

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.3222/2015

Neeraj Verma S/o Shri Basant Verma

Vs.

State of Madhya Pradesh

O R D E R

Post for 30.09.2015

**(ALOK VERMA)
JUDGE**

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Shri Rajeev Bhatjiwale, learned counsel for the petitioner.

Ms. Mamta Shandilya, learned counsel for the respondent/State.

O R D E R

(Passed on this 30th day of September, 2015)

This application under Section 482 Cr.P.C. is for quashment of proceedings in Criminal Case No.10293/2010 pending before Judicial Magistrate First Class, Indore under Sections 287, 304-A of IPC. According to the averments in the application, the petitioner-Neeraj Verma is Manager of M/s Vindhya Paper Factory, Sanwer Road, Indore. On 11.11.2010, maintenance work in the pulp chamber of the factory was in progress. Some poisonous gas erupted from the gas chamber, which was inhaled by two workers-Lakhan and Manish. They suffered death after haling the poisonous gas and other two workers went

unconscious. The matter was informed to Police Station-Banganga, District-Indore where a merg under Section 174 of Cr.P.C. was registered. After merg inquiry, crime No.997/2010 was registered by the Police Station under Section 287 and 304-A of IPC. After due investigation, a charge-sheet was filed against the present petitioner, which was registered as RT No.10293/2010.

The Factory Inspector under Factories Act, 1948 also initiated inquiry under Section 92 read with section 105 of Factories Act, 1948 (hereinafter called the 'Act'). The Chief Judicial Magistrate, Indore commenced the trial in both the cases separately. The case filed on the complaint of the Factory Inspector was registered as Criminal Case No.27864/2010 under Sections 36, 7(A), 32(B), 31, 73 read with section 92 of the Act. The petitioner was fined Rs.1,05,000/-. After suffering conviction in case No.27864/2010, the proceedings in RT No.10293/2010 became infructuous. In view of the provisions of Section 300 of Cr.P.C., now the petitioner cannot be punished twice for the offence based on the same set of facts.

This application is filed on the ground that (i) offence under Sections 92 of the Act and 304-A & 287 of IPC are based on the same set of facts, and therefore, both the cases cannot run simultaneously. (ii) The provisions of the Act being a special Act would override the provisions of Indian Penal Code,

which is a general law. (iii) Under Section 300 of Cr.P.C., prosecution of a person in an offence based on the same set of facts is prohibited, and therefore, once the petitioner is convicted under Section 92 of the Act, the proceedings in another case under Section 304-A and 287 of IPC cannot continue. On these grounds, the present petitioner prays that the proceedings and case No.10293/2010 be quashed.

Learned counsel for the respondent/State opposed the application on the ground that offence under Sections 304-A, 287 of IPC and Section 92 of the Act are different offences and both the cases can run together and the proceedings therein would be hit by the provisions of Section 300 of Cr.P.C.

Learned counsel for the petitioner placed reliance on judgement of Madras High Court in "**R. Kannan Vs. State**" in CrI. O.P. No.3749/2007 and M.P. No.1/2007 decided on 26.09.2008. In this case, the petitioner was fined Rs.25,000/- in a proceeding arising out of Section 92 of the Act. The High Court of Madras observed in Para-6 that the occurrence that taken place on 09.05.2005 at about 7:30 PM on account of burst of boiler that was installed in the factory and that was the basis for filing the cases - one before Chief Judicial Magistrate, Erode and another before the Judicial Magistrate, Erode. The Court observed that both the cases should have been trial together. However, no steps were taken by the respondent for simultaneous trial of the cases by the

Court. Taking the view that after conviction in sentence imposed in the cases pending before the Chief Judicial Magistrate under Section 92 of the Act, the proceedings in another case would not be maintainable because occurrence is one and the same, and hence, proceedings with the criminal case for the same occurrence amounts to total jeopardy, and therefore, while allowing the petition, the proceedings pending before the Judicial Magistrate under Section 304-A IPC were quashed.

