

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON. SHRI JUSTICE ALOK VERMA,J.

M.Cr.C. No.8432/2016

Vijaypal Singh & Ors.

Vs.

State of Madhya Pradesh

Shri Girish Patwardhan, learned counsel for the applicants.

Shri Sudhanshu Vyas, learned counsel for the respondent/State.

ORDER

(Passed on 21/09/2016)

This application under Section 482 Cr.P.C. is filed for quashment of criminal proceedings in Criminal Case No.1810/2012 pending before the Additional Chief Judicial Magistrate, Dhar, District Dhar arising out of Crime No.177/2012, Police Station- Pithampur, District Dhar under Sections 287 and 338 IPC.

2. The relevant facts are that the present applicants are officers working in M/s Rajshri Plastiwood Pvt. Ltd having its factory situated at Industrial Area, Pithampur, District Dhar. The incident took place on 28.01.2012, employee Deepsingh was working on a sheering machine and was cutting PVC sheets. His left hand came between the cutting blades and resulted in

chopping of four fingers and thumb. The crime was registered by Police Station- Pithampur, District Dhar as aforesaid and charge-sheet was filed before the Additional Chief Judicial Magistrate Dhar. Similarly, the case was also registered by Labour Commissioner under Factories Act. A complaint was lodged under Section 21 read with Rule 59 of Factory Rules, 1962. The present applicants were fined Rs.15,000/- each in a summary trial in S.T. No.865/2015, however, the case filed by the Police Station Pithampur in Crime No.177/2012 is still pending. Learned counsel for the applicants placed reliance on order passed by this Court in case of **Neeraj Verma vs. State of Madhya Pradesh; 2016 LLR 703**. The facts of this case was similar to the facts of the present case. In that case, a charge-sheet was filed under Sections 287, 304-A of IPC before the Chief Judicial Magistrate, Indore. A complaint was also filed under Section 92 Factories Act by Factory Inspector. The Chief Judicial Magistrate commenced the trial in both the case separately. The applicant was fined Rs.1,05,000/-. A plea was based that after suffering conviction in a complaint case filed under Section 92 of Factories Act, the proceedings in criminal case filed by the police becomes infructuous and hit by section 300 Cr.P.C.

3. This Court placed reliance on judgment of Madras High Court in case of **R. Kannan vs. State** in Cri.O.P. No.3749/2007

and M.P. No.1/2007 decided on 26.09.2008. The Madras High Court opined that proceedings in criminal case is not maintainable, as both the cases were based on same set of facts. This Court also considered the orders passed by the Jharkhan High Court in case of Ashwini Kumar Singh and another vs. State of Jharkhand; 2007(2) JCR 334 and case of Ejaj Ahmad vs. State of Jharkhand in Cr.M.P. No.911/2007 judgment dated 03.09.2009.

4. This Court observed that the provisions of Factories Act being special Act would supersede the provisions of IPC and Cr.P.C. It was also observed by this Court that under Section 304-A IPC and section 92 of the Factories Act, the sentence of imprisonment provided the same, however, additional fine is prescribed under Section 92 of Factories Act, and therefore, once a person is convicted under Section 92 of Factories Act, his conviction under Section 304-A is not possible. The proceedings are hit by provisions of Section 300 Cr.P.C. However, the situation would be different if both the cases are pending. In such a situation, it is duty of the Magistrate to try both the cases simultaneously under Section 210 of Cr.P.C. and if order of conviction is passed in both the cases, then benefit of provisions of Section 427 Cr.P.C. may be given to the accused depending on facts and circumstances of each case.

5. Learned counsel for the State, however, opposes the application on the ground that the scope of both the provisions are different. In one case criminal complaint is filed while in another matter the charge-sheet is filed by the Police.

6. I have gone through the case law cited by the learned counsel for the applicants as well as the facts and circumstances of the present case in considered opinion of this Court, the case is based on similar set of facts, therefore, once conviction is recorded in one case and the applicants are sentenced to fine, they cannot be convicted on the same set of facts in another case filed by the police, and therefore, this application deserves to be allowed and hereby allowed. The proceedings arising out of Crime No.177/2012, Police Station Pithampur, District- Dhar under Sections 287 and 338 IPC are quashed. The applicants are discharged from offence under Sections 287 and 338 IPC.

**(ALOK VERMA)
JUDGE**