

IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE, KOLENCHERRY:

**Present : Smt. Sirsha N A,
Judicial I Class Magistrate.**

Monday the 10th day of June, 2024

CMP No. 345 of 2024

In

ST No. 1521 of 2018

Petitioner/ : Bobby O.S (Managing Director)
Accused M/s. Boss Naturala Flavours (P) Ltd, Kinfra Park, Nellad

(By Adv. K Mathew Varghese)

Respondent : Inspector Factories And Boilers Gr-I Perumbavoor
(HQ- Aluva)
(By A.P.P. Kolenchery)

Order : CMP is dismissed.

ORDER

1. The petition is filed by the accused to stop the proceedings against him in ST 1521/2018 and discharge the accused from the case. The case is instituted on the basis of a complaint filed by the Inspector of Factories and Boilers. The allegation is that on 02.03.2018, at about 7.30 AM, an employee named Akhil T.K suffered burn injuries while working at a company named Boss natural flavours, in which the accused was the Managing Director. Later, Akhil succumbed to death and hence the complaint.

2. The petition averments in brief are as follows: the complainant has filed another complaint case before this court and it is as numbered as ST 1520/2018 against the petitioner for the same incident and it is pending before this court. The facts and witnesses in both the cases are one and the same and arose from the same incident. To the same incident, another case is number is numbered as ST 706/2018 and is pending before the Gram Nyayalaya, Vadavucode. Therefore, three cases are pending in total against the petitioner for the same cause of action. There is no prima facie

case against him and the cases numbered ST 1520/2018 and ST 1521/2018 are instituted upon the same cause of action and all the documentary evidence and witnesses are the same in both cases. Moreover, the punishable offences alleged against the petitioner in both the cases are also of the same nature. Therefore, the petitioner filed this petition to discharge him under section 254 r/w section 300 of the CrPC and section 16 of the General Clauses Act and there is no need to proceed with the present case as the offence alleged and the evidences are same in both cases.³. No written objection was filed. However, the Learned APP vehemently opposed the application and argued that the petition is not maintainable.

3. Heard both sides.

4. The following point arise for consideration:

i) Whether the petition is allowable?

5. The case is instituted upon a private complaint filed by the Inspector of Factories and boilers. The petition is filed to stop the proceedings against the accused in the present case and to discharge the accused from the case. The section which speaks about the stopping of proceedings in summons cases is section 258 of the Code of Criminal Procedure. The contents of section 258 of the CrPC is extracted as below:

Section 258: Power to stop proceedings in certain cases.--In any summons case instituted otherwise than upon complaint, a Magistrate of the First Class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witness has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

6. Section 258 deals with the stoppage of proceedings in summons cases. However, this section has categorically used words "instituted otherwise than upon complaint", which suggests that summons cases instituted upon police reports are covered by this section, but the cases instituted upon Criminal Complaints are not covered by this section. Therefore, the present petition cannot be disposed according to section 258 of the CrPC.

7. It is to be noted that no other section discusses about the stopping of proceedings against the accused in a summons case instituted upon a private complaint. However, it is not an exhaustive position. In *Sakiri Vasu v. State of U.P.* [2008 (2) KHC 13] the Supreme Court held that "It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution." Therefore, if a Magistrate has an implied power to explain the substance of accusation under Section 251 CrPC then it includes within it the implied power of discharge as without considering the option of discharge the very purpose of noting down the defence of accused becomes meaningless.

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1. Section 258 deals with the stoppage of proceedings in summons cases. However, this section has categorically used words "instituted otherwise than upon complaint", which suggests that summons cases instituted on police reports are covered by this section, but the cases instituted upon Criminal Complaints are not covered by this section. Therefore, the present petition cannot be disposed of according to section 258 of the CrPC.
2. It is to be noted that no other section discusses the stopping of proceedings against the accused in a summons case instituted upon a private complaint. However, it is not an exhaustive position. In *Sakiri Vasu v. State of U.P.* [2008 (2) KHC 13] the Supreme Court held that *"It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an Act confers jurisdiction it implies also grants the power of doing all such acts or employing such means as are essentially necessary to its execution."* Therefore, if a Magistrate has an implied power to explain the substance of accusation under Section 251 CrPC then it includes within it the implied power of discharge as without considering the option of discharge the very purpose of noting down the defence of accused becomes meaningless.
3. The very purpose of explaining the substance of accusation and listening to the defences made by an accused under Section 251 CrPC is to give an opportunity to the accused to say something in his defence. So, the power to discharge at the stage of Section 251 is inherent in the court who has issued

