

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT**  
**AT JABALPUR**

**CR.R.No.662/2013**

P.Sadanand Reddy & Another

Vs.

State of Madhya Pradesh

For the Petitioners : Mr.Kishore Shrivastava,  
Senior Advocate with Mr.Prem  
Francis, Advocate

For Respondent : Mr. B.P.Pandey, Government  
Advocate

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Present : **Hon'ble Mr. Justice Atul Sreedharan**

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**ORDER**  
**(14/10/2016)**

The abovementioned criminal revision has been filed by the Petitioners who are aggrieved by the order dated 24/01/13 passed by the Ld. Additional Sessions Judge, Baidan, District Singrauli, in Sessions Case No. 114/2012, by which the Trial Court was pleased to dismiss an application for discharge u/s. 227 Cr.P.C filed by the Petitioners seeking their discharge in the abovesaid case arising from a charge sheet filed against them in Crime No. 382/09 dated 05/07/09 registered by P.S. Baidan, District Singrauli, for offences u/ss. 336, 337, 338, 472 and 304-A IPC. The charge sheet which was filed after completion of investigation were u/ss. 176, 336, 338, 304-A, 286, 304 of the Indian Penal Code, u/s. 9B, 9C of the Explosives Act, 1884 (hereinafter referred to as the "Act") and u/s. 5 of the Explosive Substances Act, 1908.

1. The Petitioner No.1 is the Chairman of Ideal Industrial Explosive Ltd., Secunderabad, Telangana and the Petitioner No.2 is the Managing Director of Ideal Industrial Explosives Ltd. The Company, Ideal Industrial Explosives Ltd., is a Company registered under the relevant provisions of the Companies Act, 1956.
2. According to the case of the Respondent State, an FIR dated 05/07/09 being Crime No. 382/09 was registered at P.S. Waidan, District Singrouli, by one Shambhu Prasad Mishra, a resident of Village Ganiyari, Tehsil Waidan, District Singrauli, to the effect that he is an employee working at Mullaji's godown situated in Baliyari Industrial Area. He further states that the establishments of M/s. Ideal Industrial Explosive Ltd., (hereinafter referred to as "IIEL") and Rajasthan Explosives and Chemicals Ltd., (hereinafter referred to as "RECL") and other explosive manufacturing companies are situated to the southern side of Mullaji's godown. He further states that on 05/07/09, at around 6.45 pm, when he went to the nearby paan shop, he saw a huge explosion take place towards IIEL and there was smoke all around and debris was falling all over the place on account of which even the Complainant suffered injuries. The FIR was registered for offences U/ss. 336, 337, 338, 304-A and 427 of the IPC. The factories of IIEL and RECL are adjacent to each other and divided by a common boundary wall.
3. In the course of investigation, the police seized 100 gms of Ammonium Nitrate and 100 gms of Matrix Emulsion from the

premises of the RECL Factory on 06/07/09. The police proceeded on the premise that the explosion occurred in an explosive van parked inside the premises of IIEL, bearing the registration AP-10-T-8899. It is the case of the Prosecution that the said van was parked inside the premises for a long time and that the explosion occurred in that van which then triggered the explosions in the vehicle kept in the premises of RECL and also detonated the stock of Ammonium Nitrate stocked in the premises of RECL. From the resultant incident, eighteen people died, forty-two were injured and six persons were reported missing.

4. The Petitioners were granted the benefit of anticipatory bail by this Court vide order dated 17/08/09 passed in M.Cr.C No. 7508/09. After investigation, the police filed the charge sheet and arrived at the finding that an Explosive van belonging to IIEL bearing No. AP-10-T-8899 which was filled with explosives was parked for long next to the boundary wall separating IIEL from RECL which is against the provisions of the Explosives Rules 2008 (hereinafter referred to as the "Rules of 2008") and that the Petitioners herein knew that keeping an explosive van full of explosives within the factory premises of IIEL was hazardous, and on account of such negligence on their part, the explosion took place in the said explosive van which triggered the explosions across the boundary wall in the premises of RECL also. It is relevant to mention here that there is no allegation of the violation of any of the rules relating to absence of license or the

violation of their terms in relation to the manufacture, possession, storage, transport and sale of explosives by IIEL. The charge sheet was filed seeking the prosecution of the Petitioners herein and two others for the offences U/s. 336, 338, 304-A, 286 and 304 IPC and U/s. 176 of the Motor Vehicles Act and Section 9B and 9C of the Explosives Act, 1884 and Section 5 of the Explosive Substances Act, 1908.

5. The Petitioner herein filed an elaborate application for discharge before the Court of the Ld. Additional Sessions Judge, Waidan in Sessions Trial No. 114/2012, which is Annexure A/3 from page 42 to 76 of the revision petition. The Petitioners have stated therein that it is not the case of the prosecution that the Petitioners have violated any of the provisions of the law pertaining to the manufacture, storage, transportation and sale of explosives and that the Petitioner did not have the requisite licenses from the appropriate authorities to carry on the trade. The Petitioners also reproduced the relevant portions of the statements of witnesses U/s. 161 Cr.P.C who have stated that the first explosion occurred in the premises of RECL and then the second explosion in the premises of IIEL. The Petitioners have given an eloquent recital on the various decisions of the Supreme Court laying down the standard of scrutiny to be observed by the Trial Courts at the time of framing charges against an accused person.

