

(2019) 10 SHI CK 0088
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 338 Of 2019

Saugata Gupta & Another

APPELLANT

Vs

State Of Himachal Pradesh Through Its Labour Inspector

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Factories Act, 1948 — Section 8, 92, 106
Code Of Criminal Procedure, 1973 — Section 4(2), 473

Citation : (2019) 10 SHI CK 0088

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : K.D. Sood, Ashim Aggarwal, Atul Aggarwal, Sukrit Sood, Desh Raj Thakur

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Present petition has been filed against taking cognizance of the offence by learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P., in complaint bearing registration No.22 of 2019/101/3 of 2019, titled as State of H.P. vs. Saugata Gupta & another, filed by Inspector, appointed under Section 8 of the Factories Act, 1948 (hereinafter referred to as the 'Act'), against petitioners being Occupier and Factory Manager of the establishment, for alleged violation of various provisions of the Act and the Rules framed thereunder, punishable under Section 92 of the Act.

2. Main ground for assailing the institution of complaint dated 11.02.2019 against the petitioners is that as per complaint (Annexure P-3), same has been filed for alleged violation of the provisions of the Act and Rules made thereunder, noticed during course of inspection dated 17.10.2018, and as such, cognizance of the said complaint, by learned Magistrate on 11.02.2019, is in violation of provisions of Section 106 of the Act, wherein it is provided that no Court shall take cognizance of any offence, punishable under the Act, unless complaint thereof, is

made within three months of the date on which alleged commission of the offence came to the knowledge of an Inspector.

3. Referring judgment dated 10.07.2019, passed by this Court in Cr.MMO No. 183 of 2018, titled as Hemant Mohan and another vs. State of H.P., learned arguing counsel for the petitioners, has submitted that present case is squarely covered by the said judgment as, according to him, in present case, complaint (Annexure P-3) has been filed by the Inspector on 11.02.2019 for violation of relevant provisions of law noticed by him during course of inspection conducted on 17.10.2018, whereas, limitation provided under Section 106 of the Act of three months, for taking cognizance of the complaint so preferred, had expired on 17. 01.2019.

4. It is further submitted on behalf of petitioners that communication dated 20.10.2018 (Annexure P-1), was never served upon the petitioners, but was received by them through their Head Office on 05.11.2018, whereafter, response thereto, indicating compliance of all shortcomings/violations noticed on 17.10.2018, ordered to be complied with vide communication dated 20.10.2018 (Annexure P-1), were reported, by petitioner No.2 Ram Adarsh Darash Mishra, to have been complied with and the said communication was personally received by the Inspector on 22.11.2018, but despite reporting compliance of communication dated 20.10.2018, Inspector, has proceeded to file complaint against the petitioners on 11.02.2019, which is contrary to not only law, but also the facts for concealing response of petitioners submitted to Inspector on 22.11.2018 about compliance of the communication dated 20.10.2018. It is pointed out that though, reference of compliance order dated 20.10.2018, has been given in complaint (Annexure P-3), but the complaint is completely silent about the compliance report submitted by the petitioners in compliance thereof on 22.11.2018, despite the fact that complaint has been filed as late as in February 2019, after receiving prosecution sanction from the Chief Inspector of Factories vide order dated 04.02.2019, and therefore, it is pleaded that for the reason that petitioners had already complied with compliance of written order dated 20.10.2018, complaint is not maintainable at all, and the complaint has been preferred, without referring the compliance report, only to harass the petitioners.

5. In response, it is canvassed by learned Additional Advocate General that it is true that complaint was filed after expiry of three months from 17.10.2018 on which date, discrepancies/violations of the Act and relevant Rules were noticed by the Inspector, but keeping in view the proviso to Section 106 of the Act, which provides that for disobeying a written order made by an Inspector, complaint of such discrepancies may be made within six months of the date on which the offence is alleged to have been committed, and thus complaint in present case, is within limitation period of six months, as the Inspector had issued written order dated 20.10.2018 (Annexure P-1) to the petitioners for removing discrepancies, noticed by him on 17.10.2018, within ten days from the receipt of said order and even if it is considered that said written order (Annexure P-1) was received by

petitioners on 05.11.2018, petitioners had failed to respond to the same by removing discrepancies within ten days thereafter, as the reply to this written order dated 20.10.2018, though dated as 20.11.2018, was submitted to the Inspector on 22.11.2018, which is beyond period of ten days even after 05.11.2018.

