

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

***CRA-S No.634-SBA of 2004 (O&M)
Date of decision : 24.12.2015***

State of Punjab

... Petitioner

Vs.

Nachhattar Singh & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Mikhail Kad, AAG, Punjab.

Mr. M.S. Sidhu, Advocate for the respondents.

...

TEJINDER SINGH DHINDSA, J.

The instant appeal has been filed by the State of Punjab through Deputy Director of Factories, Moga Circle, Moga against the judgment of acquittal dated 29.09.2001 passed by the learned Additional Sessions Judge, Moga.

The Deputy Director of Factories, Moga Circle filed a complaint against Nachhattar Singh and Pardeep Singh (respondents herein) Managers of Doaba Ice Factory for breach of provisions of the Factories Act, 1948 and the Rules framed thereunder. For the sake of brevity and to avoid repetition, it would be appropriate to refer to the case set up on behalf of the prosecution and as noted by the trial Court in para 2 of its judgment dated 28.09.1999 and the same reads as under:

“The brief facts of the prosecution case are that accused Nachhattar Singh and Pardeep Singh are the occupiers and Managers of Factory registered under the Factory Act, 1948. That Daljeet Singh Deputy Director of Factory, Moga visited the factory premises on 08.04.1997 and 10.04.1997 and found that the said factory had violated the Factory Act and rules. In the said factory one worker Vijay Kumar son of Ram Saran

was working as Operator. On 06.04.1997 at 10:30 A.M. Vijay Kumar was trying to start Ammonia Compressor. In the mean while discharge valve got bursted. Discharge pipe line and the discharge valve also broke due to pressure. The broken components of this Ammonia Compressor hit face and other body parts of Vijay Kumar. The Ammonia gas leaked into the room. In the accident, Vijay Kumar worker received serious injuries and died at the spot. Accident took place because body of Discharge Valve and the Ammonia Compressor was not of adequate strength, due to which safety valve fitted in the compressor of the Discharge pipe line bursted before opening. This is violation of 61(1)(a) of the Factory Rules, 1952.

The Ammonia Compressor was not maintained as per the safety norms due to which discharge pressure exceeded the safety pressure because of which discharge valve burst. This is violation of Rule 61(1)(b) of the Punjab Factories Rules, 1952.

To maintain and assure work and safety of the discharge line of Ammonia Compressor, the said equipment had not been got tested from the competent authority; this was violation of Rule 61(1)(d) of the Punjab Factory Rules, 1952.

The operator/worker had not been imparted adequate information and training to operate Ammonia Compressor in accordance with the prescribed safety norms. This is violation of Section 7-A(2)(C) of the Factory Act, 1948.

The Manager of the Factory did not inform Deputy Director, Factory, Moga through Telephone or Special Messenger or telegraph regarding accident. This is violation of Rule 103(1) of Punjab Factory Rules, 1952.”

The respondents herein having been summoned, copies of the complaint along with supporting documents were duly supplied. After hearing both the sides, notice under Section 7-A(2)(c) of the Factories Act read with Rules 61(1)(a), 61(1)(b), 61(1)(d) and 103(1) of the Punjab Factory Rules were served upon the respondents/accused and to which they

pleaded not guilty and faced trial.

The prosecution with a view to prove its case examined four prosecution witnesses. After concluding of the prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. All the incriminating material brought on record by the prosecution was put to the accused. They alleged false implication and claimed innocence.

After hearing parties on either side and going through the record of the case, the learned trial Court convicted the accused (respondents herein) under Sections 61(1)(d) and 103(1) of the Punjab Factory Rules and sentenced them under Section 92 of the Factories Act, 1948 to undergo RI for a period of 5 months and to pay a fine of Rs.25,000/- each and in default of payment of fine to further undergo RI for a period of one month.

Dissatisfied with the aforesaid judgment of conviction and order of sentence, the convicts filed appeal. Vide judgment dated 29.09.2001 rendered by the learned Additional Sessions Judge, Moga, the appeal has been allowed and the respondents herein stands acquitted. Resultantly, the instant appeal at the hands of State of Punjab against the judgment of acquittal.

Learned State counsel has argued that the Additional Sessions Judge, Moga has erred in holding that the APP had no authority to file the complaint. It is contended that in the present case the Deputy Director of Factories had been designated as Inspector under the Factories Act and was authorized to file the complaint. The complaint accordingly had been filed by and under the signatures of the Deputy Director of Factories and who in turn had been designated as Inspector Factories under the Act through a

notification. It has been argued that the well reasoned findings rendered by the trial Court that the accused/respondents herein being occupiers and Managers of the Factory in question were responsible to maintain and ensure as regards equipment and safety of the discharge of the ammonia compressor and the same having not been periodically tested were guilty of breach of Rules 61(1)(d) of the Punjab Factories Rules, 1952 and which in turn had led to the death of a worker in the factory, namely, Vijay Kumar in an incident which took place on 06.04.1997 have been set aside by the Appellate Court without any basis and evidence. State counsel has further contended that the accused/private respondents were even guilty of having violated the provisions of Rule 103 of the Punjab Factory Rules and which contained a mandate that the factory Manager is required to inform through telephone, special messenger or telegram regarding any accident taking place in the factory immediately and without any delay. The judgment of acquittal has been assailed by submitting that the accident had taken place on account of a defect in the plant and its non-maintenance properly as also on account of private respondents having failed to give proper training to the factory worker, namely, Vijay Kumar as regards operating the ammonia compressor and as such, are guilty of violation of the provisions of Section 7(a)(2)(c) of the Factories Act.

