

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

CRIMINAL REVISION No. 3120 of 2023

BETWEEN:-

**RAJESH AGRAWAL S/O SHRI KESHARI
CHAND AGRAWAL, AGED ABOUT 57
YEARS, OCCUPATION: BUSINESS, R/O
OLD GALLA MANDI, GUNA (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI DINESH KUMAR AGRAWAL -
ADVOCATE)***

AND

**THE STATE OF MADHYA PRADESH
THROUGH INSPECTOR, BUILDING AND
OTHER CONSTRUCTION WORKERS
(REGULATION OF EMPLOYEMNT AND
CONDITIONS OF SERVICE) ACT, 1996 AND
ALSO DEPUTY DIRECTOR, INDUSTRIAL
HEALTH AND SECURITY, GWALIOR
(MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI DHEERAJ KUMAR BUDHOLIYA
-PANEL LAWYER)***

Reserved on : 23.08.2023

Pronounced on : 01.09.2023

This revision having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Present criminal revision under Section 397 r/w. Section 401 of Cr.P.C has been filed being aggrieved by the order dated 19.04.2023 passed by Fourth Additional Sessions Judge, Guna (M.P.) in Cr.A. No.110/2019 affirming the judgment dated 26.04.2019 passed in RCT No.995/2012 by Chief Judicial Magistrate Guna (M.P.) convicting the petitioner for the offence punishable under Section 50 for violation of provision of Section 39 of “The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as “the Act”) r/w. Rule 210 of the “M.P. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (hereinafter referred to as “the Rules”) and imposed with fine of Rs.1,000/-, under Section 47 for violation of provision of Section 39 of the Act r/w. Rule 49 and imposed with fine of Rs.1,000/-, under Section 48 for violation of provision of Section 46 of the Act, and also imposed with fine of Rs.1,000/- with default stipulations.

2. The facts in brief to decide the present revision are that on 14.02.2012 the wall of under construction - Yash Ware Housing Corporation A.B. Road, Bilonia Guna fell down while plastering, in which six workers were buried and died. The proprietor of said accident site is petitioner/accused - Rajesh Agarwal and the construction work was being done through the contractor accused - Munnalal Jatav. The site of the said accident was inspected on 19.02.2012, the statements of alive labourers were recorded, *Panchnama* and photographs of accident site were prepared.

3. Thereafter, a notice was issued to accused proprietor Rajesh

Agrawal and contractor Munnalal Jatav. A copy of the notice was also forwarded to the Chief Inspector and Labour Commissioner, Government of Madhya Pradesh, Indore. On the basis of said notice, Chief Inspector and Labour Commissioner, Government of M.P. by taking cognizance of the said crime, issued a show cause notice to accused persons on 20.03.2012. As per the relevant Rules of 2002, alleging that the first aid box and medicines were not kept at the construction site and safety shoes, helmets were not provided to the labourers working, nor it was ensured that the labourers at the workplace wear safety shoes and helmet while working and also it was not ensured that while making the wall it was stable without any support.

4. After grant of sanction for prosecution, a complaint under aforementioned sections was filed before the learned Chief Judicial Magistrate, Guna. The learned C.J.M., Guna framed the charges and after recording of evidence available on record vide judgment dated 26/04/2019 passed in R.C.T. No.995/2012 convicted the petitioner as described in para-1 of this order.

5. Being aggrieved, the petitioner filed an appeal bearing Cr.A. No.110/2019 before the learned Fourth Additional Sessions Judge Guna, (M.P.). The learned appellate Court after hearing learned counsel for the rival parties vide impugned judgment dated 19/04/2023 affirmed the judgment dated 26/04/2019 passed by the trial Court, against which, the present revision is filed.

6. Learned counsel for the petitioner argued that the impugned orders passed by courts below are perverse, illegal and against the settled principles of law, hence, the same is liable to be quashed. It is

further argued that both the courts below have committed serious error while taking the cognizance of offence in the complaint dated, 05.06.2012 (Annexure A/4) which is barred by limitation u/S.55 of the Act. It is further argued that both the courts below have committed serious error in ignoring the admission and documents on record and not dealing with Exh.D-1 which palpably shows that the Labour Commissioner/Chief Inspector was having knowledge of the alleged offence from 21.02.2012 in terms of Section 55 of the Act and, therefore, the written complaint u/S.54 of the Act could not have been filed on 05.06.2012. It is further argued that although the petitioner/accused was acquitted on 06.03.2017 in criminal case no.1299/2012 filed by Police Guna for the offence punishable u/S.304-A of IPC. However, the conviction of petitioner/accused by the Act and Rules has resulted miscarriage of justice.