6. It is also submitted that as there is limitation to file complaint within three months, time of ten days, granted in the written order for compliance to remove discrepancies, is also reasonable time, but petitioners have failed to remove the discrepancies within the said reasonable time and therefore, it is also contended that in view of explanation to Section 106 of the Act, in case of continuing offence the period of limitation shall be computed with reference to every point of time during which the offence continues and as the petitioners had failed to respond and to remove the discrepancies within the stipulated period of ten days granted to them, offence remained continue at least till 22.11.2018 and from the said date, complaint is within the limitation period as three months after 22.11.2018 would have expired on 22.02.2019.

7. Perusal of record of complaint, filed by the Inspector, received from learned Magistrate, it reveals that complaint has been filed on the basis of not only inspection dated 17.10.2018, but also referring issuance of communication dated 20.10.2018, referring it a written order for compliance, stating further that despite issuance of said compliance order, the employer had not reported any compliance to ratify the violations by submitting their compliance report. From the averments made in complaint and list of documents relied upon therein, it is evident that Inspector has not given any reference with respect to the response received by him from petitioners on 22.11.2018, wherein petitioners had claimed the total compliance of written order dated 20.10.2018. It is not the case of Inspector that response filed by the petitioners to the written order for compliance, was unsatisfactory and on further inspection by the Inspector, after receiving response, discrepancies noticed on 17.10.2018, in violation of the Act and relevant Rules, were found to be existing even after submitting the compliance report.

8. No doubt, issuance of written order dated 20.10.2018 by the Inspector, had entitled him to file complaint within six months of the date on which offence is alleged to have been committed, as provided in proviso to Section 106 of the Act, but the said proviso unambiguously provides that such complaint can be filed for disobeying the written order made by the Inspector and for disobedience of the written order, either there would be no response of compliance of the said order or despite filing a response of compliance, the Inspector should have noticed continuation of the discrepancies/violations mentioned in the written order and in such eventualities only, it can be said that there is disobedience of written order, whereas in present case, despite receiving the compliance report on 22.11.2018, the Inspector has neither reported the said response in the complaint nor conducted further inspection/investigation, after receiving said

response, with regard to continuation of violation or disobedience of the written order dated 20.10.2018 issued by him. Therefore, without ascertaining the deficiency, if any, receiving the response filed by the petitioners and/or pointing out continuation of discrepancies/violations of the Act and Rules, even after claiming removal thereof in the response, by conducting inspection of the establishment again, it is impermissible for the respondent-State to justify action of the Inspector to file a complaint for alleged discrepancies and violations and/or continuation thereof. Therefore, despite having limitation period of six months, after issuance of written order and provision for filing complaint even thereafter, in case of continuing offence, for absence of reference of any disobedience found by the Inspector after inspection or issuance of written order thereafter, particularly after receiving the response of compliance from the petitioners, present complaint is not maintainable, as the Inspector has not uttered even a single word about shortcomings in the response of the petitioners in compliance of written order and/or after conducting inspection again for verification of the compliance.

9. So far as contention of learned Additional Advocate General with regard to continuing offence is concerned, which provides computation of period of limitation from every point of time during which offence continues, there must be some reference of relevant evidence on record to indicate that the offence was continuing even after issuance of compliance order and submission of compliance report, such reference as well as evidence is also missing in the complaint, therefore, explanation of Section 106 of the Act is also of no help to the respondent-State.

10. Proviso to Section 106 of the Act, providing six months' limitation for filing complaint from the date of commission of offence shall come into force only where offence consists of disobeying a written order made by an Inspector and for that purpose, compliance report if any, submitted by the offender is definitely required to be considered, referred and verified by the said Inspector and in case such disobedience is found, only then, benefit of proviso shall be available which is lacking in the present case.