On this point, I have found two orders of Jharkhand High Court -one in the case of **“Ashwini Kumar Singh and another Vs. State of Jharkhand” 2007 (2) JCR 334 Jhr** delivered on 02.12.2006. In this case, workman Mukesh Singh was directed to handover the hammer to Supervisor. In pursuant to that order while he was moving towards the Supervisor, he slipped in the open metal chamber and as a result of which, he sustained serious burn injuries. He was immediately shifted to TATA Main Hospital, Jamshedpur where he succumbed his burn injuries. When he was in hospital, he gave a dying declaration to the police, on basis of which, a case was registered by the police under Section 304-A of IPC. The Factory Inspector also conducted an inquiry under the provisions of the Act and also filed a complaint before the Court. It was submitted by the counsel for the petitioner that two criminal cases based on the same set of facts

cannot proceed together and they are hit by the provisions of Section 300 of Cr.P.C. The Single Bench of Jharkhand High Court observed in para-7 to 9 as under :-

7. Having regard to the facts and circumstances of the case, I find that the prosecution has not disputed that the occurrence/accident took place within the factory premises of Golbana Engineering Department, a factory defined under Section 2(m)(i) of the Factories Act, 1948. The Factories Act, 1948 is an enactment meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises as well as the safety measures. For its objective against exploitation and to regulate the safety provisions in the factories penal provisions have been made in the Factories Act, 1948. The enactment is for the safety and security of the workers in the hazardous process of the factory and for such motive and beneficial construction Act is made self contained. I find from the record that on the statement of the victim recorded on 28.9.2005 Golmuri (Burma Mines) P.S. Case No. 187/05 was registered on 1.10.2005 and the FIR was received in the Court of CJM, Jamshedpur on 5.10.2005 and the police after investigation submitted charge-sheet on 2.2.2006 and accordingly cognizance of the offence was taken against the accused persons under Sections 287/288/338 and 304-A, IPC. At the same time, I find that on information given by the authority of the factory in respect of the accident which took place in the Tubes Division of Tata Steel Limited to the Factory Inspector, Jamshedpur

Circle No. 1, Jamshedpur on 26.9.2005 in Form No. 17-A, a preliminary enquiry was conducted and upon being satisfied and finding a prima facie case the Factory Inspector filed a complaint against the occupier and director of the Tubes Division of Tata Steel Limited as well as its Manager and the case was numbered as C/2 No. 5011/05 for the alleged offence under Section 92 of the Factories Act, 1948 for the alleged contravention of Sections 32(a) and 33(i) of the Factories Act.

8. The law is settled in the various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. I find that when the complaint case has been instituted vide C/2 No. 5211/05 under Special law (Factories Act, 1948) the continuation of the criminal prosecution against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable. In both the statutes viz. under- Section 304-A, Indian Penal Code (general law) and under Section 92 of the Factories Act, 1948 the sentence prescribed to the convict is similar but with additional fine to the extent of Rs. One lakh in the Special Act to the occupier and in this manner the extent of fine is more severe in special law and both cannot proceed at a time. The criminal prosecution of the petitioners, therefore, under Indian Penal Code is unsustainable.

9. In the facts and circumstances, the criminal prosecution of the petitioners in G.R. No. 2112/05 arising out of Golmuri (Burma Mines) P.S. Case No. 187/05 including the order taking cognizance of the offence is quashed and this petition is

allowed. Petition allowed.

Subsequently, the same High Court in case of **“Ejaj Ahmad Vs. State of Jharkhand” in Cr.M.P. No.911/2007** delivered a judgment on 03.09.2009. In this case, the accident took place on 25.11.2005 by explosion in the hot chamber in the painting shop of the factory. The allegation was that the said hot chamber was not properly maintained by the management of the factory. Under the same situation, two cases were registered. The police registered case under Sections 285, 286, 337, 338, 304-A of IPC and also a case under Section 92 of the Act. The Court observed in para-11 as under :-

11.....There is nothing in the Factories Act, which prescribe punishment for the rash and negligent act of occupier or manager of the factory which resulted into the death of any worker or any other person. Thus, I find that there is no specific punishment prescribed under the Factories Act (Special Law) for the rash and negligent act of the petitioner, which resulted into death or bodily injury of any person. Therefore, in my view, the general law i.e. IPC will apply.

And finally the Court observed in Para-13 as under :-

13.....Moreover section 300 of the Cr.P.C. will apply for the same offence. As notice above, in the instant case, the offence under section 92 of the Factories Act is different from the offences under

section 285,286, 337,338 and 304(A) of the IPC. Thus, in my considered view, section 300 of the Cr.P.C. have no application in the facts and circumstances of the present case.

