

(2004) 11 KAR CK 0002
In the Karnataka High Court
Case No : Cr.P. No. 211 of 2004

G.P. Pillai and Others

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Factories Act, 1948 — Section 92
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 304 A, 379

Citation : (2005) 104 FLR 1027 : (2005) ILR (Kar) 381 : (2005) 2 KarLJ 218 :
(2005) 2 KCCR 116 SN

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : K. Laxminarayan and N. Manohar, for the Appellant; S.P.P., for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majage, J.—The petitioners, who are accused in C.C.No. 9087/2002 on the file of the Court of V Additional Metropolitan Magistrate, Bangalore City, have approached this Court u/s 482 of Cr.P.C. with a request to quash the proceedings initiated in the said case besides cognizance taken by that Court for the offence u/s 304A of I.P.C.

2. Brief facts, which gave rise to the present matter, are;

The first petitioner-occupier/manager, second petitioner-Vice-President (Production) and third petitioner- Supervisor of M/s. Caryl Laboratories Limited, situated in Chikkaswamy Layout at Jaraganahalli in Bangalore, have been prosecuted in C.C.No. 12933/ 2001 on the complaint filed against them for the offence punishable u/s 92 of the Factories Act, alleging that on 30.09.2001 a workman of the said factory by name Shivanand got electric shock holding a pipe, connected to the overhead tank and water basin, to ensure proper support to come down through the M.S. ladder and died and that was due to violation of

Rules relating to safety measures provided to prevent electrocution and thereby committed the offence alleged.

After the said case was filed by the Inspector of Factories, the police Inspector of Jayaprakash Nagar Police Station, within whose jurisdiction the said factory is located, has filed charge-sheet u/s 304A of I.P.C. after completing investigation in Crime No. 615/2001 registered against the petitioners, alleging that inspite of bringing to the notice of the petitioners-accused repeatedly that the machine is giving current shock, they neglected with irresponsibility telling that nobody will die even if there is any current shock and as such on account of their negligence, Shivanand a worker in the said factory, got electrocution on 30.09.2001 when he had been to attend the work of cleaning distilled tank of the said factory and died and hence, they have committed offence u/s 304A of I.P.C. So, challenging the cognizance taken and issuing process against them for the offence u/s 304A of I.P.C. the petitioners are before this Court.

3. With the consent of both sides, the matter was taken for final hearing and heard. It was vehemently argued for the petitioners accused that when they have been prosecuted before the Criminal Court under Factories Act, initiating parallel proceeding against them again on the same set of facts is not at all proper and as such, the proceedings require to be quashed. Placing reliance on a decision of this Court in the case of Daljith Singh Ghai and Another Vs. State of Karnataka, it was also submitted for them that mere violation of safety measures by them or their mere negligence, even if believed, does not attract Section 304A of I.P.C. So also relied on a decision of Supreme Court in the case of Ambalal D. Bhatt Vs. The State of Gujarat, which is in fact relied on by this Court in the decision referred to already. Further relied on the decision in the case of G. Sagar Suri and Another Vs. State of U.P. and Others, in support of the argument that this Court can exercise its power u/s 482 of Cr.P.C. in such a matter. On the other hand, the learned Government Pleader supported the charge-sheet filed against the petitioners. Perused the records carefully.

4. The point for consideration is;

"Whether proceedings initiated against the petitioners for the offence u/s 304A of I.P.C. require to be quashed or not?"

5. Power of this Court u/s 482 of Cr.P.C. to quash proceedings is not in issue. If need be reference can be had to the decision of the Supreme Court in the case of G. SAGAR SURI (supra), wherein it is held that this Court can exercise power u/s 482 of Cr.P.C. if a case is made out to exercise its inherent power u/s 482 of Cr.P.C. Such a power requires to be exercised in the present case or not, is the point for consideration.

6. Whether or not, the petitioners-accused violated the rules under the Factories Act and Rules is not a matter to be decided by this Court at this stage in the present matter, as it is to be adjudicated in the Criminal Case filed by the Inspector of Factories. What is required to be considered is, whether the

negligence alleged against the petitioners attracts Section 304A of I.P.C or not and whether same set of facts are present in the present case and also in the case filed by the Inspector of Factories?