6. The Ld. Trial Court dismissed the said application for discharge filed by the Petitioners vide impugned order dated 24/01/13. It firstly, recorded the submissions of the prosecution against the Petitioners which were (a) that the Explosive van bearing No. AP-10-T-8899 was parked inside the premises of IIEL for about three months. It further observed that the explosives stored in the said van were to be supplied to the Northern Coalfields Ltd., (hereinafter referred to as “NCL”) as and when required by NCL and on account of the said van being parked in the premises of IIEL, there was a tremendous explosion engulfing both IIEL and RECL, (b) that the act of keeping a van loaded with explosives was against the provisions of the Explosive Rules of 2008 and (c) that the management of IIEL knew that it was hazardous to keep a van loaded with explosives within the premises of the factory and yet they ignored the rules.
7. In paragraph 8 of the impugned order, the Trial Court has explained how the Petitioners herein were arrayed as accused persons by the police after they procured the organisation chart relating to IIEL. In paragraph 12 of the impugned order, the Trial Court accepts the contention of the prosecution and arrives at the finding that “in the instant case, the manner in which the explosion occurred, it is clear that the Accused No.1 to 3, violated the terms and conditions of the license issued under the rules prepared in exercise of powers under section 5 of the Explosives Act, 1884, in relation to transport and storage of explosive substances and so the act of the accused persons

was prima facie established U/s. 9B(1) and 9C of the Explosives Act”.

8. In paragraph 13 of the impugned order, the Trial Court enunciates, that “anyone in control of explosive substances U/s. 4 of the Explosive Substances Act, 1908, stores them in such a manner that it poses a grave danger to the general public, then such a person is criminally liable U/s. 4 of the Explosive Substances Act”.
9. In paragraph 15 of the order, the Trial Court while examining if the Petitioner could be charged U/s. 304 and 304-A IPC, the Trial Court holds “As several people have lost their lives in the incident, offense U/s. 304 part II stands prima facie established as against the accused persons evidence of offences under. In the alternative, the accused persons can be charged U/s. 304-A and 286 of the Indian Penal Code.
10. Thereafter, the Ld. Trial Court has framed the formal charges against the Petitioners U/s. 304, 304-A on 21 counts, 286, 336, 337 on 36 counts, 338 on 06 Counts and U/s. 9B and 9C of the Explosives Act, 1884, and lastly, on account of the death of 21 persons and 42 injured, the Petitioners were also charged U/s. 4(b)(i) of the Explosive Substances Act, 1908.
11. Heard the Ld. Senior Advocate for the Petitioners, the Ld. Government Advocate for the Respondent State and perused the records of the case. The undisputed facts in this case are (a) that a massive explosion took place 05/07/09 at the Baliyari Industrial

Estate situated in Tehsil Waidan, District Singrauli, in the wake of which, twenty-one persons died, forty-two persons were injured and the factories of RECL and IIEL suffered major damage. (b) That, the police investigated the incident and filed a charge sheet against the Petitioners herein, Rajiv Ranjan, S/o. Mr. Ajit Kumar Sinha, the Sales Manager of IIEL and Sohan Singh, S/o. Mr. Gurusharan Singh, Chief Manager of RECL. (c) That the Company IIEL has not been made an accused. (d) There was a detailed investigation carried out by a team of experts from the Petroleum and Explosives Safety Organisation (Formerly known as the Department of Explosives under the Government of India) headed by Mr. A.K.Kunj, Deputy Chief Controller of Explosives (Government of India) whose report dated 20/04/10 has concluded that the genesis of the explosion cannot be determined (e) That deceased Shyam Harsulkar was the 'SMS Plant & Vehicle Incharge' at the IIEL unit at Waidhan and (f) that the Petitioners being the Chairman and Managing Director respectively of IIEL were based at the Secunderabad, where the Registered Office of IIEL is situated.

12. The place where the factory of IIEL was located in Waidhan is known as the Udyog Deep Industrial Estate, MPAKVN, Waidhan, in District Singrauli and is situated at the outskirts of Waidhan. The majority of the industrial units in the Industrial Estate are support plants for manufacturing Matrix and other ingredients for delivery of Site Mixed Explosives (hereinafter referred to as "SME") using Bulk Mix

Delivery vehicles (hereinafter referred to as “BMD”). There are fourteen such support plants in the Industrial Estate. The support plants of IIEL, RECL and M/s. Bharat Explosives Ltd., are situated in adjacent plots. Explaining about the activity undertaken by IIEL at Waidhan, the Ld. Counsel for the Petitioner submitted that the plant of IIEL at Waidhan manufactures Matrix which, by itself is a non-explosive substance, and the factory manufacturing it is called the “Support Plant”. Rule 2 (36) of the Rules of 2008 defines Matrix as **“non-explosive emulsion matrix” means water in oil emulsion or a slurry matrix, which is neither cap sensitive nor booster sensitive**]. Rule 2 (6) of the Rules of 2008 define a BMD as **“Bulk Mix Delivery (BMD)” Vehicle means a vehicle that transports non-explosive materials in bulk, for mixing to form non-cap sensitive explosives and for loading directly into boreholes**] and Rule 2 (52) of the Rules of 2008 defines SME as **“Site Mixed Explosive (SME)” means an explosive charge formed in the borehole and includes manufacture of ANFO, using a BMD vehicle**]. From the definitions given in the Rules of 2008, this Court gathers, that the plant in question belonging to IIEL was *interalia* manufacturing the Matrix which by its very nature is nothing more than an emulsion of water and oil blended to form a slurry and is completely non-explosive in nature which is then filled in the BMD Vehicle and transported to the site where the explosions are to be effected.

