

2025 LLR 843
KARNATAKA HIGH COURT
Hon'ble Mr. S.R. Krishna Kumar, J.
Crl. P. No. 3958/2024, Dt/- 10-6-2025

Mr. Prasanna M. Hegde
v.
State of Karnataka

FACTORIES ACT, 1948 – Section 92 – Filing of Criminal complaint without considering reply to the show cause notice – Legality of – Criminal petition is filed under section 482 of Cr.PC praying to quash entire proceedings filed under section 200 of Cr.PC for the offence punishable under section 92 of the Factories Act – It was contended by the petitioner that the respondent issued a show cause notice to the petitioner on 21-12-2023 who submitted his reply on 29-12-2023 to which respondent once again submitted a letter— The respondent proceeded to file the impugned private complaint without referring to the reply of the petitioner wherein the allegations of the show cause notice were specifically denied – Held, the requirement of considering reply submitted by the petitioner prior to filing a private complaint by the respondent is mandatory – In the present case, though the petitioner submitted a reply to the show cause notice, the respondent has neither referred to the reply or assigned cogent or valid reasons as to why it was not considered – The Trial Court taking cognisance for the offences is also cryptic, laconic and unreasoned without any application of mind – The matter is remanded back to the Magistrate for reconsideration afresh. Paras 7 to 9

For Petitioner: Mr. Prashanth B.K., Advocate.

For Respondent: Mr. Channappa Erappa, HCGP.

IMPORTANT POINTS

- **The requirement of considering reply submitted by the occupier against the show cause notice prior to filing a private complaint by the factory Inspector is mandatory.**
- **The Factory Inspector who has issued a show cause notice was under legal obligation to consider the reply given to his notice by showing the causes and it is only thereafter, if the causes shown in the reply were not satisfactory, then, he could have proceeded further in accordance with law.**
- **Had really the Factory Inspector considered the said reply notice, there ought to be some material, or at least, an observation to the effect that the reply to the show cause notice was considered, would have found place in any of the records.**
- **The order of the Trial Court taking cognisance of an offence under section 92 of the Factories Act which is cryptic, unreasoned, non-speaking and without application of mind is to be set aside and remanded back for reconsideration.**

ORDER (Oral)

S.R. Krishna Kumar, J.–1. In this petition, petitioner seeks for the following reliefs:

“(i) Quash the entire proceedings in C.C. No. 1390/2024 filed under section 200 of Cr.PC for the offence punishable under section 92 of the Factories Act, 1948 and all further proceedings pursuant thereto which are produced at Document

No. 1 on the file of learned 31st Additional Chief Metropolitan Magistrate, Bengaluru.

(ii) Grant such other and further reliefs as deems fit in the facts and circumstances of the case, in the interest of justice."

2. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner has invited my attention to the material on record in order to point out that on 21-12-2023, respondent issued show cause notice to the petitioner, who submitted his reply on 29-12-2023, to which respondent once again issued a letter dated 29-12-2023. It is submitted that without referring to the aforesaid communication between the parties, in particular, the reply of the petitioner wherein the petitioner specifically denied the allegations against him in the show cause notice, respondent has proceeded to file impugned private complaint, which was taken cognizance by the learned Magistrate and registered as impugned C.C. No. 1390/2024, which is assailed in the present petition.

4. In support of his contention, learned counsel for the petitioner placed reliance on the following judgments:

(i) *Mahendra Karle and Anr . v. The Assistant Director of Factories* , W.P. Nos. 52870-52871/2015 and connected matter dated 15-09-2018.

(ii) *George Alexander Muthoot v. The State of Karnataka* , CrI. P. No. 101559/2014 dated 21-01-2019.

(iii) *L. Ganesh v. State of Tamil Nadu* , (2020) 2 CTC 666.

(iv) *Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner (C) and Ors .* , AIR 2021 SC 5626.

(v) *Kranti Associates Private Limited and Anr. v. Massod Ahmed Khan and Ors. ,* (2010) 9 SCC 496.

(vi) *ORYX Fisheries Private Limited v. Union of India (UOI) and Ors .* , (2010) 13 SCC 427.

5. Per contra, learned HCGP submits that there is no merit in the petition and the same is liable to be dismissed.

6. In *Mahendra Karle's* case supra, this Court held as under:

The petitioners have filed these petitions for a *writ of certiorari* seeking quashing of the proceedings in C.C. No. 25204/2014 (in Writ Petition Nos. 52870-52871/2015) and C.C. No. 25201/2014 (in Writ Petition Nos. 52868-52869/2015), pending on the file of VII Addl. Chief Metropolitan Magistrate, Bengaluru, (henceforth for brevity referred to as 'Court below').