Per contra, Mr. M.S. Sidhu, Advocate appearing for the private respondents would support the impugned judgment of acquittal and has argued that the prosecution had failed to prove the charges against the accused and that the trial Court while convicting the respondents had failed to appreciate the evidence led on record which would clearly demonstrate that the accident had occurred on 06.04.1997 on account of negligence of

the operator, namely, Vijay Kumar and there was no omission on the part of the accused.

Having heard counsel for the parties at length and upon perusing the record of the case, which had been requisitioned, I am of the considered view that the judgment of acquittal dated 29.09.2001 passed by the learned Additional Sessions Judge, Moga is well founded.

At the very outset, it may be observed that even though there was an issue as regards maintainability of the complaint itself, yet a judgment of acquittal has been recorded having examined the case on merits. This Court would proceed in adjudicating upon the instant appeal holding the complaint lodged by Daljeet Singh, Deputy Director of Factories, Moga and which led to the prosecution of the private respondents to be maintainable.

Rule 103 (1) of the Punjab Factories Rules, 1952 reads as follows:

“103. Notification of Accident and Dangerous Occurrences.-(1) When any accident which results in the death of any or which results in such bodily injury to any person as is likely to cause his death, or any dangerous occurrence specified in the Schedule to this rule takes place in a factory, the manager of the factory shall forthwith send a notice thereof by telephone, special messenger or telegram to the Inspector and the Chief Inspector.”

The evidence adduced on record would clearly indicate that the accident/incident occurred on 06.04.1997 at about 10:30 AM i.e. on a Sunday. At the first instance, Vijay Kumar, injured was removed to Civil Hospital, Moga for immediate medical attention. Vijay Kumar unfortunately could not survive. Local police having been informed, initiated inquest

proceedings and post mortem examination was conducted at Civil Hospital, Moga on 06.04.1997 in the evening hours. The Appellate Court has recorded a finding that information with regard to the accident was received in the office of the Deputy Director on 07.04.1997 vide entry No.142. Accordingly, a view has been taken that there has been substantial compliance of Rule 103 of the Factories Rules. Reading of the relevant provision would make it apparent that the objective of such a Rule is to ensure that in the eventuality of any accident occurring and a factory worker suffering injuries, the authority concerned are to be immediately informed so that stock of the situation is taken and that the injured person is afforded immediate medical treatment. The objective of the Rule can also be seen as a safeguard for the factory worker and to eliminate the chances of the management to attempt a cover-up of any fault which otherwise would be attributable to the management itself. In the present case, the accident/incident had occurred on a Sunday at about 10:30 AM. The undisputed facts would reveal that the injured was taken to Civil Hospital, Moga forthwith. He unfortunately succumbed to the injuries. Inquest proceedings having been initiated, post mortem was conducted at about 04:00 PM on the same day and the body was handed over to the next of the kin. Information as regards accident that had occurred was received in the office of the Deputy Director, Factories on 07.04.1997 itself. The view taken by the Appellate Court as regards there being substantial compliance of Rule 103 (1) of the Factories Rules is a plausible view and does not call for any interference.

The deposition of prosecution witnesses, namely, Baldev Singh, PW2 and Ravinder Singh, PW3 would be crucial. Both the aforementioned

prosecution witnesses were eye witnesses to the incident/accident. PW3 Ravinder Siongh in his cross examination has deposed that Vijay Kumar (deceased) had been owrking in the Doaba Ice Factory for the last six months nad he had been imparted training to operate the compressor upon joining the factory. It was stated that the discharge valve is required to be started prior to operating the ammonia compressor. Vijay Kumar, deceased is stated to have not opened the discharge valve when he started motor of ammonia compressor and as a result of which the motor got tripped. Thereafter, Pardeep Kumar, Manager of Doaba Ice Factory instructed him not to operate the ammonia compressor and inspite of this Vijay Kumar started the motor without opening the discharge valve. PW3 Ravinder Singh also stated that if discharge valve is not opened then pipeline of ammonia compressor can burst inspite of whatever strength it may have. The deposition of PW2 Baldev Singh is also on identical lines. These two prosecution witnesses also deposed that Pardeep Singh Manager Doaba Ice Factory used to get the ammonia compressor checked periodically.

The deposition of PW2 and PW3 is a clear pointer towards negligence on the part of Vijay Kumar (since deceased). The Appellate Court while recording the judgment of acquittal has observed that the prosecution has failed to prove the violation of Rules 61(1)(a) and 61(1)(b) of the Factories Rules as also Section 7-A(2)(c) of the Act. Such view has been taken upon due appreciation of evidence adduced on record. In the judgment of acquittal, the Appellate Court has also recorded that no evidence was produced by the prosecution to prove that the equipment i.e. the ammonia compressor etc. was not tested by the Competent Authority.

No technical expert or person approved by the department had been

examined by the prosecution to hold that the plant suffered from any defect. Learned State counsel has not advanced any submission to rebut such observations.

Even otherwise it is settled preposition of law that whenever two views are possible, the view which favours the accused is to be followed by the Court. In ***Mrinal Dass & others Versus The State of Tripura, (2011) 9 SCC 479***, the Hon'ble Supreme Court after referring to a number of earlier judgments had examined the parameters for interfering against a judgment of acquittal by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

For the reasons recorded above and in view of the dictum laid down by the Apex Court in ***Mrinal Dass's case (supra)***, this Court does not find any patent illegality or perversity in the impugned judgment of acquittal. No case for interference has been made out.

Accordingly, the appeal stands dismissed.

24.12.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |