

(2014) 07 CHH CK 0011
In the Chhattisgarh High Court
Case No : Criminal Revision No. 247 of 2005

C.S. Tiwari

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Factories Act, 1948 — Section 104A, 105, 7A, 7A(1), 7A(2)(a)

Citation : (2014) CriLJ 4676

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Ashish Shrivastava and Anurag Verma, Advocate for the Appellant;
Anupam Dubey, Deputy Government Advocate, Advocate for the Respondent

Judgement

Sanjay K. Agrawal, J.

1. Invoking the revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (henceforth "Cr.P.C."), applicant C.S. Tiwari, Executive Director (Works) and Occupier of Continuous Casting Shop, Bhilai Steel Plant, Bhilai has filed the instant revision calling in question the order dated 29-04-2005 passed by the State Industrial Court, Chhattisgarh, Raipur in Criminal Appeal No. 8/M.P.I.R.Act/IV/2003 (State of Chhattisgarh v. C.S. Tiwari) and Criminal Appeal No. 9/M.P.I.R.Act/IV/2003 (State of Chhattisgarh v. C.S. Tiwari) by which the State Industrial Court reversed the order of acquittal dated 30-04-2003 passed by the Judicial Magistrate First Class, Labour Court, Durg in Criminal Case No. 480/2000/Factory Act/Fatal (Inspector of Factories v. C.S. Tiwari) and Case No. 481/Category-4/2000/Factory Act/Cri. (Inspector of Factories v. C.S. Tiwari) and sentenced the applicant to pay fine of Rupees One Lakh. The necessary facts, as projected by the Inspector of Factories while filing the two charge-sheets alleging commission of offence punishable under Section 92 of the Factories Act, 1948 (henceforth "the Act, 1948") for contravention of the provisions of Sections 7A(2)

(d), 7A(1) and 7A(2)(a) of the Act, 1948, are as under:

1.1 On 7-7-2000, applicant C.S. Tiwari was the Executive Director (Works) and Occupier of the Continuous Casting Shop, Bhilai Steel Plant, Bhilai, where deceased Upendra Kumar and Bhupendra Banjare were working as contract labourers. It is alleged that on 7-7-2000, in the Continuous Casting Shop, Bhilai Steel Plant, Bhilai, while deceased Upendra Kumar and Bhupendra Banjare were performing cable glanding job in ladle furnace branch inside isolator panel room, one ladle, filled with molten metal having a high temperature, while placing it to a transfer car, touched one of the stools and got inclined, as a consequence thereof, the molten metal spilled out of the ladle and spurted inside the isolator panel room and caused injuries to deceased Upendra Kumar and Bhupendra Banjare resulting into their death.

1.2 Upon a notice of the accident being served by the applicant/Occupier to the Inspector of Factories M.K. Agrawal, Inspector of Factories and Deputy Director, Industrial Health and Safety visited the place of accident and called upon the applicant/Occupier to furnish an explanation. Upon furnishing the explanation, the Inspector of Factories, finding the explanation unsatisfactory, submitted two charge-sheets under Section 105 of the Act, 1948 before the Court of Judicial Magistrate First Class, Labour Court, Durg for commission of offence punishable under Section 92 of the Act, 1948 for violation-of Sections 7A(2)(d), 7A(1) and 7A(2)(a) of the Act, 1948, alleging that the applicant, being the Occupier, failed to ensure safety measures, as a result of which, the molten metal spilled out and caused fatalities to deceased Upendra Kumar and Bhupendra Banjare. Two cases, being Criminal Case No. 480/2000/Factory Act/Fatal (Inspector of Factories v. C.S. Tiwari) and Case No. 481/Category-4/2000/Factory Act/Cri. (Inspector of Factories v. C.S. Tiwari) were registered. In Criminal Case No. 480/2000/Factory Act/Fatal, the Judicial Magistrate, by order dated 30-04-2003, acquitted the applicant/Occupier of the charge framed against him giving benefit of doubt. Challenging the order of acquittal passed in Criminal Case No. 480/2000/Factory Act/Fatal, an appeal, being - Criminal Appeal No. 8/M.P.I.R.Act/IV/2003, was filed by the State Government, which was allowed by the State Industrial Court by the impugned judgment dated 29-04-2005 and the sentence of fine of Rupees One Lakh was imposed for the offence punishable under Section 92 of the Act, 1948. In Case No. 481/Category-4/2000/Factory Act/Cri. also, the Judicial Magistrate, by order dated 30-04-2003, acquitted the applicant/Occupier of the charge framed against him giving benefit of doubt. Challenging the order of acquittal passed in Case No. 481/Cat-egory 4/2000/Factory Act/Cri., an appeal, being Criminal Appeal No. 9/M.P.I.R.Act/IV/2003, was filed by the State Government, which was allowed by the State Industrial Court by the impugned judgment dated 29-04-2005 and the sentence of fine of Rupees One Lakh was imposed for the offence punishable under Section 92 of the Act, 1948. The aforesaid two criminal appeals were cumulatively decided by the impugned judgment and collective sentence of fine of Rupees One Lakh was imposed upon the applicant/Occupier.

