

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 412 of 2012**

Hou Zuoxin (Chairman – Sepco Electric Power and Construction Corporation), Jinger Road, Jinan, Shendong (China).

---- **Petitioner****Versus**

State of Chhattisgarh, through Deputy/Assistant Director, Industrial Health & Safety and Factory Inspector, Bilaspur, Chhattisgarh.

---- **Respondent****Criminal Misc. Petition No. 413 of 2012**

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---- **Petitioner****Versus**

State of Chhattisgarh, through Deputy/Assistant Director, Industrial Health & Safety and Factory Inspector, Bilaspur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Dharmesh Shrivastava, Advocate
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.12.2016**

These two petitions have been preferred against the order dated 27.03.2012 passed by the Industrial Court in Criminal Misc Case Nos. 3/CGIR/V/2012 and 4/CGIR/V/2012 whereby the review petitions preferred by the petitioner against the order dated 25.03.2011 in Criminal Misc. Case Nos. 28/CGIR Act/V/2010 and 29/CGIR Act/V/2010 have been rejected.

2. The relevant facts for adjudication of the present case are that the present petitioner was the Chairman of Sepco Electric Power and Construction Corporation (for short 'the SEPC') who had received a contract for construction of two Chimneys of 1200MW by Bharat Aluminium Company Limited at Korba. The said SEPC had further engaged another company as its contractor i.e. M/s Gannon Dunkelers and Company Limited for execution of the said work. On 23.09.2009 one of the Chimneys under construction by the said contractor collapsed and large number of casualties took place. Subsequently, the Factory Inspector visited the place and issued notice to the persons responsible for execution of the contract. Thereafter, a criminal complaint case was filed against 10 accused persons including the present petitioner under Section 105 of the Factories Act before the JMFC (Labour Court), Korba. Pending the case before the Labour Court, the Chairman of SEPC moved two separate petitions i.e. Criminal Misc. Case Nos. 28/CGIR Act/V/2010 and 29/CGIR Act/V/2010 under Section 64-A and 64 (2) of the CGIR Act before the Industrial Court at Bilaspur seeking for quashment of Criminal Case Nos. 119 and 120/F.Act/2009 which stood allowed on 25.9.2010.
3. The petitioner through his application under Sections 64-A and 64 (2) of the CGIR Act had sought for an order of quashment on the ground of parity as the applications filed by the other co-accused persons had already been decided by the Industrial Court vide its order dated 25.09.2010 whereby the petitioners therein were discharged from the charges levelled against them and the case of the present petitioner was similar to their case. However, this application of the petitioner was rejected by the Industrial Court vide its order dated 25.03.2011. Subsequently, a review petition was also preferred by the petitioner which was also got dismissed vide impugned order dated 27.03.2012.

4. It is these two orders dated 25.03.2011 and 27.03.2012 which are under challenge before this Court through the present petitions.

5. Counsel for the petitioner submits that pending the petition before this Court, now the circumstances have changed substantially in as much as the trial Court vide its order dated 23.06.2016 has acquitted the accused persons who were prosecuted under the provisions of the Factories Act holding that the provisions of the Factories Act itself were not applicable in the establishment where the chimneys were being constructed and it is the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 which was applicable.

6. In view of the same, without entering into the merits of the case, this Court is of the opinion that the present petitions deserve to be allowed on the very limited ground of the entire prosecution case itself being held to be not proper by the trial Court as it has reached to the conclusion that the provisions of the Factories Act were not applicable upon the establishment.

7. Accordingly, the petitioner for the moment stands discharged from the proceedings in Criminal Case No. 119 & 120/F.Act/2009 pending before the JMFC (Labour Court), Korba.

8. It is made clear that in case the order of the Labour Court, Korba dated 23.06.2016 at any point of time is set aside, the respondent/State shall have liberty of moving an appropriate application for revival of the criminal case against the petitioner also and this liberty is also acceptable to the counsel for the petitioner.

9. With the aforesaid observation, the present petitions stand allowed.

Sd/-

P. Sam Koshy
Judge