

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Appeal No.277 of 2003

The State of Maharashtra	]	
At the instance of Shri. M.R. Patil,	]	
Age 33 years,	]	
Assistant Director, Industrial	]	
Safety and Health, Jalgaon.	]	.. Appellant.

Versus

Vikas Rameshchandra Joshi,	]	
Occupier/Manager, Vikas Dairy,	]	
Bhadgaon Road, Pachora.	]	.. Respondent.

Shri. P.N. Muley, Additional Public Prosecutor, for the appellant.

Shri. P.B. Patil, Advocate, for the respondent.

CORAM: T.V. NALAWADE, J.

DATE : 27th JULY 2015

JUDGMENT :

1) The appeal is filed against the judgment and order of Summary Criminal Case No.7348/2002 which was pending in the Court of the Chief Judicial Magistrate, Jalgaon. In the case filed by public servant for offence committed for breach of Rule 65(3)(i)(b) of Maharashtra

Factories Rules, 1963. The respondent is acquitted by the trial Court. Both the sides are heard.

2) Complainant is Assistant Director, Industrial Safety and Health, Jalgaon. In exercise of power given to him he visited the factory of the accused namely Vikas Dairy situated at Bhadgaon Road Pachora on 3-9-1998. During visit, the complainant noticed that ammonia receiver in which ammonia is stored under pressure of order of 200 PSI (falling under definition of vessel as defined in Rule 65 of the Maharashtra Factories Rules, 1963) was not fitted with pressure gauge of any type. He noticed that ammonia suction and discharge lines of compressor were not fitted with pressure gauges of any type. Ammonia receiver was not fitted with pressure gauge.

3) It is the case of the complainant that as aforesaid safety measures were not taken which are required to be taken under the rules, the accused committed offence of contravention of rule 65(3)(i)(b) of the Maharashtra Factories Rules 1963 which is punishable

under section 92 of the Factories Act, 1948. The complaint was filed on 2-12-1998. Process was issued for the aforesaid offences. Plea was recorded and accused pleaded not guilty.

4) Before the trial Court complainant examined himself. His evidence was as per aforesaid allegations made in the complaint. He gave evidence that occupier of the factory had supplied necessary information in Form No. II to his office in the year 1985. This form was produced before the trial Court to show that it is the accused who was occupier of the factory. Record is also produced to show that accused had applied for renewal of the licence for the period from 1998 to 2002 and such record is produced before the Court at Exhibit 27.

5) The complainant has given evidence that at the relevant time manufacturing activity of milk and chilling using ammonia as a refrigerant was going on. He has given evidence that there were machinery like ammonia compressor, ammonia condenser, ammonia receiver etc. He has given specific evidence that he did not notice

pressure gauge on any of the aforesaid sections or discharge lines of ammonia compressor and such gauges were not present at the point of the receiver also.

6) The complainant has given evidence that when he paid visit, one Narendra Sancheti was present and he handed over the report of inspection to Sancheti. Copy of note, which was served on Sancheti is at Exhibit 28. He recorded statement of Sancheti which is produced at Exhibit 29. The complainant has referred to Rule 65 of the aforesaid Rules for showing that such safety measures need to be taken.

7) Evidence is given by the complainant that after noticing aforesaid irregularities and breaches, he gave notice on 9-9-1998 to the accused, occupier. Copy of notice is produced at Exhibit 30 and postal receipt in respect of the notice is produced at Exhibit 31. Record of notice is at Exhibits 32 to 35. It appears that the accused did not accept notice which was sent on factory address. The notice was not replied by the accused.

8) During cross examination of the complainant, defence was taken by the accused that the accused was not the occupier as defined under the Factories Act at the relevant time. But suggestion was given showing that the accused is admitting that the licence was standing in his name. The accused had given address of Chalisgaon as the place of residence. Suggestion was given to the effect that the complainant and said Sancheti had joined hands to involve the accused in such a case. Some record was placed to show that the accused had given the factory for management to other persons. However, the record was to the effect that the licence of the accused was still there and it is the accused who was to receive the benefits, profit of the dairy.

9) The judgment of the trial Court is cryptic in nature and the trial Court has not discussed the aforesaid record and circumstances. Even if the record produced by the accused is considered as it is, the record produced by the complainant shows that the accused was occupier of the factory. It cannot be said that he was not actually running the factory in view of the aforesaid record. Thus

the trial Court has committed grave error in acquitting the accused on the ground that at the relevant time he was not present in the factory premises and there is some record of aforesaid nature with him. It is a serious offence committed and such safety measures are not taken by the accused, owner only to avoid the expenses and to make more profit. By doing such act, the accused was playing with the lives of the persons working in the factory. Such instances cannot be taken lightly.

10) The learned counsel for the accused submitted that the incident is of the year 1998 and after so many years it will not be proper to send the accused behind the bars. It was submitted that the accused must have learnt the lesson and as section 92 of the Act provides giving of sentence of fine, some fine can be imposed and lenient view be taken.

11) In view of the aforesaid facts and circumstances of the case this Court holds that sentence of fine of Rs.25,000/- will be just and sufficient in this case.

12) In the result, the appeal is allowed. The judgment and order of acquittal of the trial Court is set aside. The accused is convicted for the offence under Rule 65(3)(i)(b) of Maharashtra Factories Rules 1963 punishable under section 92 of the Factories Act and is sentenced to pay a fine of Rs.25,000/- (Rs. Twenty Five Thousand). In default of payment of fine, the accused is to suffer simple imprisonment of 15 days. The fine amount is to be deposited within four weeks from today either in this Court or the fine can be deposited in the aforesaid criminal case in the Court of the Chief Judicial Magistrate, Jalgaon.

Sd/-
(T.V. NALAWADE, J.)

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