IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 742 of 2014

Deepak Dokania, [redacted]

.... Petitioner

-- Versus --

The State of Jharkhand .... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Salona Mittal , Advocate
For the State :- Mr. S.K.Shukla, Advocate

6/25.04.2023 Heard Mr. Salona Mittal, the learned counsel for the petitioner and Mr. S.K.Shukla, the learned counsel for the respondent State including the O.P.no.2.

2. This petition has been filed for quashing of the order taking cognizance dated 12.12.2013 and also the entire criminal proceeding in G.O. (Complaint) Case No.251 of 2013, pending before learned Chief Judicial Magistrate, Seraikella.

3. The brief facts of the complaint case alleging therein that BMC Metal Cast Pvt Ltd is having factory situated at A-18 and 19, Adityapur Industrial Area at Saraikella Kharsawa and registered vide registration no.24270/SBM and at the time of renewal of license at Form no.2 the petitioner is one of the Director and another one Manager of the said factory. On 23.9.2013 one employee namely Tunna Tin met with an accident and got injury at the time of working and then he was admitted APEX hospital Baradwari, Jamshedpur. On receiving of information of accident the complainant inspected the factory premises on 24.9.2013 for finding out reasons of accident. One another person namely Bharat Shyamal Supervisor of said factory stated the occurrence to the complainant. The complainant taken fardbayan on 22.10.2013 regarding accident. During inspection it was found that the said employee has started his duty on 23.9.2013 at 8.00 am and he was changing damaged

sheet at the roof and safety bent came down on ground and being unstable he got injury. It was also found that the management of factory has not provided the safety and due to lack of safety measure the victim sustained injury and the management failed to comply the provisions and violated the provisions of section 32(B) and 32(C) of the Factory Act, 1948 and Rule 56(c)(a) of Jharkhand Factory Rule, 1950. On asking by the complainant, the management of the factory did not produce any record and due to this the management violated the provision of Rule 102 of Factory Rules, 1950.

4. Mr. Mittal, the learned counsel for the petitioner submits that on the basis of the complaint, the learned court has taken cognizance under section 92 of the Factory Act, 1948. He submits that the petitioner no.1 happens to be Director of the said company/firm. He draws attention of the Court to the enquiry report and submits that the worker has also admitted before the Factory Inspector that he was provided with safety equipment like belt and helmet and inspite of that the case has been lodged. On these grounds, he submits that there is no laches on the part of the management however the case has been lodged.

5. On the other hand, the learned counsel for the State submits that accident took place in the premises of factory and on enquiry the case found to be true and that is why case has been lodged and accordingly cognizance has been taken and there is no illegality in the order taking cognizance.

6. In view of the above submissions of the learned counsel for the parties the Court has gone through the contents of the complaint case as well as the order taking cognizance. Admittedly occurrence took place in factory premises and workman has also admitted that safety equipment has been supplied to him. Prima facie it appears that this is

not a case that the management has not provided safely equipment to the workman. To fasten liability upon the management one is also required to look into sections 97 and 111 of Factory Act, 1948 and there are certain obligation cast upon the worker also and the safety equipment has been supplied by the management and not taking advantage of the same, the workman is also liable under section 97 and 111 of the said Act. For ready reference sections 97 and 111 of the said Act are quoted below:

> *"97. Offences by workers.— (1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to 1[five hundred rupees]. (2) Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.*
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> *111. Obligations of workers.—(1) No worker in a factory— (a) shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein; (b) shall wilfully and without reasonable cause do anything likely to endanger himself or others; and (c) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein. (2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both."*

7. On perusal of these two provisions of the Factories Act, it is crystal clear that the scheme of the Factories Act is there, at the first instance the occupier and Manager must be prosecuted in terms of Section 92 of the Act, however, they may seek exemption under Section 101 of the said Act. Such interpretation would render the provisions of Sections 97 and 111 of the Act invalid, It is well settled principle of

interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application, which has been considered by the Hon'ble Supreme Court in the case of "*Visitor AMU and Ors. Versus K.S. Misra",* reported in *(2007) 8 SCC 593*, wherein in para-13, the Hon'ble Supreme Court has held as follows:-

> *"13. The problem can be looked from another angle. If the view taken by the High Court that the provision is directory is accepted as correct, it would in effect amount to making the provisions of sub- clause (c) of Statute 61(6)(iv) otiose. In such a case the consequences provided therein that if no option is exercised within the prescribed time limit, the employee shall be deemed to have opted for the retention of the benefits already received by him would never come into play. It is well settled principle of interpretation of statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the staute. (See Principles of Statutory Interpretation by Justice G.P. Singh Ninth Edition page 68)"*

8. On perusal of the complaint, it transpires that there is no material on record to prima facie suggest that the Occupier or Manager are in any manner responsible for the unfortunate accident. Sections 97 and 111 was not looked into by the Inspector, as admitted in the complaint itself that the workman concern has gone to the roof. No case is made out against the petitioners in terms of the Factories Act in view of the judgment rendered in the case of *J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers,* reported in *(1996) 6 SCC 685*, wherein the Hon'ble Supreme Court has come to the conclusion that *mens rea* is

not the necessity in invoking the provisions of Factories Act. In that case the Hon'ble Supreme Court was examining the certain Sections of the Factories Act, which are not under challenge in this case. Sections 97 and 111 have been ignored by the Inspector of the Factories while submitting the report and at the time of filing the complaint.

9. The Court finds that in the order taking cognizance the word 'cognizance' has been put in the blank space which suggest that there is non-application of judicial mind.

10. Accordingly, entire criminal proceeding in G.O. (Complaint) Case No.251 of 2013, pending before learned Chief Judicial Magistrate, Seraikella is quashed.

11. Cr.M.P. No.742 of 2014 stands allowed and disposed of.

12. Pending petition if any also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

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