7. At the outset, it may be noted that in the case filed by the Inspector of Factories, violation or non-compliance of the Rules under the Factories Act and Rules framed thereunder is in issue whereas, in the case on hand culpable negligence is involved and not the violation/non-compliance of Factories Act and Rules framed thereunder. Next, the requirements/ingredients for the offence in the present case are different from that of the criminal case filed by the Inspector of Factories. Thirdly, there is specific allegation against the petitioners that in spite of bringing to their notice repeatedly that there is possibility of electrocution or current shock, they neglected saying that nobody will die if current gives shock. Fourthly, the proceedings initiated against the petitioners by the Inspector of Factories is under Factories Act for a different offence and not for the same offence, because the impugned charge-sheet has been filed for the offence punishable under Penal Code. In other words, under two different enactments, two different proceedings have been taken for two different offences, though before the same Court. Fifthly, the petitioners have not been prosecuted for two different offences on the same set of facts/ allegations.

8. It is well-settled that even where an act or omission is punishable under two or more enactments, the offender could be prosecuted and punished under either or any of those enactments, but cannot be punished twice for the same act or omission constituting an offence in view of Section 26 of the General Clauses Act, which runs as under;

"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence".

9. Said provision lays emphasis/stresses on the ingredients, which constitute two different offences with which a person is charged and not on the facts alleged in the two complaints filed for two different offences. In other words, if the offences are not the same but are distinct or made up of different ingredients, the bar imposed cannot be invoked. In this regard, reference can be had to the decision of Supreme Court in the case of *The State of Bombay Vs. S.L. Apte and Another*, .

10. It is also settled that the two provisions in the two Acts may have conterminous fields of operation. Still both the Acts can function with full vigor side by side in their own parallel channels. So while considering Sections 403 and 300 of Cr.P.C. and the provisions contained in Article 20(2) of the Constitution of India as well as Section 26 of the General Clauses Act (extracted above), in the case of *Manipur Administration Vs. Thokchom, Bira Singh*, . the Supreme Court has observed that both in case of Article 20(2) of the constitution as well as Section 26 of the General Clauses Act, to operate as a bar, the second

prosecution and consequential punishment thereunder must be for the same offence i.e, an offence whose ingredients are same.

11. In the case of Bhaiyalal and Others Vs. State of Madhya Pradesh, wherein prosecution of accused in two different proceedings-one on the allegation that trees standing on State Government land have been cut by them and thereby committed offence of theft punishable u/s 379 of the I.P.C. and another for the offence punishable u/s 253 of the M.P. Land Revenue Code for having contravened Section 240 of the said Code i.e, for two different offences in two different proceedings was held proper by the High Court of Madhya Pradesh.

12. Of course, the learned counsel for the petitioners strongly relied on the decision of the Supreme Court in the case of AMBALAL D. BHATT (supra), which is relied on by this Court in the case of DALJITH SINGH (supra), in support of his argument that mere carelessness is not sufficient to prosecute for the offence u/s 304A of I.P.C. But in the present case, the allegations are that inspite of repeated bringing to the notice of the petitioners that the G.I. Pipe is giving current (electric) shock, they neglected with irresponsibility telling that nobody will die by such shock whereas, such allegations were not present in the case of DALJITH SINGH (supra), so also in the case of AMBALAL D. BHATT (supra), the Supreme Court found that giving wrong batch number by the accused was not the direct cause for the death of persons, who had taken drugs having wrong batch number and as such, held that Section 304A of I.P.C. is not attracted. That is not so in the present case. So, having regard to the facts and circumstances of the case on hand besides the specific allegations made in the charge-sheet, I am of the opinion that the said two decisions relied on for the petitioners do not help them in any way.

13. In the above view, it cannot be said that Section 304A of I.P.C. is not attracted to the case on hand so as to invoke Section 482 of Cr.P.C. No other point has been raised nor arises for consideration.

In the result, the petition is rejected. It is made clear that the observations made during the course of this order are for the purpose of present petition only.