

(2008) 08 OHC CK 0147

In the Orissa High Court

Case No : Criminal MC No. 972 and 1125 of 2008

Sri Jaiprakash Pandey and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Factories Act, 1948 — Section 7A(2), 92
Orissa Factories Rules, 1950 — Rule 62(0)
Penal Code, 1860 (IPC) — Section 285, 287, 288, 304, 304(A)

Citation : (2008) CLT 1259 (Suppl CrI)

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Bijaya Ku. Ragada, Laxminarayan Patel, Digambar Sethi and N.K Das, for the Appellant; P.K Parhi, ASC for state, for the Respondent

Judgement

A.K. Parichha, J.—Heard Learned Counsel for the parties.

2. The Petitioners, who are employees of M/s. SMC Power Generation Ltd. and accused persons in G.R. Case No. 274 of 2008 of the Court of Learned S.D.J.M., Jharsuguda, have filed these petitions u/s 482, Code of Criminal Procedure to quash the proceeding of the above noted G.R. Case basically on the ground that the said proceeding is not maintainable in view of pendency of Criminal Case No. 1392 of 2008 in the Court of Learned S.D.J.M., Jharsuguda for the offence u/s 92 of the Factories Act.

3. Learned Counsel for the Petitioners submits that once a case u/s 92 of the Factories Act has been instituted against the Petitioners for an occurrence, another police case under Sections 285,337,338,304,34, I.P.C. is not maintainable for the self same incident. In support of this plea, he has cited the case of Ashwini Kumar Singh and Anr. v. State of Jharkhand, 2007 LLR 866.

4. Learned Counsel for the State-Opposite Party raises strong objection to this prayer of the Petitioners stating that the offence u/s 92 of the Factories Act is

distinct from the offence under the I.P.C. noted above and, therefore the G.R. Case lodged by the police against the Petitioners cannot be quashed.

5. Section 92 of the Factories Act provide a general penalty for offences. The Section reads thus:

92. General Penalty for offences. - Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued

Provided that where contravention of any of the provisions of Chapter IV or any rule made there under or u/s 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

6. In the present case, the Petitioners who are officers of the Management have been prosecuted for violation of Rules 62(0) of the Orissa Factories Rules, 1950 and Section 7-A(2)(c) of the Factories Act, 1948. These provisions basically speak about lack of provision, information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work. The allegation against the Petitioners noted in this case submitted by the Factory Inspector is virtually same as the allegations noted in the G.R. Case by the police authorities. Whenever, there is parallel provision in a general statute and special statute, the provision of the special statute will override the general statute. Keeping this in mind, the Jharkhand High Court in Ashwini Kumar Singh (supra) ruled that a police case under Sections 287, 288, 304-A and 338, I.P.C. is not maintainable, when for the self same incident a case u/s 92 of the Factories Act is pending. I am in respectful agreement with the view expressed in that case that for the self same incident there cannot be two prosecution. Since the entire allegation is covered in Criminal Case No. 1392 of 2008, there is no scope for continuance of proceeding of G.R. Case No. 274 of 2008 against the Petitioners. Therefore, the proceeding of G.R. Case No. 274 of 2008 pending in the Court of Learned S.D.J.M., Jharsuguda is quashed. The other case u/s 92 of the Factories Act against the Petitioners will however continue.

7. With the above observation both the CRLMCs are disposed of.

8. CRLMCs disposed of.