1.3 Feeling aggrieved, applicant/Occupier C.S. Tiwari has filed the instant revision challenging the judgment passed by the State Industrial Court in the two criminal appeals.

2. Shri Ashish Shrivastava and Shri Anurag Verma, learned counsel appearing for the applicant/Occupier would submit that the State Industrial Court has committed a manifest legal error in reversing the order of acquittal passed by the Judicial Magistrate First Class (Labour Court). They would further submit that the finding recorded by the State Industrial Court is clearly perverse and contrary to the evidence available on record and, therefore, the order passed by the State Industrial Court, convicting the applicant/Occupier, deserves to be set aside and the order of acquittal passed by the Judicial Magistrate First Class (Labour Court) deserves to be restored.

3. Opposing the submission made on behalf of the applicant/Occupier, Shri Anupam Dubey, learned Deputy Government Advocate appearing for the State/non-applicant would submit that the State Industrial Court, relying upon the testimony of M.K. Agrawal, Inspector of Factories, which was duly corroborated by the testimony of P.R. Sonvanshi, Crane-Operator, has rightly reversed the order of acquittal passed by the Judicial Magistrate First Class.

4. I have heard and considered the rival contentions raised by learned counsel appearing for the parties and have perused the record with utmost circumspection.

5. The following two questions arise for determination in this revision--

1. Whether the applicant in the capacity of an Occupier complied with the provisions contained in Section 7A(2)(d) of the Act, 1948 and the finding recorded by the appellate Court in this regard is just and proper? (Subject-matter of Case No. 481/Category-4/2000/Factory Act/Cri. and Criminal Appeal No. 9/M.P.I.R.Act/IV/2003).

2. Whether the applicant/Occupier has complied with the provisions contained in Sections 7A(1) and 7A(2)(a) of the Act, 1948 and the finding recorded by the appellate Court in this regard is just and proper? (Subject-matter of Criminal Case No. 480/2000/Factory Act/Fatal, and Criminal Appeal No. 8/M.P.I.R.Act/IV/2003).

6. Answer to First Question:

M.K. Agrawal, Inspector of Factories was examined. He was a duly notified Inspector of Factories on the date of accident. He clearly deposed that though molten metal having a high temperature, filled in the ladle, was being transported by a crane at the height of 25 metres just above the isolator panel room, the safety of deceased Upendra Kumar and Bhupendra Banjare, who were doing the job of cable glanding work in the said isolator panel room, was not ensured. There was no provision for safe emergency exit from the isolator panel room. On account of the accident, the two workers roasted, as, on the only door

of the isolator panel room, molten metal spilled out from the ladle and spurted inside the room. There being no other space or exit in the emergent situation, the two workers could not come out from the room and came into contact with the molten metal and as a consequence thereof got burn injuries and succumbed to death. The aforesaid statement of M.K. Agrawal, Inspector of Factories has been supported by P.R. Sonvanshi, who was the Crane-Operator in the Continuous Casting Shop of the Plant.

7. Section 104A of the Act, 1948 provides as to onus of proving limits of what is practicable, etc., as under:

"104A. Onus of proving limits of what is practicable, etc.--In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or, as the case may be, all practicable measures were taken to satisfy the duty or requirement."

8. A bare and close perusal of the aforesaid provision would show that where in a proceeding for an offence for the contravention of any provision of the Act, 1948 alleging failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that all practicable measures were taken to satisfy the duty or requirement.

9. Since the testimony of M.K. Agrawal, Inspector of Factories states a failure on the part of the applicant/Occupier to comply with the duty or requirement to ensure the safety of the two deceased workers, and his testimony is corroborated by the testimony of Crane-Operator, therefore, in view of Section 104A of the Act, 1948, it was incumbent upon the applicant/Occupier to prove that all practicable measures, as contemplated under Section 7A(2)(d) of the Act, 1948, were taken to satisfy the duty or requirement in regard to the safety of the two deceased workers who were working in the isolator panel room. Section 7A(2)(d) of the Act, 1948 provides as under:

"7A. General duties of the occupier.--

xxxxx xxxxx xxxxx

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include--

xxxxx xxxxx xxxxx

(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;"

10. The very object of the Act, 1948 is to provide protection to the workers and

for the improvement of working conditions within the factory as per provisions of the Act, 1948. The Act, 1948 prescribes to maintain a system of work of the factory that is safe and without risk to the workers working in it. Section 7A of the Act, 1948 was not originally included in the Act, 1948. Section 7A of the Act, 1948 was inserted by the Amending Act 20 of 1987 to provide especially for the safeguard to be adopted against the use and handling of hazardous substances by the Occupiers of the factories and laying down of emergency standards and measures. Keeping the aforesaid object of enacting Section 7A of the Act, 1948 prescribing general duties of the Occupier, it appears that it is the statutory duty imposed by Section 7A(2)(d) of the Act, 1948 that all places of work in the factory have to be kept in safe condition so that there may not be any risk to the health of the person working in the factory and it further imposes an obligation on the part of the Occupier to make safe provisions for accessing to, and aggressing from, the place of work within the factory and such provisions made for accessing to and aggressing from should be without risk in case of emergency.