2. A perusal of the memorandum of writ petitions placed before this Court go to show that the respondent herein filed a complaint under section 200 of Code of Criminal Procedure, before the Court below seeking prosecution of the present petitioners who were arrayed as accused in the said private complaint under the Factories Act, 1948, and Karnataka Factories Rules, 1969.

3. The summary of the said complaint is that when the complainant visited and inspected the factory, i.e., M/s. Karle International Private Limited, Tumakuru Road, Bengaluru, of which the 1st petitioner is the occupier and the 2nd petitioner is said to be the Factory Manager, on 14-6-2014 he noticed certain discrepancies and the violation of provisions of the Factories Act. The complainant has alleged that it was noticed that the factory had not employed Safety Officer though it had engaged more than 1,000 workers in the factory. Thus, it had violated the provisions of section 40(B)(1)(i) of the Factories Act, 1948.

Secondly , it had not maintained any ambulance room.

Thirdly , in the place of a qualified doctor, only a Nurse was found. As such, no qualified doctor was present at the time of inspection. As such, there was non-compliance of requirements of provisions of Rule 92(1) of the Karnataka Factories Rules, 1969.

It was also alleged that the Creche was not adequately furnished and equipped as required under the provisions of Rule 101 of Karnataka Factories Rules, 1969.

4. The learned Magistrate took cognizance of the said private complaint and ordered to register a criminal case and ordered to issue summons to the accused. It is the said proceedings in C.C. No. 25201/2014 and C.C. No. 25204/2014, the petitioners have challenged in these writ petitions.

5. Learned Senior Counsel appearing for the petitioners in his argument submitted three points:

Firstly , he submitted that the Officer filing the complaint is not competent to file the complaint. The re-designated post of the Inspector would be the Senior Director of Factories. Since the complaint is filed by the Assistant Director of Factories, the same is not maintainable.

Learned Senior Counsel secondly submitted that there is no material to show that the reply to the show cause notice submitted by the petitioners has been considered by the respondent. As such, the filing of the criminal case in a mechanical manner exhibits the non-application of mind by the respondent which takes away the sanctity of the submission of the reply to the show cause notice. As such, the entire proceeding deserves to be quashed.

Lastly , learned Senior Counsel submitted that the 2nd petitioner has left the services of the factory on 29-10-2012, nearly two years prior to the date of alleged inspection of the factory. As such, instituting a criminal case against an employee who has already left the services with respect to the discrepancy found and for the non-availability of the said person on the alleged date of inspection, also makes the complaint bad in the eye of law.

6. Learned High Court Government Pleader representing the respondent in his argument submitted that the Notification of the Government dated 7-8-2003, makes it very clear that Inspector of Factories has been re-designated as Assistant Director of Factories.

Learned High Court Government Pleader further submitted that no order was passed by the respondent after receiving reply notice. Since no compliance was noticed by the respondent, they have proceeded to institute a criminal action by filing a private complaint under section 200 of Code of Criminal Procedure.

Learned High Court Government Pleader also submitted that the non-compliance can be seen by the very document produced by the petitioners along with their petition, i.e., in Writ Petition Nos. 52870-52871/2015, wherein Annexure-C shows that the Safety Officer had joined the petitioner's factory only on 13-7-2015, which was much later to the date of the inspection.

7. It is not in dispute that the 1st petitioner is the occupier of a Readymade Garment Manufacturing Factory called by name M/s. Karle International Private Limited, situated at 12th KM, N.H.4, Tumakuru Road, Bengaluru, and is also governed by Factories Act, 1948. It is also not in dispute that the complainant who is the Assistant Director of Factories, conducted the inspection of the said factory on 14-6-2014. According to the said Assistant Director of Factories/complainant, certain discrepancies or irregularities were noticed in the premises of the factory, with respect to which, a show cause notice was issued to the petitioners as at Annexure-A. The receipt of the said show cause notice dated 14-6-2014 is also an admitted fact.

8. In response to the averments made in the said show cause notice regarding irregularities said to have been noticed by the Inspector, the 1st petitioner-Factory vide Annexure-B, has

submitted its reply. The receipt of the said reply by the respondent/complainant is also not in dispute.

9. According to the learned Senior Counsel for the petitioners, before proceeding further, the respondent ought to have considered the reply to the show cause notice and passed an order. If the petitioners are aggrieved by any such order, it had an opportunity to prefer an appeal under section 107 of the Factories Act, 1948. As such, without considering the reply notice, in a mechanical manner and without application of mind, the respondent proceeded to institute the complaint.

10. The respondent has not placed any material to show that the reply of the petitioners, which is at Annexure-B, was considered by it. There are no materials to arrive at any conclusion as to for what reasons the respondent decided to institute a criminal proceeding against the petitioner-Company. When a show cause notice is given, asking the other party to show cause in writing, the person issuing the notice is under an obligation to go through the reply/cause shown by the noticed person and only thereafter to proceed in the matter. Otherwise, the very purpose of issuance of show cause notice would be defeated and a mere mechanical manner of issuance of a show cause notice and ignoring the reply given to it would result in mockery of process.