- 13.** The Emulsion Matrix is filled up in the BMD truck and carried to the mining site. This Matrix, which by itself is non-explosive and stable, is then mixed with gassing and doping agents while the Matrix is stored inside the BMD Truck at site. Once this is done, the mixture attains explosive properties and is known as Site Mix Explosive. At the site, the Matrix in the BMD is filled into bores drilled into the earth and detonated. The obvious application of this method appears to be in the mining industry. The advantage of this method appears to be the safe transportation of non-explosive material to the site where then the Matrix is mixed with other material which makes it explosive. The license to operate the factory by IIEL is issued under the Explosive Rules, 2008 and the numbers of the BMD vehicles are also specified in the license details, meaning thereby, that the BMD vehicles are considered a part of the plant and machinery of the manufacturing unit.
- 14.** It is submitted on behalf of the Petitioners that the Petitioner No.1 is only the head of the Company in hierarchy under the Memorandum of Articles of the company. The company IIEL has other manufacturing facilities located at places like Korba in Chhattisgarh, Chandrapur in Maharashtra and Jharsiguda in Odisha. The Petitioner No.2 is the Managing Director of the IIEL and is based at Secunderabad, where also the Registered Office of IIEL is situated. It is contended on behalf of the Petitioner No.2 that he was in charge of looking after the conduct of business of the Company and is the

administrative in charge of the Company. It is also submitted that under his functions, he is to ensure that there is complete compliance with the provisions of the Rules of 2008 and that those persons who have to be employed in order to conduct the production part of the company's business are having the required qualifications as mandated under the Rules. The Ld. Counsel for the Petitioners contend that the factory premise in question was under the control and care of Mr. Shyam Harsulkar as the "SMS Plant and Vehicle in Charge" at the IIEL unit at Waidhan and he was the competent person to handle the day to day affairs of the Plant. The appointment letter of Shyam Harsulkar has been annexed by the Petitioners to the petition as Annexure P/2 at page 41. It would be relevant to mention here that Mr. Shyam Harsulkar also died in the accident in question and the same is not disputed by the State.

15. Ld. Counsel for the Petitioners has drawn the attention of this Court to the provisions of Rule 11 of the Rules of 2008 which reads as hereunder;

**"11. Employment of competent person.— (1) All operations associated with handling of explosives shall be carried out under supervision of competent person.**

(2) No explosive shall be manufactured in any building or part thereof except under the supervision of a competent person employed by the licensee who shall be fully conversant with the process of manufacture of explosives, hazards connected therewith and the provisions of these rules.

**(3) Professionally qualified person with Degree or Diploma in Engineering or Graduate in science having minimum 5 years experience in manufacturing explosives**

shall be an essential qualification and Diploma in Industrial safety as an optional qualification to be the competent person referred to in sub-rules (1) and (2) who shall be employed by the licensee to ensure compliance of safety norms in a factory for manufacturing explosives of Class 1 with the capacity exceeding one hundred and fifty tonnes per annum or explosives of Class 2, 3 or explosives accessories like detonating fuse, detonator, shock tube, initiating composition.

(4) Foreman holding foreman's certificate shall be the competent person referred to in sub-rule (2) who shall be employed by the licensee to ensure compliance of safety norms in a factory for manufacturing fireworks or safety fuse.”

It has been argued on behalf of the Petitioners that the duty of the Petitioners under the law was to act in accordance with Rule 11 (3) of the Rules of 2008 and in compliance of which, IIEL had engaged the services of Shyam Harsulkar who was the “Competent Person” to look after the production, storage and handling of explosives at the Waidhan facility of the IIEL.

16. Ld. Counsel for the Petitioners has drawn my attention to the statement of the various eyewitnesses under section 161 Cr.P.C, fifteen of whom, namely Hajamat Ali, Yakoob Ali, Nasarulla Ansari, Ram Bahadur Kewat, Radheshyam Vishwakarma, Amarnath Dharma, Hira Singh. Shiv Ratan, Surendra Singh, Jagdayal Sahe, Mohammad Ajeg, Archana Dwivedi, Ramji Soni, Shriniwas Reddy and Vijay Chand, have stated that the blast occurred at RECL accompanied by a blast at IIEL. There were other witnesses who have stated that they are not aware as to where the first blast had occurred. The Ld. Counsel for the Petitioners has also submitted that not a single witness has stated that the primary blast occurred at the premises of

IIEL. This contention has not been disputed by the Ld. Counsel for the State. Shambhu Prasad Mishra, who is the author of the FIR, has also stated that blast had taken place towards RECL and IIEL. Based on this, it has been emphasised on behalf of the Petitioners that most of the witnesses have all stated that the blast occurred first in the premises of RECL and then it spread to the premises of IIEL, and that there is not a single witness to testify to the contrary.

