

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**S.B: HON'BLE SHRI RAJEEV KUMAR DUBEY J,**

**M.Cr.C.No.6210/2015**

Mrs. Indu Batni and 1 ano.

Vs.

State of Madhya Pradesh

Shri Girish Patwardhan, learned Counsel for the applicant.

Shri Himanshu Joshi, learned PL for the respondent/State.

Heard finally at motion hearing stage.

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**ORDER**

**(Passed on 20.2.2017)**

This petition has been filed under Section 482 Cr.P.C. for quashing of proceeding pending before CJM Indore, in Criminal Case No. 15750/2013.

Brief facts of the case are that on 26.4.2013 respondent No.2 factory Inspector inspected a factory named Best Uniforms Pvt. Ltd. Applicant No.1 is the occupier of that factory and applicant No.2 is the Manager of that factory in the inspection the inspector found that factory license was not exhibited in factory premises and it was being run without license and some fire extinguisher were not refilled in time. Besides goods lift was not being run by competent person so he prepared a report regarding certain violation of the provisions of Factory Act and filed a complaint against the applicants in the Court of CJM Indore, on which CJM Indore, have taken cognizance against the applicants and for the offences under Section 92 of the Factory Act and registered Criminal Case No.15750/2013.

Learned Counsel for the applicant submitted that from the perusal of the inspection report it appears that respondent No.2

Factory Inspector was not accompanied by any person as provided under Section 9 of the Factories Act. At the time of inspection, so no prosecution can be filed against the petitioner because the so called inspection does not fulfill the requirement of Section 9 of the Factory Act.

Section 9 of the factory Act specifically provides an Inspector within the local limits for which he is appointed entry with such assistance being person in the service of the government or any local or other public authority or with an expert as he thinks fit, any place which is used or which he has reason to believe is used as a factory. Because the factory inspector at the time of inspection was not accompanied by any person as provided in Section 9 of the Factory Act so prosecution against the petitioner is pending in the Court of CJM Indore, as Criminal Case 15750/2013 of that report be quashed.

In this regard learned Counsel for the applicant placed reliance upon the judgment delivered by this Court in case of **H.K.Kala vs. State of M.P. reported in MPLJ 2008(3) page 526** in which this Court held:

“Factories Act (63 of 1948), Sections 8,9,92 and 105-Rail Spring Factory- A small explosion took place in Deep Plain Plant- Factory Inspector could have entered the factory premises with an expert as provided under Section 9 of the Act- However, Factory Inspector all alone went inside the factory and submitted a report- Factory Inspector was not a specialist/expert, on the basis of whose report, the complaint was entertained under Section 105 of the Act- Held- A small explosion was taken place when the plant was being switched on- Merely because the petitioners are occupiers of the Factory- They cannot be prosecuted by filing a complaint under Section 105 of the Act in view of the fact that provisions of Section 9 was not complied with by the Factory Inspector- Proceedings initiated against the petitioners under Section 105 of the Act which are pending before the Labour Court are quashed.

but the fact of that case is clearly distinguishable because in that case the factory Inspector inspected the factory after explosion took place to know the cause of explosion so Court on the ground that Factory Inspector is not an expert held that prosecution cannot be initiated on

that report.

Learned Counsel for the applicant also placed reliance on this Court judgment passed in **M.Cr.C. No. 1916/2014 dt. 1.3.2016 Shiv Singh Mehta and ors. vs. State of M.P.** but here also Inspector inspected the factory after accident in which a worker received injury but in the instant case Inspector did not inspect the factory after any accident but only in a routine manner as appears from the report.

Section 9 of Factory Act reads as thus:-

**Powers of Inspectors.**- Subject to any rules made in this behalf, in Inspector may, within the local limits for which he is appointed,-

(a) enter, with such assistants being persons in the service of the Government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other documents relating to the factory;

(e) seize, or take copies of any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b) taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it

to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

On bare perusal of this section it appears that the section gives power to the Inspector either he himself alone inspect the factory or by the assistance of any expert, government or local or other public authority or with an expert as he thinks fit.

First part of section 9 enumerates the powers of Inspectors appointed under the Act :

(i) to enter any place which is used or which he has reason to believe is used as a factory;

(ii) to take assistants along with him recruited from persons in the service of the Government or any local or other public authority as he thinks fit which shows the section gave the discretion to the Inspector that if he wants he enter into the factory for inspection alone or if he thinks fit he took assistance along with him recruited from persons in the service of the Government or any local or other public authority.

So the proceeding of the case No.15750/2013 is pending before CJM Indore, on the report of Factory Inspector cannot be quashed only on the ground that the Inspector inspected the factory alone.

In the report, the Inspector cited certain violation of the provisions of the Factory Act. So it cannot be said that prima facie no offence is made out from the complaint. Hence, the petition has no force and is, hereby, rejected.

M.Jilla.

**(Rajeev Kumar Dubey)**  
Judge