Thus, the High Court of Jharkhand gave two different views on this point and held that the offence under Section 304-A of IPC and Section 92 of the Act are two different offences and proceedings can run simultaneously. This principle laid down by Jharkhand High Court was followed by High Court of Chhatisgarh in case of **“Firoz Alam Vs. State of Chhatisgarh”** passed in Criminal Miscellaneous Petition No.36/2009 delivered on 28.02.2009. The High Court of Chhatisgarh took a view that since no punishment is prescribed in the Act for rash and negligent act, therefore, the provisions of Section 300 of Cr.P.C. and Article 20 (2) of Constitution of India would not barred simultaneous hearing in two cases. It was further observed that if in one case, petitioner is convicted then proceeding cannot continue in another case. Placing reliance in case of **“Ashwini Kumar Singh (supra) of Jharkhand High Court”**, there is also a judgment of Karnataka High Court passed in Criminal Petition No.2408/2014 titled as **“Sri Sridhar Punachithya and others Vs. State of Karnataka & another”**. In this case, the High Court of Karnataka considered the provisions of Section 300 of Cr.P.C. vis-a-vis Section 92 of the Act and Section 304-A of IPC. Also the principle laid

down in case of “**Ashwini Kumar Singh (supra) of Jharkhand High Court**” was taken into consideration.

In its final finding, the High Court of Karnataka observed in para-9 of the order thus :-

9. On reading of the above said provisions, it is clear that facts of this particular case, for which the accused has been convicted for the offence under Section 92 of the Factories Act are exactly the same to the alleged offences under Section 304-A of IPC. The Court can frame charges under Section 304-A, but it can only frame on the basis of the same facts. Therefore, in my opinion Section 300 of Cr.P.C. is also applicable to the present facts and circumstances of the case. Once the accused/petitioner No.4 herein has been convicted for the offences under Section 92 of the Factories Act, he or any other person cannot be once again prosecuted for the offences under Section 304-A of IPC.

With due respect to the view taken by High Court of Jharkhand in case of '**Ejaj Ahmad (Supra)**' and High Court of Chhatisgarh in case of '**Firoz Alam (Supra)**', I differ from their views that the Act does not provide any punishment for rash and negligent Act of occupier or manager of the factory. There are certain occasions when the statutory duties imposed on occupier and manager of the factory under the Act, are not performed properly, they are under obligation to provide sufficient safeguards to prevent happening of any untoward incident. When such safeguards are not provided i.e.

on omission on their part and dereliction of a statutory duties imposed on them by the Act, such omission results into a death and that is equal to rash and negligent Act, and accordingly, the word 'Act' used in Section 304-A of IPC may on some occasions includes omission also, and therefore, when there are such grave omission on the part of the occupier and manager of the factory in which a worker under their employment suffers death or grievous bodily injuries then provisions of Section 92 of the Act are attracted. Based on the same set of facts, hypothetically, if provisions of Section 92 of the Act are not there, then provisions of Section 304-A are attracted, and therefore, in my view, the provisions of Section occupy the same field, so far as an incident in a premises of the factory is concerned, and therefore, the provisions of Factories Act being a special law shall prevail over provisions of Indian Penal Code, which is a general law.

After taking into consideration all the views taken by different High Courts, in my considered opinion, there can be certain occasions when provisions of Factories Act under Section 92 do not apply, e.g. death may occur or grievous hurt may be caused to a person who came in the premises of a factory authorised by the management for some other works like repair of machinery, inspection etc. Another occasion may be that a worker, who is under employment of the management may suffer such

bodily injury or death when he was performing the act, which was not part of his obligations under the employment - e.g. on being requested by his fellow-worker, he may be helping them in performance of an act, which was not assigned to him. Under these circumstances, may be, provisions of Section 304-A of IPC may apply, otherwise, when act and bodily injury is caused to a workman while discharging his obligation under the terms of employment, the provisions of IPC, which are general law cannot be applied. When such situation arises, two cases should be trial together by the same Court and one being a case of police report filed under Section 173 of Cr.P.C., another being a complaint filed under Section 92 of the Act, both the cases should be heard together under the provisions of Section 210 of Cr.P.C. and when it is found that bodily injury or the death is caused to a person, who is not covered by provisions of Factories Act, due to negligent act or omission on the part of the factory management then the provisions of Section 304-A of IPC may be applied, otherwise, proceedings and punishment should be under Section 92 of the Act.

Reverting back to the present case, there is no dispute that the workers who suffered death while discharging their obligations under the terms of employment, they were performing his duties which they were assigned by the factory management/occupier, and therefore, the petitioners

were convicted under Section 92 of the Act. The proceedings in case filed on police report under Section 287, 304-A of IPC cannot continue.

In this view of the matter, this application is allowed. The proceedings in RT No.10293/2010 pending before Judicial Magistrate First Class under Section 287, 304-A of IPC are quashed. The petitioner is discharged from the offence under Sections 287, 304-A of IPC.

With observations and direction as aforesaid, the matter stands disposed of.

Certified copy, as per rules.

(Alok Verma)
Judge

Chitranjan