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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 669 of 2016**

- Mohd. Naem (Occupier Factory Manager), M/s Niyaj Sons R/o Village Sakri, Police Station Mandir Hasoud, District Raipur Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh (Labour Department) Through Deputy Chief Factory Inspector (Deputy Director, Industrial Health & Safety), Raipur, District Raipur Chhattisgarh.

---- Non-applicant

For Applicant	Shri H.B. Agrawal, Sr. Advocate along with Shri Himanshu Kr. Sharma, Advocate
For Non-applicant/State	Shri Ashish Surana, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****27/09/2016**

1. The present Revision Petition has been preferred under Section 397 read with Section 401 Cr.P.C. challenging the order dated 17.03.2016 passed by the Judicial Magistrate First Class, Labour Court No.2, Raipur in Criminal Case No. 69/Factory Act/2014 in case of State of Chhattisgarh v. Mohd Naem.
2. The grievance of the Applicant primarily is that the Factory Inspector who has initiated the prosecution against the Applicant is not competent under the provision of law for inspecting the premises particularly at the time of explosion that has taken place in the premises of the Applicant on the ground that the factory inspector is

not technically qualified.

3. Learned Counsel for the Applicant relied upon the decision of the Gwalior Bench of the Madhya Pradesh High Court in case of **H.K. Kala & Anr. v. State of M.P.**¹.
4. A bare perusal of the record annexed along with the Petition clearly reflects that it is a case where on 15.05.2014 an explosion took place in the cracker factory belonging to the Applicant accused resulting in fatal accident where death of a worker Nagendra Sahu took place. The factory premises was inspected by the Deputy Chief Factory Inspector, Government of Chhattisgarh-cum-Deputy Director, Industrial Health and Safety, Raipur on 17.05.2014 and a report was given stating that there has been violation of provisions of safety measures under the provisions of the Factory Act, 1948 and accordingly initiated a case by prosecuting the Applicant for the offence under the Factory Act.
5. The Applicant has raised this Revision Application for discharging himself from the criminal prosecution on the ground that the factory Inspector who had inspected the premises was not technically qualified particularly in respect of fatal incident that has taken place. In support of the said contention they have relied upon the judgment of the Gwalior Bench, M.P. High Court in case of H.K. Kala (Supra).
6. The above facts and dispute can only be thrashed out at the time of recording of evidence where the Applicant would also get opportunity and liberty to question the factory inspector so far as his technical competence and expertise is concerned pertaining to the inspection

¹ 2008 (IV) MPJR 71

that he had conducted particularly in the light of the fatal accident that took place in the premises.

7. Thus, since the nature of dispute which has been questioned by the Applicant is the fact which can be decided only after the evidence is recorded and on other side the Applicant would also get opportunity of cross-examining the prosecution witnesses. Thus, this Court at this juncture does not find it appropriate to entertain the Petition at this stage.
8. Reserving the liberty of the Petitioner to raise these grounds in his defence at the appropriate stage, the Revision Petition stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE