
(2013) 07 JH CK 0212
In the Jharkhand High Court
Case No : WP (Cr.) No. 106 of 2009

Mayank Tiwari and Another	Vs	APPELLANT
The State of Jharkhand and Another		RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 4 JLJR 542

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : T.R. Bajaj and Hemant Shikarwar, for the Appellant; Ravi Kerketta, for the Respondent

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing of the entire criminal proceeding in relation to Bistupur Police Station Case No. 11/2008 dated 13.8.2008, corresponding to G.R. No. 90/2008 registered under Sections 287/304A of the Indian Penal Code, pending in the Court of Sri B.K. Pandey, Judicial Magistrate, Jamshedpur. The facts of the case, in brief, is that father of informant namely, Ghasi Ram Mahto (deceased) was a permanent employee of TISCO. It is alleged that on 12.1.2008, at about 5:00 a.m. a blast took place in the blast furnace. Due to that the platform, on which deceased was standing, fell down and deceased received burn injury. It is further stated that deceased was brought to T.M.H. for treatment, where he died due to the injuries sustained by him.

2. It is stated that TISCO Management gave information to the Inspector of Factories regarding the accident vide its letter dated 13.1.2008. It is further stated that Inspector of Factories conducted inquiry and came to the conclusion that there was no violation of any rules or provisions of Factories Act. Thus, he didn't file any complaint against the Management and/or these petitioners for their prosecution under the Factories Act. It is stated that later on the son of deceased gave information to the police regarding the occurrence, accordingly, Bistupur Police Station Case No. 11/2008 dated 13.1.2008 registered under

Sections 287/304A of the Indian Penal Code. It further appears that after investigation police submitted charge-sheet against the petitioners under Sections 287/304A of the Indian Penal Code, Accordingly, the court took cognizance of the aforesaid offences.

3. It is submitted by Sri T.R. Bajaj, learned senior counsel appearing for the petitioners that No offence under Sections 287/304A of the Indian Penal Code is made out against the petitioners. He submits that there is no allegation in the F.I.R., counter-affidavit and charge-sheet that petitioners were using any machine, rashly and negligently, due to which any injury caused to the deceased. Thus, no offence u/s 287 of the Indian Penal Code is made out. Likewise, there" is no allegation that due to the negligent act of these petitioners, deceased received burn injury and died. Thus, no offence u/s 304A of the Indian Penal Code is made out. Accordingly, it is submitted that entire prosecution case pending against the petitioners is liable to be quashed.

4. On the other hand, Sri Ravi Kerketta, JC to G.P.-IV submits that petitioner No. 1 is the Manager, whereas petitioner No. 2 is Supervisor of the blast furnace. He further submits that a blast took place in the furnace and due to the said blast, father of informant fell down and received burn injuries and later on died. He further submits that it was the duty of the petitioners to take proper precaution for the smooth running of the furnace. Since, the petitioners had not taken said precaution, they were negligent in discharge of their duty, hence liable to be punished under Sections 287/304A of the Indian Penal Code. Accordingly, it is prayed that application filed by the petitioners is liable to be dismissed.

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

6. In the F.I.R. as noticed above, there is no allegation against these petitioners that they were using any machine. There is also no allegation that due to rash and negligent use of said machine, deceased received any injury. Section 287 of the Indian Penal Code reads as follows:--

Negligent conduct with respect to machinery.--Whoever does with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person.

Or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

Shall be punished with imprisonment of either description or a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7. Since, both the petitioners were not using any machine which caused hurt or injury to the deceased, I am of the view that no offence u/s 287 of the Indian Penal Code is made out.

8. So far, offence u/s 340A of the Indian Penal Code is concerned, it is relevant to mention that there is no allegation that due to rash and negligent act of the petitioners present occurrence took place. Under the said circumstance, in my view, offence u/s 304A of the Indian Penal Code is not made out against the petitioners.

9. The argument advanced by learned counsel for the respondents that petitioners, being Manager and Supervisor, had not taken proper precaution for the smooth running of the furnace, cannot be accepted, because the Inspector of Factories after receiving information of accident made inquiry and come to the conclusion that there is no violation of any provision of the Factories Act. Thus, argument of learned counsel for the State that petitioners had not taken precaution appears to be imaginary, based on no evidence.

10. In view of the discussion made above, I find that no offence under Sections 287/304A of the Indian Penal Code is made out against the petitioners. Thus, I find that continuation of present criminal proceeding against the petitioners is an abuse of process of court. Accordingly, I allow this writ application and quash the entire criminal proceeding in connection with Bistupur Police Station Case No. 11/2008 dated 13.8.2008 corresponding to G.R. No. 90/2008, pending in the Court of Sri B.K. Pandey, J.M. Jamshedpur.