17. After investigation, the police filed the charge sheet in the Court of the Ld. Chief Judicial Magistrate, Singrauli against the Petitioners herein and Rajiv Ranjan, the Factory Manager of IIEL at its Baliyari establishment and Sohan Singh, the Chief Manager of RECL of its factory at Baliyari. The Ld. Counsel for the Petitioners has forcefully emphasised that none from the top echelons of RECL have been proceeded against by the police even though statements of witnesses and the Expert's Report were indicting them. This according to the Ld. Counsel for the Petitioners, is reflective of the biased approach of the police, while investigating the case. It is relevant to observe here that the Company IIEL has not been made an accused by the police.
18. The business of manufacture, storage, transportation and sale of explosives is by its very nature, a hazardous activity. The Explosives Act, 1884, is a Regulatory Statute, the same being enacted as "*An Act to regulate the manufacture, possession, use, sale, [transport, import and export] of explosives*" (Preamble to the Explosives Act, 1884). The said act seeks to regulate the activity associated with the

commerce related to explosives. At a time when there is a growing demand for industrial grade explosives, especially from the mining and infrastructure industry, the Explosives Act, 1884 with subsequent amendments and the Explosive Rules of 2008, attempts to regulate a very hazardous activity by putting in place protocols which when strictly followed can minimise the risk of accidents associated with the industry which otherwise can have cataclysmic consequences as in this particular case, which has left over twenty persons dead. However, whether the accident herein took place on account of any violation of such mandatory rules of caution on the part of the Petitioners or anyone else, will be dealt with elsewhere in this judgement. The Ld. Counsel for the Petitioners has stated that even if the entire case of the prosecution, as stated in the charge sheet is taken as true, even then no case is made out against the Petitioners as it is an admitted case that there have been no statutory violations on the part of the Petitioners and that the accident though unfortunate, did not happen on account of any violation or on account of any non-compliance with any of the protocols put in place for the safe conduct of the business.

19. It is essential to refer to the legal provisions relating to actions that are to be taken in the aftermath of an accident under the Explosives Act, 1884 (hereinafter referred to as the “Act”) and the Rules. Section 8 of the Act relates to the notice of accidents involving explosives and the same reads as hereunder;

**8. Notice of accidents.** Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or [any aircraft, carriage or vessel,] either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or [the master of the aircraft or vessel,] or the person in charge of the carriage, as the case may be, shall within such time and in such manner as may be by rule prescribed give notice thereof and of the attendant loss of human life or personal injury, if any, to the [Chief Controller of Explosives] and to the officer in charge of the nearest police station.

This provision provides for information relating to any accident in connection with explosives occurring in any place, aircraft, carriage and vessel. As far as this provision is concerned, there appears to be no dispute that the same was complied with in this case. In fact, in paragraph 2 of the report of the Mr. A.K.Kunj, Deputy Chief Controller of Explosives, Guwahati dated 20/04/2010, which is a part of the charge sheet, mentions *“News of the accident appeared on local T.V Channels on 05.07.2009. A fax message from IDEAL was received in the office of Deputy Chief Controller of Explosives (Dy.CCE), Bhopal intimating the accident”*.

20. Section 9 of the Act deals with **Inquiry into accidents** and Section 9A deals with **Inquiry into more serious accidents**. Section 9A bears greater relevance in the factual aspects of this case as twenty-one persons are said to have died and another thirty-six suffered injuries and six others suffered grievous injuries in the accident. Section 9A of the Act reads as hereunder;

- 9-A. Inquiry into more serious accidents.** - (1) The Central Government may, where it is of opinion, whether or not it has received the report on an inquiry under Section 9, that an inquiry of more formal character should be held into causes of an accident such as is referred to in Section 8, appoint the [Chief Controller of Explosives] or any other competent person to hold such enquiry, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.
- (2) Where the Central Government orders an inquiry under this section it may also direct that any inquiry under Section 9 pending at the time shall be discontinued.
- (3) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound so to do within the meaning of Section 176 of the Indian Penal Code (45 of (1860)).
- (4) Any person holding an inquiry under this section may exercise such of the powers conferred on any officer by rules under Section 7 as he may think it necessary or expedient to exercise for purposes of the inquiry.
- (5) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make; and the Central Government shall cause every report so made to be published at such time and in such manner as it may think fit.
- (6) The Central Government may make rules for regulating the procedure at inquires under this section.

It was under this section that Mr. A.K.Kunj, the Deputy Chief Controller of Explosives, Guwahati was entrusted the task of carrying out an inquiry into the incident, which he did and filed his report dated 20/04/2010 before the Chief Controller of Explosives, Nagpur. The said report forms a part of the charge sheet against the Petitioners and the same is at page 600 to 636 of the Volume II of the documents filed along with the petition.

21. The Petitioners have been charged by the Ld. Trial Court for having committed offences U/ss. 304, 304-A on twenty-one counts, 286, 336, 337 on thirty-six counts and 338 of the IPC on six counts. Besides, the Petitioners have also been charged for offences U/ss. 9B (1) (b) and 9B (1) (c) of the Explosives Act, 1884 and U/s. 4 (b) (i) of the Explosive Substances Act, 1908. All the sections under the Indian Penal Code, with the exception of section 304, are all offences involving the element of Rashness or Negligence associated with it. Section 304-A relates to causing death of a person by an act which is rash or negligent. Section 286 makes punishable an act which endangers human life on account of rash or negligent conduct with an explosive substance. Section 336 makes punishable an act endangering life or personal safety of others by acting in a rash or negligent manner. Section 337 makes a person liable to be punished if he causes hurt by his actions which endanger the life or personal safety of other on account of rash or negligent conduct, and section 338 IPC exposes a person to punishment for causing grievous hurt by acting in a manner that endangers the life or personal safety of others account of rash or negligent conduct of such a person. Section 304 IPC on the other hand requires the *mens rea* of intention or knowledge, restricted to the four exceptions of section 300.
22. As regards the offence under the provisions of Section 9B (1) (b) and (c) of the Act, It would be essential to appreciate the liability created by the said section which reads as hereunder;

9-B Punishment of certain offences. (1) Whoever, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules-

(a) manufactures, imports or export any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification issued under Section 6 manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of the aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever,-

(a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of Section 6-A; or

(b) sells, delivers or despatches any explosive in contravention of the provisions of clause (b) of that section,

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of Section 8 fails to give notice of any accident shall be punishable,-

(i) with fine which may extend to five hundred rupees, or

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or fine or with both.