11. In J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, highlighting the object of the Amending Act of 1987, by which Section 7A of the Act, 1948 was inserted in the Act, 1948, their Lordships of the Supreme Court expressed about the responsibility of an Occupier as under:

"38. By the Amending Act of 1987 it appears that the legislature wanted to bring in a sense of responsibility in the minds of those who have the ultimate control over the affairs of the factory, so that they take proper care for maintenance of the factories and the safety measures therein. The fear of penalty and punishment is bound to make the Board of Directors of the company more vigilant and responsive to the need to carry out various obligations and duties under the Act, particularly in regard to the safety and welfare of the workers....."

12. Thus, keeping in view the statutory responsibility of an Occupier flowing from Section 7A(2)(d) of the Act, 1948 and considering the responsibility of the Occupier, as held by their Lordships of the Supreme Court in J.K. Industries case (supra) and the testimony of M.K. Agrawal, Inspector of Factories in the instant case duly corroborated by the testimony of P.R. Sonvanshi, Crane-Operator and further considering the fact that not taking precaution to ensure safety by not providing emergency safe exit in the isolator panel room and failure of the applicant/Occupier to adduce any evidence in support of his case and his failure to discharge the burden as provided in Section 104A of the Act, 1948, it cannot be held that the State Industrial Court was unjustified in holding the applicant responsible for not ensuring compliance of provision of Section 7A(2)(d) of the Act, 1948. Thus, the applicant is held guilty for violation of provision of Section 7A(2)(d) of the Act, 1948.

13. Answer to Second Question:

This brings me to the question relating to the subject-matter of Criminal Appeal No. 8/M.P.I.R.Act/IV/2003 arising out of Criminal Case No. 480/2000/Factory Act/

Fatal that the applicant/Occupier failed to comply with the provisions contained in Sections 7A(1) and 7A(2)(a) of the Act, 1948, which read as under:

"7A. General duties of the occupier.--

(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include--

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;"

14. To prove the violation of the provisions contained in Sections 7A(1) and 7A(2) (a) of the Act, 1948, M.K. Agrawal, Inspector of Factories was examined. He clearly stated that the applicant/Occupier failed to ensure safety in the system of placing the ladle on transfer car, as a result of which, the ladle, filled with molten metal, got inclined and the molten metal spilled out thereof and spurted inside the isolator panel room and caused the fatalities. The further flaw found by M.K. Agrawal, Inspector of Factories was that while placing the ladle in the transfer car, the Crane-Operator, at the height of 25 metres above the isolator panel room, was not in a position to clearly see the seating point of the two deceased workers. That being so, the Crane-Operator has to depend upon the signal of the Signal-Man and in this process, if the ladle is not placed exactly at the required place of transfer car, there always remains chance of ladle getting inclined and the result of which would be spilling out of the molten metal filled in the ladle. This testimony is duly corroborated by P.R. Sonvanshi, Crane-Operator. No evidence has been led by the applicant/Occupier in view of Section 104A of the Act, 1948, which he was obliged to lead to clarify the burden placed upon him. In the considered opinion of this Court, the finding recorded in this regard by the State Industrial Court is absolutely justified and I hereby affirm the same.

15. Shri Ashish Shrivastava, learned counsel appearing for the applicant/Occupier would lastly contend that the applicant/Occupier was not responsible, as he had taken all reasonable and practicable safety measures in all the places of work in the Plant and, therefore, the sentence of fine of Rupees One Lakh for the offence punishable under Section 92 of the Act, 1948 is harsh and deserves to be reduced.

16. In J.K. Industries case (supra), their Lordships of the Supreme Court held that the offences under the Act, 1948 are not a part of general penal law, but arise out of the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself an offence. It has been further held that what is made punishable under the Act, 1948 is the "blameworthy" conduct of the Occupier, which

resulted in the commission of the statutory offence.

17. Thus, considering the fact that the applicant/Occupier has been found guilty for violation of the provisions of Sections 7A(2)(d), 7A(1) and 7A(2)(a) of the Act, 1948, which provisions the applicant was obliged to comply with being the Occupier of the Continuous Casting Shop, Bhilai Steel Plant, Bhilai and further considering the fact that in the said accident, abovenamed two workers lost their lives and only the sentence of fine is imposed upon the applicant, I do not consider it a case of reduction of amount of fine. The amount of fine imposed is appropriate and commensurate to the guilt of the applicant. Concludingly, the revision, being devoid of any merit, deserves to be and is hereby dismissed.