7. In support of his submissions, counsel for the petitioner has relied upon the decision of Apex Court in the case of **Kolla Veera Raghav Rao Vs. Gorantla Venkateshwara Rao** reported in [AIR 2011 SC 641] and argued that the conviction of petitioner/accused is against the settled principles of law, therefore, present revision be allowed by setting aside the impugned judgments of both the courts below.

8. On the other hand, learned Panel Lawyer drawn attention of this Court to the discussion on evidence of the impugned judgments of courts below and contends that the trial court as well as appellate Court have considered the entire evidence placed on record and upon critical evaluation thereof have reached the conclusion for award of sentence, under such obtaining facts and circumstances, both the courts below have not faulted while awarding the punishment to the petitioner.

Hence, the present revision deserves to be dismissed.

9. Heard learned counsel for the parties and perused the material available on record.

10. For ready and reference and convenience, Section 54 and 55 of the Construction Workers Act reads as under;

54. Cognizance of offences.—

(1) No court shall take cognizance of any offence punishable under this Act except on a complaint—

- (a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or
- (b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860); or
- (c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926 (16 of 1926).

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

55. Limitation of prosecutions.—No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organization or, as the case may be, an office-bearer of any concerned trade union.

11. Under Rule 251 of the Construction Workers Rules, the powers of Inspectors have been engraved and sub-rule (2) and (3) reads as under;

(2) An Inspector may, within the local limits for which he is appointed issue show-cause notice or warning to employers regarding the safety, health or welfare of building workers provided under the Act or the rules.

(3) An Inspector may, within the local limits for which he is appointed, file in a court having jurisdiction a complaint or other proceeding relating to an offence under the Act.

12. In the case in hand, argument of the learned counsel for petitioner in respect to the point of limitation is based on the ground that notice referred in para-3 of written complaint (Annexure A/5) dated 21.02.2012, addressed to the Labour Commissioner, State of Madhya Pradesh at Indore was sent on 21.02.2012 by Inspector/Deputy Director, Industrial Health & Safety, Gwalior about alleged offence and this fact has been admitted by the witness (PW-5) who is Inspector/Deputy Director, Industrial Health & Safety; therefore, the incident dated 14.2.2012 was in the knowledge of the Labour Commissioner on 21.02.2012 itself. Since the complaint is not filed within three months from the knowledge, therefore, it is not maintainable as being time barred.

13. The above arguments of the petitioner is not acceptable because the record indicates that copy of notice (Exhibit-P14/Annexure A-5) was sent to petitioner and the co-accused/Contractor on 21.02.2012 and at para 6 of said notice, it was directed that the copy be forwarded to Labour Commissioner/Chief Inspector, Indore. However, there is no evidence on record to show that the notice was received on the same day *i.e.* 21.02.2012 by Labour Commissioner /Chief Inspector at Indore. Mere order of forwarding of notice does not mean that Labour Commissioner, Indore/Chief Inspector had knowledge about the incident on same day.

14. Undisputedly, Harsh Chaturvedi – Inspector/Deputy Director, Industrial Health & Safety, Gwalior received knowledge on 14.02.2012, however, he holds the post of Inspector/Deputy Director and, therefore, learned courts below have rightly discarded the argument of counsel for the petitioner that the complaint is time barred.

15. It is also apparent that before filing of written complaint in the Court of learned Chief Judicial Magistrate, Guna, the Inspector/ Deputy Director, Industrial Health & Safety, Gwalior and Chambal Division has issued notice dated 24.05.2012 (Annexure A/6) and the complaint is filed on 05.06.2012; therefore, learned courts below have also not erred in holding that the complaint is within limitation and maintainable. Even if, the limitation starts from the date of show cause notice *i.e.* 20.03.2012 sent by Labour Commissioner/Chief Inspector, the complaint filed on 05.06.2012 is within limitation.

16. It is well settled that the revisional jurisdiction of the High Court cannot be equated with appellate jurisdiction. In its revisional jurisdiction, the High Court can examine the records of any proceedings for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. There has to be perversity or unreasonableness, complete misreading of records leading to the court taking into consideration irrelevant material while ignoring relevant material, when alone the High Court would exercise its revisional jurisdiction to set aside such order/judgment. In this case no ground as described above is found in the order passed by the court below.

17. Consequently, the present petition is hereby **dismissed**.

(SUNITA YADAV)
JUDGE

Vpn/-