This section provides punishment for the non-compliance of the mandatory provisions of the Act. The provision for jail term is not mandatory and it is the discretion of the Court whether to impose a jail term or impose a fine or punish with both.

23. The Ld. Trial Court has framed charges against the Petitioners solely on the premises that an explosives van bearing number AP-10T-8899, belonging to IIEL, laden with detonator fuse, was parked near the boundary wall separating the manufacturing facilities of IIEL and RECL and that the same was close to the maintenance shed of IIEL. In paragraph 9 of the impugned order, the Ld. Trial Court arrives at the prima facie finding that the said truck was parked inside the premises of IIEL for three months and the explosion occurred in the said truck which triggered the explosion in the manufacturing facility of RECL also. In paragraph 9 of the impugned order, the Petitioners herein are found to be prima facie involved in the offence only on the ground that they are the Chairman and Managing Director of IIEL and they were responsible to ensure that the truck loaded with explosives was not parked within the premises of IIEL for a long duration and that as the explosion was triggered from the said van, the Petitioner were guilty of negligence on account of which several people lost their lives. The Ld. Trial Court in paragraph 11 at page 8 of its order has alluded to section 9C of the Act which makes those in charge of the day to day affairs of the Company vicariously liable for an offence committed by the Company under the Act. Thus, the only grounds on which the Petitioners have been held prima facie guilty as charged was based upon the finding of the Ld. Trial Court that (a) the explosive truck bearing number AP-10T-8899 laden with explosive detonators, was parked inside the premises of the manufacturing facility of IIEL for three months which was in contravention of the Rules of 2008 and (b)

that the Petitioners being the Chairman and Managing Director of IIEL were liable to be prosecuted in view of section 9C of the Act.

24. Before trying to examine the correctness of the impugned order, it would be necessary to examine section 9C of the Act which reads as hereunder;

9-C. Offences by companies.- (1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

- (a) "company" means anybody corporate, and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm

This sections makes those who were in charge of, or responsible to the company in the conduct of its business also liable to be punished for an offence attributable to the company. The liability imposed by this section is vicarious in nature. Subsection 2 of 9C goes further and

makes the Director, Manager, Secretary or other officer of the Company guilty of an offence under this Act if it is proved that the said offence attributed to the Company was committed with the consent or connivance of or is attributable to any neglect on the part of the said functionaries, then they too shall be held guilty of the offence, notwithstanding the provisions of Section 9C (1) of the Act.

25. Ld. Senior Counsel for the Petitioners has forcefully argued that the impugned order, besides being unsustainable in law, is also erroneous on facts. He has submitted that the prima facie finding of the Ld. Trial Court relating to the genesis of the holocaust is grossly repugnant to the evidence on record. He has further submitted that in such a case, the investigation must reveal where the epicentre of the blast is situated which in other words would refer to the first explosion is a series of explosions, as the probability of the first explosion triggering the subsequent explosions is a reasonable hypothesis, given the fact that the location where the accident occurred is an industrial estate consisting of various units manufacturing high explosives for industrial and infrastructural use, which are adjacent to each other and in such a situation, the shockwaves, flying debris and projectiles resulting from the first blast would have the propensity to detonate and set off other explosive material at a proximate distance from the primary blast. I find the argument appealing and in order to have a clearer understanding if the investigation does reveal where ground zero lay, I deem it necessary to refer to the report of the Deputy Chief

Controller of Explosives, Guwahati (hereinafter referred to as the “DCCE”) dated 20/04/10, addressed to the Chief Controller of Explosives, Nagpur.

26. The said report gives an account of the investigation carried out by the DCCE and in paragraph 2 of the report acknowledges the fact that a fax message was received from IIEL at the office of the Deputy Chief Controller of Explosives, Bhopal intimating the accident. In paragraph 3 of the report, the DCCE observes that even though the site was under police guard, the site was in a totally disturbed condition on account of the search and rescue operations that followed the blast. It is observed that the scene of occurrence was disturbed and upturned as JCB (excavators) were used to locating and extricating dead bodies in the process of which, tell-tale evidence such as crater formation and their sizes etc., was not available for examination by the DCCE. Describing the plant of RECL, the DCCE observes that the plant of RECL was totally destroyed and that all the plant and equipment had vanished from the site except for three damaged BMD Vehicles, part of a blown off Ammonium Nitrate tank fixture and a severely damaged guard room. Thereafter, the DCCE goes on to describe the damage suffered by the establishment of IIEL and describes how its office and half part of its chemical storage shed were completely razed to the ground and how the roof of the plant building was blown off and the walls had suffered heavy cracks. He goes on to record that the vehicle maintenance shed was also blown

off and six BMD vehicles and one truck suffered heavy damages. As regards the machinery and equipment, the DCCE records that they had suffered only minor damages and the common boundary wall between IIEL and RECL was completely destroyed. However, the remaining part of the compound wall of IIEL was almost intact. At the time of the preparation of the report, the casualties were noted as eighteen dead, six missing and forty-two injured

