

(2015) 03 JH CK 0124

In the Jharkhand High Court

Case No : Criminal M.P. No. 1513 of 2014

Hemant Madhusudan Nerurkar and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Factories Act, 1948 — Section 7(A), 92

Citation : (2015) 3 AJR 633

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Indrajit Sinha and Arpan Mishra, for the Appellant; Anita Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J—This application has been filed for quashing the entire criminal proceeding initiated against the petitioners in connection with C2 Case No. 470 of 2013 including the order dated 07.10.2013 passed by Judicial Magistrate, 1st Class, Jamshedpur, whereby and whereunder he took cognizance of the offence under sub-section 2(C) of Section 7(A) of the Factories Act, 1948. It appears that a complaint filed in the court of Chief Judicial Magistrate, Jamshedpur on 07.10.2013 against the petitioners alleging therein that on 26.06.2013, the deceased-worker was passing through fabrication yard and in course of that, he got himself pressed under a Double Cone Valve, which resulted to his death. Petitioners arraigned in this case being the occupier and manager of M/s. Tata Steel Limited. It appears that after receiving said complaint, the learned court below took cognizance of the offence under sub-section 2(C) of Section 7(A) of the Factories Act, 1948 against the petitioners.

2. It is submitted by Mr. Indrajit Sinha, learned counsel appearing for the petitioners, that from the perusal of impugned order, it is clear that the learned Judicial Magistrate, Jamshedpur has not applied his judicial mind on the material available before ? 2 - him and took cognizance under sub-section 2(C) of Section

7(A) of the Factories Act. Shri Sinha submitted that sub-section 2(C) of Section 7(A) of the Factories Act, 1948 is not a penal section, rather it prescribes general duties of the management for safety of the workers. This shows that learned Judicial Magistrate has not applied his judicial mind on the facts of the case. He submitted that learned Judicial Magistrate took cognizance merely by filling blank space in the order-sheet.

3. Having heard the submissions, I have gone through the records of the case.

4. From perusal of impugned order, I find that Judicial Magistrate had filled up the gap in the order-sheet format which was typed from before. It further appears that part of the blank space was filled up in different hand-writing. It further appears that before filling up the gap, the learned Judicial Magistrate has not considered the law. Sub-section 2(C) of Section 7(A) of the Factories Act, 1948 deals with the general duties of the employer and the same is not a penal section. The penal section for violation of provisions contained in sub-section 2(C) of section 7(A) is section 92 of the Factories Act. However, it appears that the learned Judicial Magistrate had not gone through Section 92 of the Act, therefore, he took cognizance against the petitioners under sub-section 2(C) of Section 7(A) of the Factories Act, 1948. Thus, it is manifestly clear that learned Judicial Magistrate had not applied his judicial mind either on the facts of the case or on the law and passed the order in a mechanical manner.

5. It is settled law that summoning of an accused in a criminal case is a serious matter, therefore, the order must reflect that learned Magistrate has applied his mind to the facts of the case and the law applicable thereto. In my view, while taking cognizance of an offence, it is the duty of a Magistrate to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegation made in the complaint petition and/or in the charge-sheet. In the present case, as noticed above, learned Magistrate has not applied his mind in the facts of the case as well as the law applicable thereto. Therefore, I have no hesitation in holding that learned Magistrate has passed the order in a mechanical way without applying his judicial mind.

6. In several cases, coming from District Court, Jamshedpur, I find that while taking cognizance learned Magistrates are not recording the reasons for their satisfaction that prima facie case made out, rather it appears that they simply fill up the blanks in the order-sheet format which are typed and/or printed from before. Thus, I direct the Principal District and Sessions Judge, East Singhbhum Jamshedpur to look into the matter and ensure that in future the Magistrate working under him should not commit such illegality.

7. In view of the discussions made above, I allow this application and quash the order dated 07.10.2013 and remit back the case in the court of Judicial Magistrate, Ist Class, Jamshedpur and direct him to apply his judicial mind in the facts and law applicable thereto and then pass order in accordance with law. Let a copy of this order be sent to the Principal District and Sessions Judge, East

Singhbhum, Jamshedpur through FAX for compliance of the direction.