11. In report dated 17.10.2018 as well as in written order dated 20.10.2018, issued for compliance, Inspector has referred seven discrepancies/violations of the Act and Rules and petitioners, in their response dated 20.11.2018, received by the Inspector on 22.11.2018, have reported compliance of all seven discrepancies/ violations of the Act, if so there was no occasion for the Inspector to proceed to file a complaint unless, on verification, compliance report was found false.

12. Plea of learned Additional Advocate General is that case was submitted by the Inspector for prosecution sanction on 19.11.2018, whereas, response was submitted by the petitioners on 22.11.2018, and therefore, after receiving prosecution sanction in furtherance to the letter dated 19.11.2018 seeking permission for prosecution sanction, there was no other alternate with the

Inspector to file a complaint, and thus, he has committed no irregularity or illegality in filing the complaint, after receiving belated response of compliance, which was submitted after expiry of stipulated period of ten days. This plea is not sustainable for reasons discussed hereinafter. Firstly, perusal of order granting prosecution sanction indicates that in this order, prosecution sanction was granted for prosecution against six persons and these prosecution sanctions were granted in response to the requests submitted by the Inspector vide letters dated 19.11.2018 and 03.01.2019. Prosecution sanction granted in present case is in the last at Sl.No.6 and the last letter requesting grant of prosecution sanction appears to be of the date 03.01.2019. Therefore, it appears that application seeking prosecution sanction against the petitioners was submitted on 03.01.2019 and not on 19.11.2018 i.e. on a date after receiving the response of the compliance from the petitioners. Even it is considered that request for prosecution sanction was made earlier to receiving the response of compliance, then also, submission of application for prosecution sanction or grant of prosecution sanction against a person, is not a gunshot, which cannot be reversed, but is a procedure being followed to file a complaint for commission of an offence and in case where there is a complete compliance of the written order issued for compliance, complaint should not be filed only for the sake of filing complaint ignoring subsequent events only for the reason that process for seeking sanction was initiated prior to receiving the response, rather, in such a situation, Inspector, after reported back to the Sanctioning Authority with complete detail of subsequent events after conducting inspection of the establishment and verifying claim of petitioners made in the response filed by and/or on behalf of the establishment, should decide further course of action.

13. The Factories Act is a special Statute dealing with a specific field and provides taking cognizance of certain offences related to violation of the Act as well as Rules made thereunder and specific period of limitation has been provided under Section 106 of the Act for taking cognizance of the offences. Explanation thereto also describes manner in which limitation shall be calculated in continuing offence. However, there is no specific provision with regard to extension of period of limitation as provided under Section 473 of the Code of Criminal Procedure (in short 'Cr.P.C.'). Cr.P.C. is a Statute general in nature and Section 4(2) of Cr.P.C., provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to provisions of Cr.P.C., but subject to any enactment for the time being in force regulating manner or place of investigation, inquiring into, trying or otherwise dealing with such offence. In the Factories Act, there is specific provision providing limitation for taking cognizance of commission of offence, including continuing offence, but there is no provision of extension of time of period of limitation, corresponding to Section 473 Cr.P.C.

14. Therefore, in my opinion, in any case, in a complaint filed under the Act, Court may take cognizance of an offence, after expiry of period of limitation, if it is satisfied in the facts and in the circumstances of the case that delay has been

properly explained or that it is necessary to do in the interest of justice as provides under Section 473 Cr.P.C. In such eventuality, learned Magistrate, at the time of taking cognizance by extending limitation period must indicate that he was satisfied on the facts and circumstances of the case that delay has been properly explained and/or it was necessary to do so in the interest of justice. However, it is not a case in present petition as petitioners herein is not banking upon only expiry of limitation period but also upon claim of compliance of violation/discrepancies pointed out by the Inspector noted on 17.10.2018 and directed to be rectified vide written order dated 20.10.2018, compliance whereof was reported on 22.11.2018.

15. In view above discussion, impugned order dated 7.03.2019 (Annexure P-4) is set aside and proceedings arising out of complaint filed by the Inspector, pending before learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, registration No.22 of 2019/Case No.101/3 of 2019, titled as State of H.P. vs. Saugata Gupta & another, are quashed. Petition is disposed of in the aforesaid terms. Pending application(s), if any, also stand disposed of. Record be returned forthwith.