

2016 (2) CrLR(Guj) 348

**GUJARAT HIGH COURT**

**Hon'ble Judges:Vipul M.Pancholi, J.**

Shell India Markets Private Limited Versus State Of Gujarat

Special Criminal Application No. 2936 of 2011 ; \*J.Date :- APRIL 21, 2016

- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [482](#)
- [FACTORIES ACT, 1948](#) Section - [7A\(2a\)](#)

**Code of Criminal Procedure, 1973 - S. 482 - Factories Act, 1948 - S. 7A(2a) - rectification of bonafide mistake - complaint u/s. 7A(2a) of the Factories Act filed for the incident which has occurred at the factory premises of petitioner - application for quashing of complaint - application filed by complainant to withdraw the complaint - rejected by Trial Magistrate - immediately after filing of the complaint, decision was taken at the government level to withdraw the complaint as the breach was rectified and there was no loss of life or injury to anybody - mistake was rectified immediately by petitioner and no loss of life or injury to anybody was caused because of the accident - State Government has passed a reasoned order after application of mind - impugned complaint quashed - petition allowed.**

**Imp.Para:** [ [8](#) ]

Equivalent Citation(s):

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**JUDGMENT :-**

**Vipul M.Pancholi, J.**

**1** This petition is filed under Article 227 of the Constitution of India read with Section 482 of Criminal Procedure Code, 1973, in which the petitioner has prayed that the impugned complaint being Criminal Case No.443 of 2011 pending before the learned Judicial Magistrate, First Class, Savli be quashed and set aside as well as the order dated 27.9.2011 passed by learned Judicial Magistrate, First Class, Savli passed in Criminal Case No.443 of 2011 be quashed and set aside.

**2** Heard learned Senior Counsel Mr. K.S. Nanavati with learned advocate Mr. Pranit Nanavati for the petitioner and learned APP Mr. Devnani for the respondents.

**3** Learned counsel appearing for the petitioner submitted that respondent no.2 filed complaint on 9.3.2010 before learned J.M.F.C., Savli, District Vadodara for the alleged breach committed by the petitioner on 7.12.2009 for the offence punishable under Section 7A(2a) of The Factories Act, 1948 for the incident of fire which had taken place in the premises of the petitioner-company. It is, however, contended that in the said incident, no injury or harm was caused to anybody and the said fire was brought under control and extinguished.

**4** Learned counsel further contended that after the said private complaint was lodged before the concerned Magistrate immediately, the alleged breach was rectified on the same day by switching off the furnace and thereafter it was represented before the Labour and Employment Department, Government of Gujarat that they have rectified the bonafide mistake and there is no harm or injury caused to anybody in the incident of fire and hence complaint be withdrawn. The Labour and Employment Department, therefore on 12.11.2010, instructed the respondent no.2 complainant to withdraw the complaint being Criminal Case No.443 of 2010 on the ground that there was no loss of life and injury to anybody and the breach alleged had been rectified. Learned counsel has referred to the said communication dated 12.11.2010 and 22.11.2010 produced at Annexure 'C' collectively with the compilation.

**5** Learned counsel thereafter referred to the application Exh.2 which is produced at page 34 of the compilation whereby the respondent no.2 has requested the learned Magistrate that he may be permitted to withdraw the complaint which has been filed by him. However, learned Magistrate by the impugned order rejected the application Exh.2 on the ground that while taking the decision of withdrawal of the complaint, the concerned officer of Labour and Employment Department has not applied his mind and no reason is assigned for the same in the communication.

**6** Learned counsel contended that immediately after filing of the complaint, the decision was taken at the government level to withdraw the complaint as the breach was rectified and there was no loss of life or injury to anybody. The incident has occurred merely because of an accident and while passing the order, the concerned officer of the department has given the reason and the said order was passed after proper application of mind. Thus, even before the cognizance was taken by the learned Magistrate, the application Exh.2 was given by the complainant himself for withdrawal of the complaint and therefore the learned Magistrate is not right in rejecting the said application and not permitting the complainant to withdraw the said complaint. He, therefore, requested that the impugned order passed by the Magistrate be quashed and set aside and thereby the application Exh.2 be allowed.

**7** On the other hand, learned APP submitted that the decision is taken at the government level and instruction was given to the complainant for withdrawal of the complaint and, therefore, he submitted the application Exh.2. However, if this Court is inclined to quash and set aside the impugned order passed by the Magistrate and thereby allow the application Exh.2, then this order may not be treated as precedent and the government has taken the decision in the peculiar facts of the present case and accordingly this Court may pass appropriate order.

**8** Having considered the submissions canvassed on behalf of learned advocates appearing for the parties and having gone through the material produced on record, it is revealed that the complaint under Section 7A(2a) of the Factories Act, 1948 came to be filed for the incident which has occurred at the factory premises of the petitioner on 7.12.2009. However, immediately after filing of the complaint on the basis of the representation made by the petitioner, the respondent-officer of the Labour and Employment Department, Government of Gujarat took the decision that when the mistake is rectified by the petitioner immediately and there is no loss of life or injury to anybody because of the accident which has occurred, the decision is taken by the government to withdraw the said complaint. Thus, the said order is a reasoned order after proper application of mind by the concerned government authority. On the basis of the said decision, the complainant submitted an application Exh.2 for withdrawal of the complaint. However, the learned Magistrate passed the impugned order by which the said application was dismissed. From the reasoning given by the learned Magistrate, it appears that the learned Magistrate has discussed about the seriousness of the offence which is punishable under Section 7A(2a) of the Factories Act. However, in the present case, as observed in the decision taken by the government, there is no loss of life or injury to anybody and when the mistake was immediately rectified, in the peculiar facts of the present case, it cannot be said that the decision taken by the government is incorrect. The concerned authority has assigned the reason for taking such decision after proper application of mind and therefore in the peculiar facts and circumstances of the present case, this Court is of the opinion that the impugned order passed by the learned Magistrate is required to be quashed and set aside.

**9** Accordingly, the same is quashed and set aside. Thereby the order dated 27.9.2011 passed by learned Judicial Magistrate, First Class, Savli below application Exh.2 in Criminal Case No.443 of 2010 filed by the complainant for withdrawal of the complaint is allowed. The complainant is permitted to withdraw the said complaint. However, it is clarified that this order shall not be treated as precedent and the concerned government officer shall apply his mind at the time of taking decision for withdrawal of the private complaint.

**10** In view of the aforesaid discussion, this petition is allowed. Rule is made absolute.