
(1995) 09 KAR CK 0050
In the Karnataka High Court
Case No : Criminal P. No. 360 of 1991

General Manager, Wheel and Axle Plant and Another	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Factories Act, 1948 — Section 92
Penal Code, 1860 (IPC) — Section 21

Citation : (1995) 5 KarLJ 605 : (1996) 1 LLJ 943

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.B. Vishwanath, J.—In this criminal petition the petitioners accused have prayed that the entire proceedings in C.C.No. 4916/1989 on the file of the III C.M.M. Bangalore City should be quashed.

2. A few facts necessary for the purpose of this petition are : The Inspector of Factories, Bangalore Division-I, Bangalore-10, filed a complaint against the petitioners alleging that one P. Jagadeeshen, HSA-I, died as a result of burn injuries on account of improper maintenance of the Furnace "B" while in use and failing to take adequate care about the following cases :

"A (a) leakage of water to the heart of molten metal from any one source of the following :

- (i) Bessel ring;
- (ii) Slag gate jacket;
- (iii) Electrode-holders Jacket;
- (iv) Busbar jacket led to the cause of mild explosion above molten bath ; etc.

B (a) Allowed the deceased with asbestos apron., instead of aluminized suit for working near the Furnace-B.

(b) Allowed the deceased to work near dangerous zone without proper training.

Thus the accused have contravened the provision of Rules 83 and 84 of Karnataka Factories Rules, 1969."

3. The complainant (Inspector of Factories) has therefore prayed that the petitioners-accused should be punished u/s 92 of the Factories Act.

4. The learned Magistrate took cognizance and issued process to the petitioners-accused who are working in Railways as General Manager and Deputy Chief Mechanical Engineer, Wheel and Axle Plant, Railways, Yelahanka, Bangalore. It is argued by the learned counsel for the petitioners-accused that the proceedings before the learned C.M.M. Bangalore should be quashed because no sanction u/s 197 Cr.P.C. has been obtained. It is contended by the learned Government Pleader appearing for the complainant-respondent that the accused are the employees of the Indian Railway Board and so no sanction of the Board is required for prosecuting them for the offence u/s 92 of the Factories Act.

5. It is laid down by the Supreme Court in *G.A. Manterio v. The State of Ajmer* (1995 II LLJ 538) that the true tests in order to determine whether a person is an officer of the Government are :

(i) whether he is in the service or pay of the Government, and

(ii) Whether he is entrusted with the performance of any public duty.

After applying these two tests the Supreme Court has been pleased to lay down that an official or an Officer working in the Railways is a public servant within the meaning of Section 21 IPC. In view of the law laid down by the Supreme Court the two petitioners accused who are top officers in the Railways are public servants.

6. It has been laid down by the Supreme Court in *State of Maharashtra v. Dr. Budhikota Suharao* AIR 1983 SC 901 that the requirement of obtaining sanction to prosecute is mandatory and taking cognizance of an offence in the absence of sanction cannot be allowed to stand. When once it is held that the petitioners-accused are public servants, the prosecution launched against them without obtaining permission as contemplated u/s 197 Cr.P.C. cannot be sustained.

7. For the aforesaid reasons the proceedings against the petitioners-accused on the file of the III Addl. C.M.M. in C.C.No. 4916 of 1989 are quashed. Petition allowed accordingly. It is made clear that this order will not come in the way of the dependents of the deceased P. Jagadeeshen claiming any compensation.