
(2018) 05 OHC CK 0029
In the Orissa High Court
Case No : CRLMC No.1772 of 2003

SANJIB GUPTA

APPELLANT

Vs

STATE OF ORISSA

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Factories Act, 1948 — Section 31, 92, 112
Orissa Factories Rules, 1950 — Rule 56(7), 103

Citation : (2018) 05 OHC CK 0029

Hon'ble Judges : DR. D.P. CHOUDHURY

Bench : Single Bench

Advocate : R.K.Rath, P.K.Mohanty

Final Decision : Disposed of

Judgement

Dr.D.P.Choudhury, J.

1. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "the Code") to quash the order

dated 12.08.2002 of taking cognizance of offence under Section 92 of the Factories Act, 1948 (hereinafter called as "the Act") passed by the

learned Sub-Divisional Judicial Magistrate, Khurda in 2(c) C.C.26/2002 and issuance of process against the present petitioners and the order dated

16.04.2003 passed by the said Court in rejecting the petition filed by the petitioners to recall the order dated 12.08.2002.

2. Mr.R.K.Rath, learned Senior Advocate for the petitioners submits that the petitioners are employees of Hindustan Coca-Cola Beverages Private

Limited situated at Khurda and they are in helm of the affairs of the factory. According to him, the Inspector of Factories and Boilers made check-up

inspection on 24.06.2002 and found the following defects and accordingly issued notice to remove the said defects on 31.07.2002.

1. Ammonia receiver and its connected pipe-lines, and the Carbon Di-oxide tank and its connected pipelines have not been tested periodically by a

competent person violating rule 56 of Orissa Factories Rule, 1950 made under Section 31 of F.A., 1948 for which both occupier and Manager are

liable;

2. Adult worker register has not been maintained in respect of the security persons (who are contract workers) violating Rule. 81 of Orissa Factories

Rule, 1950 for which Manager is liable; and

3. The leave with wages register in respect of contract workers (other than security persons) for the year 2001 and the leave with wages register in

respect of the security persons for the years 2000, 2001 or 2002 were not produced on demand violating rules 88 of Orissa Factories Rule, 1950 for

which Manager is liable. A report of inspection was prepared on the spot and the signature of Mr.G.Kumar, Manager was obtained on it. Â

3. Mr.R.K.Rath, learned counsel for the petitioners submits that the petitioners have immediately complied above defects within no time but the

opposite party, being vindictive to the petitioners' business organization, filed prosecution report on 3.8.2002 and cognizance under Section 92 of the

Act was taken on 12.08.2002 by the learned Magistrate and process issued.

4. Mr.Rath, learned counsel for the petitioners, drawing the attention of the Court to the complaint vide 2(c) C.C.26/2002, submitted that it is clear

from said document that no opportunity was given to the petitioners to remove the defects and without waiting for the compliance within seven days,

the prosecution report was filed and the learned Magistrate, without being mindful to this fact, took cognizance of the offence and issued process. He

submitted that the prosecution report is pre-mature and as per Rule-56(7) of the Orissa Factories Rules, 1950 (hereinafter called as 'the rules'),

which provides for an extended period for the purpose of testing of Ammonia Receiver and its connected pipelines, in fact the petitioners informed

vide letter dated 12.8.2002 regarding testing of equipments and vessels by competent persons which was carried out already on 27.3.2002.

5. Mr.Rath, learned counsel for the petitioners submits that the provisions of Rule 103 of the Rules have been violated as the opposite party filed

prosecution report without waiting for the statutory period of seven days from the date of receipt of the notice. Moreover, the petitioners have already complied the defects for which no prosecution report should have been filed under Section 92 of the Act. Learned Magistrate, without application of his judicial mind, took cognizance of the offence vide impugned order and issued process for which the same should be quashed and the subsequent order passed on the petition of the petitioners filed to recall the order of taking cognizance.

6. Mr. Mohanty, learned Additional Standing Counsel for the State submitted that due to violation of Section 31 of the Act and other provision, prosecution report has been filed and the learned Magistrate, after applying his judicial mind, took cognizance of the offence under Section 92 of the Act and issued process.