27. The DCCE's report grapples with the question of the primary blast and finally homes down on two probable causes. One being the detonation in the explosives van of IIEL bearing number AP-10T-8899, which was parked along with the BMD vehicles of IIEL which was situated near the maintenance shed in the extreme north west corner of its premises adjacent to RECL and the other was the explosion in Ammonium Nitrate storage shed of RECL. Adding to the difficulty of isolating the primary explosion was that the onsite damage at RECL and IIEL was maximum along the common boundary wall separating IIEL and RECL. On the side of RECL, Ammonium Nitrate was being unloaded from a tractor trolley into the shed. At the time of the accident, there was fourteen metric tonnes of Ammonium Nitrate in the shed of RECL. The DCCE also takes into consideration the possibilities of the explosion being triggered from a lightning strike, mishandling of detonators by IIEL, Welding in the workshop of IIEL, use of mobile phone in the vicinity and static charge. He also examines the possibility of the explosion being

caused on the side of RECL on account of the large quantity of Ammonium Nitrate in the shed which in the opinion of the DCCE, though not an explosive by itself, can be detonated with high explosive or by severe mechanical impact or under high temperature. In page 35 of the report, the DCCE speculates by observing “The first possibility that the ammonium nitrate stockpile could have been detonated by the shock wave from the explosion of the van of IDEAL appears to be more likely”. After examining and considering all the data collected from the site and applying his mind to the material, the DCCE concludes at page 38 of his report that **“Thus it is evident that explosives in the van and (blank space) explosion of ammonium nitrate were involved in the accident. However, I am of the opinion that it is not possible to pin point whether the initial explosion occurred owing to probable causes mentioned above, in the explosive van parked in the IDEAL premises or in the ammonium nitrate storage shed of RECL”**. The said report, which is prepared under the provisions of the Act and Rules of 2008 is unable uncover the genesis of the explosion.

28. The Ld. Trial Court has arrived at the prima facie conclusion that it was the parking of the vehicle laden with explosives by IIEL along its boundary wall with RECL for several months, which was in violation of the rules, which led to the accident and the consequent loss of lives. The Ld. Trial Court does not mention anywhere in the impugned order as to which was the specific rule which prohibited the

parking of the truck loaded with explosives in the premises of IIEL. The Trial Court has simply accepted the contention of the State that the said act was in contravention of the Rules of 2008. On the other hand, the Ld. Counsel for the Petitioners has drawn the attention of the Court to Rule 67 (4) of the Rules of 2008 which reads as under;

67. Loading, unloading, maintenance and operation of road vans.—

(4) The driver or operator of a vehicle carrying or containing an explosive shall not stop unnecessarily or for a longer period than is reasonably required, and shall avoid stops or places where public safety is in danger :

Provided that where a van transporting or containing explosives is parked overnight due to the reasons beyond the control of licence or the driver, the premises in which the van is parked

(a) shall not be used for any purpose that might give rise to the presence therein of an open flame, matches or any substance or article likely to cause explosion or fire;

(b) shall be away from any habitation of any godown containing articles of a flammable nature or other hazardous goods:

Provided further that the nearest police station shall be informed about the location and temporary parking of the van.

Relying upon the said Rule, the Ld. Counsel for the Petitioners has emphasised that the rule requires that an explosive truck/van should not be stationed in a public place and shall avoid stops or places where public safety is in danger. He has further contended that the factory premises of the IIEL at Waidhan was frequented by the truck for transporting explosive material from the factory to such places as per requirement. According to the Petitioners, the factory of IIEL was the

most suitable place to station the truck when it needed to be stationed, either for loading or unloading of explosives as the said establishment was not open to public access and those who were there were only authorised personnel engaged in the task of manufacture and transportation of explosives.

29. In paragraph 9 of the impugned order, the Ld. Trial Court holds that the explosion occurred in the explosive van bearing number AP-10T-8899 which was parked in the factory premises of IIEL for three months. It further holds that the parking of the truck for such a long time was in contravention of the Rules of 2008. However, report of the DCCE does not (a) give the duration of time that the truck was parked inside the establishment of IIEL and (b) the report of the DCCE does not arrive at the finding that even if the said truck was parked within the establishment of IIEL for a long time, that the same constituted a violation of any rules under the Rules of 2008. The Ld. Trial Court arrives at the conclusion that the truck was parked inside the facility for an inordinately long time and that the same was in contravention of the Rules of 2008 only on the basis of the charge sheet filed by the police where such is the contention. This prima facie finding by the Ld. Trial Court appears to be erroneous as the Ld. Trial Court has failed to advert to any specific provision under the Rules of 2008 in order to give any credence to its finding. The Ld. Trial Court has simply taken the contention of the State as laid out in the charge sheet to be true without applying its mind to the allegations in the charge