11. In the instant case, as submitted by the learned High Court Government Pleader there are no materials to show that the respondent had considered the reply at Annexure-B submitted to it by the petitioners. As such, the further proceedings initiated by the respondent, which, in the instant case, is in the form of institution of criminal case, is purely in a mechanical manner without even bothering to notice the causes shown by the petitioner-Factory in response to the show cause notice served upon it. In such an event, the very decision (if any) by the respondent to institute a criminal proceeding would be in a mechanical manner and without application of its mind. Thus, it deprives the right of a noticed person who has submitted his reply to the show cause notice from getting his replies an appropriate consideration by the person issuing the show cause notice.

12. Being a public servant, the respondent who has issued a show cause notice was under legal obligation to consider the reply given to his notice by showing the causes and it is only thereafter, if the causes shown in the reply were not satisfactory, then, the respondent could have proceeded further in accordance with law. But, admittedly, in the instant case, there is no material to show that the respondent before instituting a criminal case, has considered the cause shown by the petitioner-Factory in the form of reply to the show cause notice. As such, the very purpose of giving an opportunity to show cause in the form of reply to the show cause notice has stood defeated in the present matter. Had really the respondent considered the said reply notice, there ought to be some material, or at least, an observation to the effect that the reply to the show cause notice was considered, would have found place in any of the records. In the absence of the same, it would lead to infer that in a mechanical manner and without any application of mind, the respondent has proceeded further in instituting the criminal case.

13. Even though Annexure-C to the writ petition (produced in Writ Petition Nos. 52870-52871/2015), which is an appointment letter shown to have been issued by the petitioners, shows that a Safety Officer has joined the factory on 13-7-2015. By that itself, it cannot be inferred that from the date of inspection till 13-7-2015, there was no Safety Officer in the factory. This is also for the reason that in the reply notice, the petitioner-Factory has stated that the Safety Officer has been appointed by it on 28-8-2013. In such a situation, considering the said reply by the respondent was very much necessary.

Lastly , according to the petitioners, the 2nd petitioner, shown as the Manager of the Factory, has left its services with effect from 29-10-2012. Learned High Court Government Pleader submitted that any such change in the officers of the factory has to be informed to the concerned authorities by submitting Form No. 3A, which, in the instant case, has not been made. According to the petitioners, the annual return being filed by the factory clearly mentions that from 30th October 2012 onwards, the 2nd petitioner was no more a Factory Manager of the 1st petitioner's factory.

14. Without going in detail on the said aspect, suffice it to say that, in view of my observations made above that inviting the causes to be shown to the show cause notice, in the instance case, has resulted in a mere formality since the said reply has not been considered, any further initiation of criminal case against the petitioners deserves to be set aside, however, reserving liberty to the respondent to consider the reply notice to the show cause notice as at Annexure-B (in both the Writ Petitions) and to proceed further, if necessity arises, in accordance with law.

Accordingly, the Petition is *allowed in part*. The proceedings in C.C. No. 25204/2014 (in Writ Petition Nos. 52870-52871/2015) and C.C.No. 25201/2014 (in Writ Petition Nos. 52868-52869/2015), pending on the file of VII Addl. Chief Metropolitan Magistrate, Bengaluru, are quashed. However, the respondent is at liberty to consider the reply to the show cause notice which is at Annexure-B (in both the Writ Petitions) and to take appropriate decision in that regard in accordance with law.

7. The requirement of considering reply submitted by the petitioner prior to filing a private complaint by the respondent has also been considered by the Apex Court and this Court in the other judgments referred to supra.

8. However, in the instant case, though the petitioner had submitted a reply dated 29-12-2023 to the Show Cause Notice dated 21-12-2023, respondent has neither referred to the said show cause notice or the reply or assigned cogent or valid reasons as to why the reply submitted by the petitioner cannot be accepted. It is also relevant to note that the Trial Court taking cognizance for the offences punishable under section 92 of the Factories Act, 1948, against the petitioner is also cryptic, laconic, unreasoned, non speaking order with absolutely no application of mind, which deserves to be set aside on this ground also and the matter may be remitted back to the learned Magistrate for reconsideration afresh bearing in mind the observations made in this order and judgments relied upon by learned counsel for the petitioner.

9. In the result, I proceed to pass the following:

ORDER

(i) The petition is hereby *allowed*.

(ii) The Impugned order dated 17-01-2024 passed by the 31st Additional Chief Metropolitan Magistrate taking cognizance of the private complaint at PCR No. 1390/2024 filed by the respondent is set aside.

(iii) Matter is remitted back to the Trial Court for reconsideration afresh by passing a speaking order and in accordance with law.

(iv) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.

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