
(2013) 12 KAR CK 0306
In the Karnataka High Court
Case No : Criminal P. No. 11712 of 2013

G. Mounaguruswami and Seetharamayya	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0306

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : N.H. Hansi, for the Appellant; V.M. Banakar, Addl. SPP, for the Respondent

Final Decision : Allowed

Judgement

Jawad Rahim, J.—Petitioners are arraigned as accused 1 and 2 in C.C. No. 810/2012 for offences punishable under Sections 336, 338 of the IPC, on the file of the J.M.F.C. and they seek quashing of the proceedings. Heard learned counsel Sri. Hansi, for the petitioners and Sri. V.M. Banakar, learned Addl. S.P.P. for the State. Perused records in supplementation thereto which reveals the factual matrix:

a) Petitioners are permanent employees of the Hindustan Coco-Cola Beverages Private Limited and are presently working in Coco Cola Factory at Koppal. The factory unit is situated in Survey Number 193-195, Hirebaganal Village, Ginigera Post, Koppal District. They are Factory Manager and Maintenance Manager and are discharging their duties in that capacity. During tenure of their office, the incident occurred in the factory premises resulting in injuries to workman by name Yasin, who was an employee of M/s. Cotmac Private Limited, Hospet and he suffered injury.

b) It is alleged he was assigned job to maintain air conditioners and while performing such duty he stepped on false ceiling which broke resulting in his fall from 15 meters height. He sustained injury and was rushed to the hospital for

medication. He filed petition seeking compensation under the provisions of Workman's Compensation Act in W.C. No. 44/2013. The Commissioner for Workman's Compensation is seized of the claim for 12.00 lakhs sought as compensation against his employer - M/s. Cotmac Private Limited. The claim is pending adjudication. Meanwhile, the Deputy Director of Factories, Bellary Division having been informed of the incident has issued a show cause notice dated 13.6.2012 to the company alleging contravention of Rule 7A(1) of the Karnataka Factory Rules 1969 and based on the said notice, further proceedings have been initiated through a private complaint u/s 200 of the Cr.P.C. before the Judicial Magistrate, Koppal arraigning the petitioners for offence punishable u/s 92 of the Factories Act, 1948. Later, the jurisdictional Magistrate has taken cognizance for the said offence based on the private complaint vide its order dated 2.7.2012 and the case is now registered in C.C. No. 684/2012.

c) While the situation stood thus, it is alleged the victim - Yasin filed a complaint before the jurisdictional Magistrate, I Class, Koppal, seeking prosecution of the petitioners for offence punishable under Sections 337 and 338 of IPC, which is registered in C.C. No. 810/2012.

d) The petitioners aggrieved by initiation of prosecution under the Indian Penal Code have sought quashing of the proceedings. Notice of this petition has been taken by Addl. S.P.P.

2. I have heard learned counsel on both sides.

3. From the factual matrix referred to above and the grounds urged, it admits of no doubt the incident has occurred in factory premises which issue has to be considered in an appropriate proceedings.

4. It is not in dispute that the competent authority -Deputy Director of Factories, Bellary Division after issuing show cause notice on 13.6.2012 has initiated prosecution of the petitioners herein for contravention of Rule 84 and 7A(1) of the Karnataka Factory Rules, 1969 which is punishable u/s 92 of the Factories Act. The proceedings are pending in C.C. No. 684/2012. Subsequent to the registration of that case on the basis of the complaint of the victim, C.C. No. 810/2012 has since been registered to try them for offence punishable under sections 337 and 338 of the IPC which action is during pendency of action initiated for contravention of Rule 7-A(1), Rule 84 of the Karnataka Factories Rules 1969, which are punishable under the provisions of Section 92 of the Karnataka Factories Act.

5. Rule 84 mandates no process of work shall be carried on in any factory in such a manner as to cause risk of bodily injury. If that mandate is contravened, then u/s 92 of the Factories Act, the contravener could be proceeded against and on proof of contravention, the provisions of the Karnataka Factories Act 1948 provides punishment for a term which may extend to two years or with a fine which may extend to One lakh rupees or with both. If contravention is continued after conviction, with a further fine, which may extend to one lakh rupees for

each day on which the contravention is so continued. The proviso to said provision makes it more stringent in awarding punishment if contravention of provision in Chapter-IV of the Act is proved or u/s 87 has resulted in accident causing death or serious bodily injury, the fine shall not be less than Rs. 25,000/- in the case of death and Rs. 5,000/- in case of serious bodily injuries placing that provision in juxtaposition with Section 337 and 338 IPC, we have examined whether simultaneously two penal action is permissible.

6. It could be seen the offence defined under these sections would be attracted on proof of negligence of the offender. Section 337 IPC postulates whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. Provision of Section 338 IPC would be attracted if the offender has caused grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others.

7. Due to negligence, the victim having suffered simple injuries, provision of 337 is attracted. If the victim has suffered grievous injuries, Section 338 IPC. is attracted, the punishment prescribed for both offences is 6 months or 2 years imprisonment with fine as the case may be. The punishment prescribed by Section 92 is imprisonment for a period of 2 years and fine which is more than the punishment prescribed u/s 337 and 338 of the IPC.

8. The question is whether the overt acts or the omissions attributed to the petitioners resulting in accident falls within the provision of the special enactment or the Indian Penal Code.

9. I am of the opinion that the allegation made against the petitioners would attract the contravention of Rule 84 Rule 7(A(1) of the Karnataka Factory Rules, 1969 punishable u/s 92 of the Karnataka Factories Act, 1948, as also the provision of Section 337 and 338 of IPC. Whether the offences are similar has to be decided applying the provision of 219 of the Cr.P.C. which defines what is similar offence. Sub Section (2) of Section 219 envisages" offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law. In the. instant case, the punishment prescribed for offence 338 IPC and 92 of the Karnataka Factories Act is same.

10. It is a settled principle of law if the act of the petitioners attracts the provision of the Indian Penal Code or any special law or local law, then the prosecution in respect of one of such offence is only permissible. This issue has been considered by this Court in detail in the order passed in Criminal Petition No. 9104/2009, connected with Criminal Petition No. 9105/2009, Criminal Petition No. 9106/2009 and Criminal Petition No. 914/2009 disposed of on 22nd January 2010 in Circuit Bench at Gulbarga. The proposition of law laid down in

the said decision applies to the facts of this case.

11. In the circumstances, I am satisfied, the petitioners have made out a case to quash the proceedings in C.C. No. 810/2012 registered on the complaint of victim - Yasin.

12. Consequently, the petition is allowed. The proceedings in C.C. No. 810/2012, on the file of the J.M.F.C, Koppal, are quashed. It is necessary to observe that quashing of the proceedings in C.C. No. 810/2012 shall not affect the prosecution of the petitioners in C.C. No. 684/2012 under the provisions of Factories Act.