7. Considered the submissions of the learned counsel for the respective parties. The inspection note and the prosecution report are gone through. The impugned order dated 12.8.2002 of taking cognizance passed by the learned Magistrate is as under:

12.8.2002. P.R. u/s 92 Factories Act is received against Sanjeeb Gupta and G.Kumar. Perused the register and P.R. There is prima facie case

u/s 92 Factories Act. Hence, cog is taken thereunder. Summons to the accused fixing 30.1.2002 for appearance. Sd/-S.D.J.M., Khurda.

8. After the aforesaid order has been passed by the learned Magistrate, the petitioners have filed a petition to recall the said order but the learned Magistrate has refused to recall his earlier order dated 12.8.2002 by passing a very lengthy order on 15.4.2003.

9. In the prosecution report, it has been made clear that the factory was inspected on 25.1.2002 and having found some defects, sent a letter on 11.2.2002 to the management, which was received on 27.3.2002 and again a reminder was issued on 27.4.2002. But the same was received on

6.5.2002. Thereafter, they made check-up inspection on 24.06.2002 and found the aforesaid defects in the factory but the prosecution report is silent when the inspection dated 24.6.2002 was informed to the petitioners. But in the prosecution report, only it is prayed to take cognizance of the offence under Section 92 of the Act. Virtually the inspection dated 24.06.2002 is the theme of the crime basing on which the prosecution report is filed.

10. Mr.Rath, learned counsel for the petitioners drew the attention of the Court to the inspection report dated 24.06.2002 and the same was actually sent to the petitioners on 31.7.2002. It is only available from that letter that the opposite party has informed the petitioners but had not directed to remove the defects. Of course, the petitioners produced the letter vide Annexure-4 series and Annexure-5 series to show that the defects found out on inspection have already been removed and the same letter was received on 13.8.2002 by the Chief Inspector of Factories and Boilers, Orissa, Bhubaneswar. Of course at the time of taking cognizance, the documents of defence need not be gone through because at the time of cognizance, the accused has no chance to be heard so as to put up the defence.

11. From the aforesaid analysis, it is clear that the defects were intimated on 31.7.2002 and the prosecution report is filed on 3.8.2002 although cognizance was taken on 12.8.2002. Section 112 of the Act and Rule-103 of the Rules are placed below for better reference:

112. General power to make rules: The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act. 103.Information required by the Inspector:-

The occupier, owner or Manager of a factory shall furnish any information that an Inspector may require for the purpose of satisfying himself whether any provision of the Act has been complied with or whether any order of an Inspector has been duly carried out. Any demand by an Inspector for any such information, if made, during the course of an inspection, shall be complied forthwith if the information is available in the factory, or, if made in writing, shall be complied with within seven days of the receipt thereof.

12. The aforesaid provisions are very clear to show that under the statute, the rules have been framed by the State Government and such Rule is clear to show that any demand by the Inspector to remove the defects, which was allegedly made by the occupier or the manager or owner, must be complied within seven days from the date of receipt of the notice. So, sending of the notice to comply the provisions of the Act within seven days is one of the ingredients to file the prosecution report and then take cognizance of the offence thereon. It is reiterated that in the instant case, the

prosecution report is silent as to whether the notice was received to remove the defects within seven days of defect found but it is clear that the

prosecution report was filed on 3.8.2002, which is not beyond seven days of 31.7.2002, when notice was issued. Thus, it must be observed that such

prosecution report is premature as without giving seven days time to remove the defects, prosecution report is filed by violating Rule 103 of the Rules.

Thus, the impugned order of taking cognizance and issuance of process on such prosecution report is vulnerable.

13. In terms of the above discussions, it appears that the learned Magistrate, without application of his judicial mind, has taken cognizance of the

offence under Section 92 of the Act vide impugned order dated 12.8.2002 and as such the same is liable to be quashed and the Court do so under

Section 482 of the Code. Consequently, the subsequent order dated 16.4.2003 passed by the learned Magistrate is also quashed. The CRLMC is

disposed of accordingly. A copy of this judgment be sent immediately to the learned trial Court.