summons to the accused either by considering a police report or under Section 204 CrPC. As held by the Hon'ble High Court of Kerala in Kamala Rajaram v. DySP, office of the SP (rural), [2005 KHC 951], *in a prosecution in a summons case instituted otherwise than on a police report, the magistrate has the power to discontinue the proceedings at the stage of S.251 Cr.P.C by invoking his powers under S.251 along with the powers under S.258 Cr. P.C.*

9. In the petition, it is stated that in, there are two complaints filed against the accused for the same cause of action and the documents produced in both the cases are also one and the same. Moreover, the punishable offences alleged against the petitioner in both the cases are also of the same nature.

10. On perusing the materials before me it is seen that the allegations in ST No.1521/2018 are as follows:

- a) Failed to obtain prior permission for the construction of the partition chamber surrounding the electrical panel board which caused the accumulation of combustible vapour in the partition chamber and caused flash fire resulting in the death of the worker Shri. Akhil T K and thereby violated provisions under Rule 3(1) of the Kerala Factories Rule, 1957, Section 6(1) (aa) Factories Act 1948.
- b) Failed to provide a vapour detection system in the vacuum pump plant which resulted in the accumulation of vapour and subsequent flash fire resulting in the death of the worker Shri. Akhil T K and thereby violated the Provisions under Clause 16 of schedule XVIII of Rule 122 of the Kerala Factories Rules 1957 prescribed under section 87 of Factories Act 1948.
- c) Failed to install and maintain the electrical apparatus such as switches of vacuum pump as to prevent the danger of being the source of ignition which resulted the flash fire and death of the worker Shri. Akhil T K and thereby violated Sub Rule 5(a) of Rule 79 of the Kerala Factories

Rules, 1957 prescribed under subsection (1) of section 38 of Factories Act 1948. to surrounding the electrical panel board which caused the accumulation of combustible vapour in the partition chamber and caused flash fire resulting in the death of the worker Shri. Akhil T K and thereby violated provisions under Rule 3(1) of the Kerala Factories Rule, 1957, Section 6(1) (aa) Factories Act 1948.

11. On perusing the materials before me it is seen that the allegations in ST No.1520/2018 are as follows:

- a) Failed to ensure the health, safety and welfare at all workers while they are at work in the factory by providing and maintaining plant and system of work that are safe and without risks to the health which resulted the death of worker Mr. Akhil T K and thereby violated Subsection (1) and Section 7A and clause (a) of subsection (2) of section 7A of Factories Act 1948.
- b) Allowed the vacuum pump plant operated and maintained in the factory in such a manner as to cause risk of bodily injury to the worker Shri Akhil T K and thereby violated Rule 81 B of Kerala Kerala Factories Rules 1957 prescribed under section 41 of Factories Act 1948.
- c) Failed to maintain the electrical wiring and equipments such as switches on electrical panel board for operating of vacuum pump plant in flame of proof construction which resulted the flash fire and death of such as switches of vacuum pump as to prevent the danger of being the source of ignition which resulted the flash fire and death of the worker Shri. Akhil T K and thereby violated the provisions under Sub Section (3) (1) of schedule XVIII of Rule 122 of Kerala Factories Rules, 1957 prescribed under section 87 of s Factories Act 1948.

12. Comparing these allegations, it can be seen that although both cases are factually connected, the offences in each are not “one and the same.” The ingredients of the offences differ because the cited sections/rules and the duties allegedly violated by the accused are distinct. It is true that they are factually connected, as all allegations arise from the same accident and revolve around failures in the safety management of the vacuum pump/electrical installations. Hence, the contentions raised on behalf of the petitioner cannot be accepted, and consequently, the petition is found to be devoid of merit. Accordingly, the petition is hereby dismissed.

In the result:-

The petition is dismissed.

(Dictated to the Confdl, Asst, transcribed and typed by her, corrected by me and pronounced in open court on this the 10th day of June, 2024.)

**Sirsha N A
Judicial Ist Class Magistrate
Kolencherry**