

(2008) 09 MAD CK 0130

In the Madras High Court

Case No : C.R.L. O.P. No. 3749 of 2007 and M.P. No. 1 of 2007

R. Kannan

APPELLANT

Vs

State by Sub-Inspector of Police

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 22
Criminal Procedure Code, 1973 (CrPC) — Section 482
Factories Act, 1948 — Section 41, 92
Penal Code, 1860 (IPC) — Section 287, 304(A), 338

Citation : (2008) 09 MAD CK 0130

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : Sivaprakash for Mr. A.K. Kumarasamy, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—The petitioner herein is the accused in C.C. No. 249 of 2006 on the file of the Judicial Magistrate No. III, Erode. The petitioner / accused has filed this petition u/s 482 of the Code of Criminal Procedure to quash the proceedings, pending before the Judicial Magistrate No. III, Erode. Mr. Sivaprakash, learned counsel appearing for the petitioner submitted that he was the manager of M/s. Pioneer Mills, a private limited company, situated at R.N. Pudur, Bhavani Main Road, Erode, at the relevant point of time. On 09.08.2005 at about 7.30 p.m. when the employees were working in the factory, a boiler in the factory got burst causing injuries to the workers, due to which, one injured died and another was admitted in the hospital. A case was registered against the petitioner/accused under Sections 287, 338 and 304(A) IPC. The learned counsel further contended that on the aforesaid occurrence, similar criminal proceeding was initiated in C.C. No. 74 of 2005 on the file of the Chief Judicial Magistrate, Erode, charge-sheet was filed against the petitioner for the offence, punishable under Sections 41, Rule 61(R) read with Section 92 of Factories Act. The said

case ended in conviction, whereby a fine of Rs. 25,000/- was imposed and in default, the petitioner/accused was directed to undergo Simple Imprisonment for a period of 2 months, as per the Judgment of Chief Judicial Magistrate, Erode, dated 12.12.2005 and the petitioner paid the fine amount, imposed by the court.

2. According to the learned counsel appearing for the petitioner, the case in C.C. No. 249 of 2006 pending on the file of the Judicial Magistrate No. III, Erode is also a criminal case, based on the very same occurrence that had taken place on 09.08.2005 at 7.30 p.m. in the aforesaid premises, on account of the burst of the boiler and therefore, as per Article 22 of the Constitution of India, it is to be construed as double jeopardy, which is prohibited under Law.

3. Mr. V.R. Balasubramanian, learned Additional Public Prosecutor appearing for the respondent has not disputed the fact that both the criminal cases were registered against the petitioner, based on the same occurrence, that had taken place on 09.08.2005 at 7.30 p.m. in the premises of M/s. Pioneer Mills, a private limited company. As contended by the learned Additional Public Prosecutor, the charges framed in the earlier case in C.C. No. 74 of 2005 on the file of the Judicial Magistrate, Erode is for offence under Sections 41, Rule 61(R) read with Section 92 of Factories Act. The charges framed in the present case in C.C. No. 249 of 2006 is under Sections 287, 338 and 304(A) IPC and both cases are based on the same occurrence and hence, the alleged offences could have been tried in the same criminal court. However, after the trial, Chief Judicial Magistrate, Erode has convicted the accused, as per his Judgment, whereas the other case is pending before the Judicial Magistrate No. III, Erode.

4. According to the learned counsel appearing for the petitioner, the second case pending before the Judicial Magistrate No. III, Erode, after the disposal of the earlier case is only a double jeopardy and not maintainable.

5. It is not in dispute that a departmental proceedings and a criminal case, both can go simultaneously. Similarly, in case of the charges relating to different occurrence, one after another, the respondent can maintain both the cases, without any legal bar. Admittedly, in the instant case, the occurrence had taken place on 09.08.2005 at 7.30 p.m. on account of the burst of the boiler, that was installed in the factory and that was the basis for filing the cases, one before the Chief Judicial Magistrate, Erode in C.C. No. 74 of 2005 and the other case in C.C. No. 249 of 2006 before the Judicial Magistrate No. III, Erode. Had the present case was transferred to the file of the Chief Judicial Magistrate, Erode, both could have been tried together, however, no steps were taken by the respondent, for simultaneous trial of the criminal cases, by the same court.

6. It is an admitted fact that for the occurrence that had taken place on 09.08.2005 at about 7.30 p.m. the petitioner herein, who was the supervisor/manager of the factory, was prosecuted under Sections 41, Rule 61(R) read with Section 92 of Factories Act and convicted. Admittedly it is a penal action for the negligence attributed against the petitioner / accused. The present case in C.C.

No. 249 of 2006 pending on the file of the Judicial Magistrate No. III, Erode is also based on the same occurrence and it is also a criminal proceeding. Therefore, I am of the view that after the conviction and sentence imposed in earlier case in C.C. No. 74 of 2005 by the Chief Judicial Magistrate, based on the same occurrence, the other case in C.C. No. 249 of 2006 would not be maintainable, as the occurrence is one and the same, hence proceeding with the second criminal case for the same occurrence, amounts to double jeopardy and therefore, in the interest of justice, I am of the view that the Criminal Original Petition has to be allowed. In the result, this Criminal Revision Petition is allowed and the proceedings in C.C. No. 249 of 2006 on the file of the Judicial Magistrate No. III, Erode is quashed. Consequently, connected miscellaneous petition is closed. No costs.