sheet against the Petitioners. The Trial Court has recorded the cases cited by the Petitioners *Inter alia* which are Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4 and Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135. Prafulla Kumar Samal's case is a landmark judgement relating to the role of the Trial Court at the stage of framing charges. In this judgement, the Supreme Court has spelt out in no uncertain terms that the Trial Court is not the mouth piece or a post office of the prosecution that it would go ahead and frame charges against an accused only because the prosecution is of the opinion that a triable case is made out against the accused person. The Supreme Court further laid down that the Trial Court must satisfy itself that the evidence on record discloses a "grave suspicion" against the accused person in order to frame charge and where the evidence on record only shows some suspicion that the accused had committed the offence, the Trial Court would be justified in discharging the accused. As a word of caution, the Supreme Court added that in this endeavour, the Trial Court is not expected to make a roving enquiry into allegations against the accused person but it will nonetheless examine the evidence to see if the same discloses a prima facie case against the accused. In Dilawar Balu Kurane's case, the Supreme Court once again follows the law laid down by Prafulla Kumar Samal's case with regard to the standard to be observed by the Trial Court at the stage of framing charge. Though these case have been mentioned by the Ld. Trial Court in the impugned order, the same has not been considered by it and neither has it been rejected on account of the same not being applicable

in the factual matrix of the case before it. Unfortunately, the Ld. Trial Court has gone ahead and done precisely what the Supreme Court had prohibited in the abovementioned cases, i.e., the Ld. Trial Court ended up being the mouth piece of the prosecution as is evident from paragraph 9 and 15 of the impugned order where the Trial Court has very simply accepted the assertion by the prosecution in the charge sheet that the parking of the truck laden with explosive within the premises of the factory of IIEL at Waidhan, which was against the rules, led to the explosion which claimed so many lives. The Ld. Trial Court failed to even advert to the evidence on record to substantiate its prima facie view that the parking of the truck for three months within the premises was the genesis of the holocaust. The Trial Court has also failed to consider the expert report of the DCCE which was unable to pin point the genesis of the explosion. The Trial Court has also not rejected the findings of the DCCE giving reasons why the same was unreliable, while accepting the view of the prosecution that the genesis of the holocaust was the explosion in the explosive van of IIEL which was parked on its premises.

30. As regards the liability of the Petitioners, who are the Chairman and the Managing Director of IIEL and who are based in Secunderabad, the Ld. Trial Court failed to appreciate that the offences U/ss. 304-A, 286, 336, 337, 338 of the IPC are concerned, they are all offences for the commission of which, the element of negligence or negligent conduct is essential to be established for a person to be held guilty of

these offences. It is undisputed that the Petitioners were not based at Waidhan and it is also undisputed that the Petitioners had engaged Shyam Harsulkar as the in charge of the Waidhan factory of IIEL and therefore, the remoteness of the Petitioners to the incident at Waidhan ought to have been taken into account while assessing the prima facie liability of the Petitioners. The Ld. Trial Court ought to have taken into account the rule of law enshrined in the maxim "*Causa Proxima Non Remota Jura Spectator*", or that the law takes cognizance of the proximate cause and not the remote cause while assessing liability. In this case, the Trial Court has framed charges against the Petitioners only on account of them being the Chairman and Managing Director of IIEL closing its eyes completely to the fact that the Petitioner's duty under Rule 11 (reproduced in paragraph 16 supra) of the Rules of 2008 was to employ a competent person to handle the explosives and in compliance of the said rule, the Petitioners had engaged Mr. Shyam Harsulkar as the competent person as the Manager of its facility at Waidhan. The Petitioners herein could have been held liable of an offence under the provisions of the Act in the event they had failed to appoint a competent person as required of them under Rule 11 or that the person so appointed by them under Rule 11 did not possess the qualifications to be appointed as a competent person under Rule 11. However, that has never been the case of the prosecution and so the fact there was no violation of Rule 11 of the Rules of 2008 by the Petitioners herein is undisputed. The Ld. Trial Court also failed to appreciate that the appointment of the competent person under Rule 11

resulted in the dilution of the Petitioners liability for the events at the facility of IIEL at Waidhan. The Trial Court apparently has been affected by the large number of persons who have lost their lives in the ghastly incident as is reflected in paragraph 9 of the impugned order wherein the Trial Court had held that as a large number of people have lost their lives in the incident, the top management of IIEL is responsible for the loss of lives.

31. The magnitude of an incident/accident or the overwhelming attendant loss of lives cannot be the criteria to bring someone under the ambit of an offence and an ensuing criminal trial. This is more so in relation to offences which do not involve *mensrea* as an ingredient of such an offence and where the incident/offence in question has a preponderant element of negligence, then the duty of the Court is to identify the proximate cause of the incident/accident and affix the liability on the person so directly vested with a duty under the law to prevent such an eventuality and the omission on whose part, led to the eventuality/accident to occur. The Ld. Trial Court, in the impugned order, rather than assessing the extent of the Petitioners involvement in the incident has held the Petitioners prima facie liable to be tried only on account of the death toll in the case. Such an approach is erroneous in law. All the offence under the IPC in which charges have been framed against the Petitioners herein, with the exception of section 304 of the IPC, are all offences relating to negligent conduct. There can be no vicarious liability under the general law for offences involving

negligent conduct and only that person is liable to be proceeded against for the commission of such offences to whom the said negligent act/omission is attributable. Thus, the charges framed against the Petitioners for offences under sections 304-A, 286, 336, 337, 338, in the facts and circumstances of the instant case as discussed hereinabove, are unsustainable in the eyes of law and deserve to be set aside.

32. As regards the charge for an offence u/s. 304 IPC, the same is also unsustainable as the said offence requires both the *actus reus* and the *mens rea* of at least “knowledge”, if not “intention” on the part of the accused, to be guilty of the said offence. Nowhere in the order dismissing the application for discharge does the Trial Court arrive at a prima facie finding that the Petitioners sitting in Secunderabad had the knowledge of the impending event or that they ever intended the incident to take place. Under the circumstances, the charge u/s. 304 IPC also is unsustainable against the Petitioners and the same also deserves to be set aside.

