

IN THE HIGH COURT OF BOMBAY AT GOA**STAMP NUMBER (APPLN.) NO.787 OF 2014****IN****STAMP NUMBER MAIN NO.786 OF 2014**

THE STATE (GOVT. OF INDIA)

REP. BY DINESH PANDE

... Appellant

Versus

SANDEEP DIVAKAR AND 2 ORS.

... Respondents

Shri Mahesh Amonkar, Additional Public
Prosecutor for the Applicant.

Shri S.S. Kantak, Senior Advocate with Shri
Vishnuprasad A. Lawande and Ms. S. Kamat,
Advocate for the Respondents.

Coram:- C. V. BHADANG, J.**Date:- 25th October, 2016****ORAL ORDER :**

This is an application for leave to
appeal against acquittal.

2. The respondents were prosecuted on the
basis of a complaint filed by the petitioner
under Section 73 and Section 72(C)(1)(a) of the
Mines Act, 1952. The learned Magistrate has
acquitted the respondents vide judgment and
order dated 4/07/2013.

3. The prosecution case is that there was a fatal accident at Gulliem-e-Gaval Mine of Smt. Geetabala M.N. Perulkar on 17/01/2009 at about 10.00 hours in which the dumper operating in the mines met with an accident in which the operator of the dumper had died. The information about the accident was given to the Inspector of Mines on 18/01/2009 who carried out an inspection and inquiry. Ultimately, the Deputy Director of Mines and Safety filed a complaint as aforesaid on the basis of which the respondents were prosecuted.

4. On behalf of the petitioner, a specific case was made out that the accident occurred as a result of the failure of the breaks of the dumper. The dumper hit the parapet wall and fell down to the extent of 18 metres causing the death of the operator. It was the specific case that the dumper was not properly maintained and the fortnightly testing of breaks and overhauling of breaks system was not carried out at

regular intervals as required under Regulation no.172 of Metalliferous Mines Regulations, 1961 ('the regulations' for short).

5. At the trial, the prosecution examined five witnesses. The respondents did not lead any evidence in defence. The learned Magistrate framed in all three points, all of which were answered in the negative. The learned Magistrate found that the petitioner had failed to prove that the respondents were responsible for the occurrence of the fatal accident. It was further found that the petitioner failed to prove that at the relevant time when the accident occurred the respondents were acting as agents at the above mines and were bound to conduct the mining operations in accordance with provisions of the Mines Act, 1952 and the Rules and Regulations framed thereunder. Lastly, the learned Magistrate found that the petitioner had failed to prove that at the relevant time when the accident occurred, the respondents were

responsible for the proper maintenance and the checking of the dumper and to take steps to ensure that the dumper is maintained in proper condition.

6. I have heard Shri Amonkar, the learned Additional Public Prosecutor for the applicant and Shri Kantak, the learned Senior Counsel for the respondents.

7. It is submitted on behalf of the petitioner that the learned Magistrate had wrongly cast a burden on the petitioner for production of the relevant documents in the absence of which the respondents have been acquitted. It is submitted that it was not expected of the petitioners to produce the documents to show that the respondents were acting as agents and were responsible for proper maintenance and the up-keep of the dumper. It is submitted that thus the impugned order is perverse requiring interference.

8. On the contrary, it is submitted by Shri Kantak, the learned Senior Counsel for the respondents that the provisions of Regulation no.172 of the Regulations are not attracted. It is submitted that the dumper cannot be said to be covered within the meaning of Machinery and Plant as envisaged under Chapter XVI of the Regulations. It is next submitted that the names of the persons who are responsible as agents are required to be statutorily reported to the authorities and, thus, it was within the competence of the petitioner to have produced such documents to show that the respondents were in charge and were responsible for maintenance of the dumper at the relevant time. Lastly, it is submitted that it has not been proved on record that the accident occurred due to the failure of the breaks of the dumper which is the very basis for filing of the complaint.

9. It is submitted that in an application

seeking leave to appeal against acquittal this Court is not expected to reappreciate the evidence. It is submitted that the view taken by the learned Magistrate is a plausible view, which does not require interference.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for grant of leave is made out. At the outset, it is necessary to mention that there is nothing on record to show that the dumper was got examined from an expert to show that the accident had occurred due to failure of breaks. This was a material circumstance to be established by the prosecution, in as much as the entire case set up on the basis of breach of the provisions of Regulation no.172 was that the failure of the breaks was on account of the absence of proper maintenance of the dumper. Secondly, it was also necessary for the petitioner to have established that the respondents were at the

relevant time responsible and were in charge of the operations and for the proper maintenance of the vehicle. This aspect has rightly been held to be not proved.

11. This takes me to the submissions advanced on the basis of non applicability of Regulation no.172 of the Regulations. Before advertng to the same, it may be mentioned that this ground was not raised before the learned Magistrate. However, as the same goes to the root of the matter and as the parties have advanced arguments on the basis of the same, it is necessary to briefly consider the said ground. Regulation 172 falls under chapter XVI of the Regulations which is entitled "machinery and plant" and it reads thus:

172. General provisions about construction and maintenance of machinery :- All parts and working gear, whether fixed or moveable, including the anchoring and fixing appliances of all machinery and apparatus used as or forming part of the equipment of a mine, and all foundations in or to which any such

appliances are anchored or fixed shall be of good construction, suitable material, adequate strength and free from visible defect and shall be properly maintained.

12. Section 72 of the Mines Act provides for obligation of persons employed in a mine while Section 73 of the said Act provides for general provision for disobedience of orders. Under Section 73 whoever contravenes any provision of the Act or of any regulation, rule or bye-law or of any order made thereunder, for the contravention of which, no penalty is provided for, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. Thus, the contravention with any of the provisions of the Act, Rules or bye-laws made thereunder is a sine qua non for the offence as contemplated under Section 73 of the Act. As noticed earlier, the contravention alleged is of Regulation no.172. It would be significant to note that definition of a

"machinery" as can be found in Regulation no.2(15) of the Regulations reads thus:

(i) any locomotive or any stationary or portable engine, air-compressor, boiler or steam apparatus, which is, or

(ii) any such apparatus, appliance or combination of appliances intended for developing, storing, transmitting, converting or utilizing energy, which is, or

(iii) any such apparatus, appliance or combination of appliances if any power developed, stored, transmitted, converted or utilized thereby is.

13. It can thus be seen that the dumper cannot fall under clauses 2(15)(ii) and (iii) above. Even so far as the Regulation no.2(15) (i) is concerned, it cannot fall under any of the categories such as air-compressor, boiler or steam apparatus or any locomotive. In the Oxford dictionary 'locomotive' is defined as a powered railway vehicle used for pulling trains. Thus, even otherwise, I find that the dumper cannot be said to be covered within the meaning of 'machinery and plant' under the relevant regulation. That apart, on the ground of the

absence of any proof as to the fact that the respondents were at the relevant time responsible for maintenance of the dumper and further having regard to the fact that it has not been established on record that the accident occurred due to the failure of the breaks, I do not find that any exception can be taken to the finding recorded by the learned Magistrate. It is now well settled that in a challenge of the present nature against the judgment of acquittal even where two views are equally possible, this Court cannot substitute its view on the ground that it is more plausible. Unless and until the view taken by the learned Magistrate is shown to be perverse and against the weight of the evidence no interference is called for.

14. I have carefully gone through the impugned order and I find that the view taken by the learned Magistrate is a plausible view and does not require interference. In the result, no case for grant of leave is made out. The

application is accordingly dismissed.

C. V. BHADANG, J.

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