
(2003) 08 OHC CK 0012
In the Orissa High Court
Case No : C.R.M.C. No. 9304 and 2001

Edward Grayson Harvell

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 30-08-2003

Acts Referred:

Factories Act, 1948 — Section 62, 7A(2), 92
Orissa Factories Rules, 1950 — Rule 62D

Citation : (2003) 08 OHC CK 0012

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Jayant Das, K.G. Raghavan, S. Sharma, L.K. Bhushan, R. Sood, S. Mahedevan, A.N. Patnaik, A.N. Das and N. Sarkar, for the Appellant; Sisir Das, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This application has been filed with a prayer to quash the proceeding initiated by the Sub-divisional Judicial Magistrate, Jharsuguda, in Complaint Case No. 2(C) CC 105/2001 against the Petitioner, who is described as occupier of M/s. I.B. Thermal Power Station, Banharpalli, Dist. Jharsuguda.

2. The short facts relevant for disposal of this application are that the aforesaid complaint case has been filed alleging violation of Sections 62 and 7A(2)(b) of the Factories Act, 1948 (in short "the Act") as well as Rule 62-D of the Orissa Factories Rules, 1950 (hereinafter "the Rules") punishable u/s 92 of the Act jointly against the Petitioner in his capacity as the occupier of the I.B. Thermal Power Station (ITPS) and against Respondent No. 2 in his capacity as the Deputy General Manager (P&IR) and Manager under the Act of the aforesaid ITPS. The further allegation in the complaint is that the Petitioner and Respondent No. 2 had engaged some workers for stone pitching work relating to the in-take channel (water reservoir) in their factory. On 17th April, 2001 in course of performance of the said work, one of the workers by name Pravin Nayak, who

was a mason, drove a tractor carrying certain co-workers and the tractor hit a heap of boulders on the bank resulting in the death of said Pravin Nayak. It has been alleged that the deceased was unauthorisedly driving the vehicle and also did not have a valid licence to drive the vehicle. The allegation against the Petitioner and Respondent No. 2 is that they have failed to take any safety measures in the performance of the aforesaid work and that they have failed to enter the details of the workers in the factory's register of adult workers.

3. Learned Counsel for the Petitioner submitted that the prosecution as against the Petitioner is not maintainable in view of the fact that neither the provisions of Section 7-A(2)(b) of the Act nor the provisions of Rule 62-D of the Rules are attracted to the facts and circumstances of the case.

4. For the sake of convenience, it would be appropriate to quote hereinbelow the provisions of Section 7-A(2)(b) of the Act:

7-A. 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)

(b) the arrangement in the factory for ensuring safety and absence or risks to health in connection with the use, handling, storage and transport of articles and substances;

xxxxxx xxxxxx xxxxx

Learned Counsel for the Petitioner further submitted that the prosecution is based upon the statement made by one Anupam Mohapatra, Team Leader of the Support Services of the ITPS, Banharpalli, on the 14th May, 2001 before the Inspector of Factories and Boilers. The said statement of Anupam Mohapatra, which is enclosed to the complaint petition (Annexure-A) tends to reveal that while the tractor was parked near the camp, its driver Bhimsen Saha had gone to canteen for taking tea and the helper of the tractor Bihari Oram was guarding the tractor with the key. Pravin snatched away the key from Bihari and started driving the tractor. Then he forced Ors. to seat in the empty trolley of the tractor. Out of fear four female workers sat on the trolley and Bihari Oram stood on the connecting link between the tractor and the trolley. Pravin then drove the tractor from the camp house towards the stone pitching area where plying of transport vehicle was not allowed as work was in progress. After driving about a length of 900 mtrs. the left wheel of the tractor hit a boulder on the bank and Pravin lost his balance and could not control the tractor, which fell down towards the outer side of the slope. Bihari Oram and four female workers jumped from the tractor just before falling of the tractor and saved themselves.

Statements of a female worker, namely, Tara Khadia, the tractor helper and the driver, namely, Bihari Oram and Bhimsen Saha, were also recorded. The said statements have been enclosed to the complaint petition. They have stated that on 27.4.2001, Parvin Nayak was the Sardar and he was totally in a drunken state. Parvin persuaded the female workers to sit on the trolley so that he would take them for fetching boulders. Relying upon these statements, learned Counsel for the Petitioner submitted that it cannot be said that the Petitioner violated the provisions of Section 7-A(2)(b) of the Act by not ensuring safe movement of vehicle for use, handling, storage and transport of articles in the factory causing loss to valuable lives. Though the learned Counsel for the Petitioner stretched his argument to the extent that this work was only connected to a construction work to which the provisions of the aforesaid section were not applicable, a bare reading of the prosecution report, which is annexed to the complaint petition (Annexure-A), reveals that there is no allegation of violation of the provisions of Section 7-A(2)(b) of the Act. The manner in which the accident occurred was due to act of an irrational person done in a whimsical manner which will never attract Section 7A(2)(b) of the Act in the absence of any specific allegation to that effect. So, the prosecution against the Petitioner, so far as the provisions of Section 7A(2)(b) are concerned, is not maintainable. But so far as the prosecution against the Petitioner for the offences u/s 62 of the Act and Rule 62-D of the Rules is concerned, I am not inclined to interfere with the order of cognizance.

5. Accordingly, the prosecution against the Petitioner u/s 7A(2)(b) of the Factories Act is quashed. So far as prosecution under Rule 62-D of the Orissa Factories Rules and Section 62 of the Factories Act is concerned, the same shall continue and the Petitioner will be at liberty to raise the contention regarding maintainability thereof during the course of trial. It is open to the Petitioner to file an application before the S.D.J.M. Jharsuguda, to that effect.

The Criminal Misc. Case is allowed to the extent indicated above.