33. As regards the charge against the Petitioners u/s. 9B (1) (b) r/w s. 9 C of the Act is concerned, the provisions of section 9B (1) (b) read as hereunder;

9-B Punishment of certain offences. (1) Whoever, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules-

(a) manufactures, ...

**(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term**

**which may extend to two years or with fine which may extend to two years or with fine which may extend to three thousand rupees or with both; and**

The provisions of Section 9B (1) (b) of the Act are only applicable provided the prosecution is able to show the contravention of the rules made under section 5 of the Act which means the Rules of 2008. The Ld. Trial Court, but for saying that the Petitioners have violated the Rules of 2008 by parking their explosive laden truck within the premises of their facility at Waidhan, has been unable to show the specific rule which has been violated by the Petitioners by their alleged act. By reading the said provision along with Section 9C of the Act which creates vicarious liability against the Directors or those associated with the affairs of the company, the Ld. Trial Court has failed to appreciate that the Petitioner herein can only be made liable for the offence under the Act provided that the Company itself was arraigned as an accused. The undisputed fact is that the company in this case has not been made an accused and it is only the Petitioners herein who have been charged in the absence of the company, which is impermissible in law. Under the circumstances, the charge under section 9B (1) (b) of the Act is also unsustainable against the Petitioners and deserves to be set aside.

- 34.** The last charge that has been framed against the Petitioners herein is U/s. 4 (b) (i) of the Explosive Substances Act, 1908 which reads as hereunder;

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life

or property.—Any person who unlawfully and maliciously

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- (a) does any act .....; or
- (b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India, shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—
  - (i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;
  - (ii) in the case of .....

Where the Explosives Act, 1884 is a regulatory statute, the Explosive Substances Act, 1908 is purely a penal statute. An offence u/s. 4 of the Explosive Substances Act, 1908 only comes into being where the person so charged has done the proscribed act with *intention to endanger life and property*, and the same is done *unlawfully and maliciously*. It has never been the case of the prosecution that the Petitioners have ever done an act with the intention of endangering life or property. Neither is it the case of the prosecution that there has been any malice on the part of the Petitioners to cause loss to human lives and properties. The requirement of *mens rea* for offences under the Explosive Substance Act, 1908 is writ large on every section of the Act. However, the case of the prosecution against the Petitioners is one of negligence and not of malicious intent to kill, maim or destroy property. Not a single piece of evidence has been placed before this

Court by the Ld. Counsel for the State in order to sustain a charge u/s. 4 (b) (i) of the Explosive Substances Act, 1908 and so the said charge also in untenable and deserves to be set aside.

35. Finally, the Ld. Counsel for the Petitioners has argued that the proceedings against the Petitioners are liable to be quashed as the principal offender if any, is the company IIEL, and that the Petitioners are being sought to be made vicariously liable for acts/omissions of the company. In order to buttress his contention, the Ld. Counsel for the Petitioner has relied on a catena of judgements. As all the judgements deal with the same point, I do not consider the need to deal with each one of them. In **Aneeta Hada Vs. God Father Tours and Travels – (2012) 5 SCC 661**, a three judge bench of the Supreme Court examined the scope of vicarious liability of Directors of a Company for offences committed by companies under the Negotiable Instruments Act, 1881 and for offences committed by Companies under the Information Technology Act, 2000. The Supreme Court held that a company could not be prosecuted unless it was arraigned as a party in the criminal case and that a Director or a person responsible for the affairs of the company could not be prosecuted in the absence of the company, where the offence is alleged to have been committed by the company. In other words, the Supreme Court held that vicarious liability of the Director and others responsible for the affairs of the

company arose only when the company itself was prosecuted for the offence under the special law. In **Sharad Kumar Sanghi Vs. Sangita Rane – (2015) 12 SCC 781**, the Supreme Court extended the same principle to cover offences under the Indian Penal Code committed by companies, by holding that the Director of a Company could not be tried for offences under the IPC where the main allegations were against the company and the company was not arraigned as an accused. In the instant case against the Petitioners, it is undisputed that the company IIEL is the entity which manufactures, stores and sells explosive and the premises damaged in the explosion belonged to IIEL. Under the circumstances, the prosecution of the Petitioners herein who are the Chairman and the Managing Director of IIEL in the absence of IIEL, the company, is bad in law.

- 36.** The Ld. Counsel for the State has only emphasised on the case of the prosecution as set out in the charge sheet and has argued that the police arrived at the finding that the explosion was triggered in the explosives van stationed in the premises of IIEL, after an elaborate investigation. On being asked as to how the prosecution sought to harmonise such a view in the light of the finding by the DCCE in his report that it was not possible to establish the genesis of the explosion, no satisfactory answer was forthcoming.

37. Thus the petition succeeds. The impugned order dismissing the application for discharge dated 24/01/13 and the order framing charges against the Petitioners in Sessions Trial No. 114/2012 passed by the Additional Sessions Judge, Waidhan, District Singrauli are set aside and the Petitioners are discharged.

**(Atul Sreedharan)**  
Judge

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**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT  
JABALPUR**

**Criminal Revision No.662/2013**

**O R D E R**

**Post for : 14/10/2016**

**(Atul Sreedharan)**  
Judge