only the Chief Judicial Magistrate who alone are empowered to levy a fine exceeding Rs.5,000/-, the matter was placed before the Full Court of the High Court and the Full Court has taken a decision on 31.08.1998 withdrawing cases to the file of the Chief Judicial Magistrates in respect of offence punishable under the Factories Act.

7. According to the first respondent, while Section 29 of the Criminal Procedure Code empowers the First Class Magistrates to imposed the sentence of fine upto Rs.5,000/-, by amending under Section 94 of the Factories Act enhancing the minimum penalty to that of Rs.1 Lakh in respect of offences punishable under Section 92 of the Factories Act, in effect no such offence can be tried by the First Class Magistrates and the very purpose of the amendments will be thwarted and therefore the impugned order came to be passed.

8. I have heard the learned counsel for the petitioner and also the learned Special Government Pleader for the respondent.

9. The learned counsel for the petitioner would submit that there is a contradiction between Section 105 of the Factories Act, 1948 which states that only the Judicial Magistrate got power to try the offence committed under the Factories Act, the impugned order under which the matter are transferred to the Chief Judicial Magistrate should be taken as illegal. According to him, the only authority who has power is the State Government in exercising its rule making power under Section 112 of the Factories Act 1948. Therefore, according to him, in the absence any rules framed by the State Government, the withdrawal of cases from the Judicial Magistrate to the Chief Judicial Magistrate is outside the power of the first respondent High Court.

10. On the other hand it is the contention of the learned Government Advocate that the impugned order passed is only consequential to the amendment carried out to Section 94 of the Factories Act, 1948 by enhancing the penalty and therefore it does not suffer from any illegality whatsoever. I have considered the rival submission. At the outset, it is relevant to point out one important factor namely that what is contemplated under Section 105

of the Factories Act, 1948 is that the cognizance of offence in respect of offences under the Factories Act are to be taken by the courts not below the Presidency Magistrate Court or the Magistrate of First Class. Section 105 of the Factories Act 1948 which states as follows:

"Cognizance of offences.- (1) No Court shall take cognizance of any offences under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act."

11. In the present case, the impugned order of the first respondent is only to withdraw the cases from the court of the First Class Magistrate to the Chief Judicial Magistrate who is superior to the First Class Magistrate and therefore, the intention of the impugned order is not to withdraw the cases to the court of the Magistrate below the First Class Magistrate and therefore, there is absolutely no contradiction as far as the wordings of Section 105 of the Act is concerned. The impugned order is certainly not violative of Section 105(2) of the Factories Act, 1948. In this regard it is relevant to extract the impugned order as such for proper understanding and comparison between Section 105 and the impugned order. The resolution of the Full Court which has been extract in the impugned order runs as follows:

"It has been brought to the notice of the High Court by the Chief Inspector of Factories, Madras that the penalty for violation of any offence under the Factories Act is enhanced to Rs.1,00,000/- and in view of the above penalty clause framed under the Factories Act and Rules the Chief Judicial Magistrates alone are empowered to levy a fine beyond five thousand Rupees. Hence the case filed by that Department in the Sub Divisional Judicial Magistrates' and Judicial Magistrates' may be ordered to be transferred to the respective Chief Judicial Magistrates Courts.

After considering the matter that was brought to the notice of the High Court, the Full Court of the High Court resolved the followings:

'The Chief Judicial Magistrates are instructed to withdraw the cases pending under the Factories Act and filed before the amendment came into force in which the punishment to be imposed is beyond the competency of the Judicial Magistrate'."

12. There is one another circumstance to be considered in this case. Admittedly Section 94 of the Factories Act 1948 was amended by Act 20 of 1987 with effect from the 1st December 1987 by which the penalty has been increased to Rs.10,000/-. However it is also the fact that in reasonable case for a special reason to be adduced, the penalty can be even less than Rs.10,000/-. On the other hand Section 29 of the Code of Criminal Procedure which is also a Central Act states as follows:

"Sentences which Magistrates may pass.- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class."

13. Therefore, under Section 29(2) of the Code of Criminal Procedure which was amended in 2005, the jurisdiction of the First Class Magistrate in imposing fine upto Rs.5,000/- has been enhanced upto Rs.10,000/-. Therefore the power of the First Class Magistrate in imposing fine in respect of any offence is only upto Rs.10,000/-.

14. As stated above, under the amendment brought to the Factories Act 1948 in 1987, the minimum fine for the offence under Section 92 of the Factories Act has been increased to Rupees one lakh to the maximum extent of Rs.2 lakhs. Therefore, it is obvious that the First Class Magistrate cannot having jurisdiction to impose fine in respect of the offence under Section 92 of the Factories Act and on the other hand, the Chief Judicial Magistrate is empowered. Even under Section 105 as I have elicited above, the said provisions of the Factories Act only imposes of right of cognizance of offence under the said act before the Magistrate not less than the Magistrate of First Class and Presidency Magistrate and therefore, by the impugned order, by transferring the same to the Chief Judicial Magistrate who is above the Magistrate of First Class, there is absolutely no violation of Section 105(2) of the Factories Act 1948. Therefore the contentions of the learned counsel for the petitioner as if it requires formation of rules under Section 112 has no legal basis whatsoever.

15. Therefore, considering the matter into any angle, I am of the considered view that there is absolutely no contradiction in the impugned order passed by the first respondent in transferring the matters from the courts of the Judicial First Class Magistrate to that of the Chief Judicial Magistrate in respect of offence punishable under Section 92 of the Factories Act and on the other hand the impugned order only facilitates the proper implementation of the amendment brought into Section 94 of the Factories Act 1948 which does not violate any other provisions of law.

16. In view of the same there is absolutely no substance in the contention of the petitioner in questioning the validity of the impugned order of the first respondent. Therefore, the writ petition fails and the same is dismissed with costs of Rs.10,000/- to be paid by the petitioner to the Chief Justice relief fund.

nbj

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
High Court,
Madras 600 104.
2. The Assistant Registrar,
(Rules) High Court,
Madras 600 104.
3. The Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Chepauk, Chennai 600 005.
4. The Chief Inspector of Factories,
Office of the Chief Inspector of Factories,
Chepauk,
Chennai 600 005.
5. The Section Officer,
Accounts Section (CJ RF Seat)
High Court, Madras-104.

1 cc to the Government Pleader, High Court, Madras-104, SR.39715

1 cc to Mr.P.Chandsekar, Advocate, SR.39744

SGL (CO)

dv/8.9.06

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