

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APL] No. 227 of 2016
[MMP Industries Ltd. & two others Vs. State of Mah.]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. S.V. Sirpurkar, Adv., for the applicants.
Mrs. Deshmukh, APP for respondent.

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**CORAM : B. P. DHARMADHIKARI
AND
A.S. CHANDURKAR, JJ.**

DATE : 16th September, 2016

After hearing respective counsel on 2nd
September, 2016, we had passed the following order:-

“Heard learned counsel Shri S.V. Sirpurkar for the applicants and learned Addl. Public Prosecutor Mrs. M.H. Deshmukh for the non-applicant/State.

Though we prima facie find that the FIR filed by the police is mainly concerning Section 304A of the Indian Penal Code, it depends upon outcome of the trial to find out violation of the safety measures. That

trial is already registered as Summary Criminal Case No. 336 of 2016. There is substance in the contention of learned counsel Shri S.V. Sirpurkar for the applicants that there cannot be two separate trials.

Learned Additional Public Prosecutor Mrs. M.H. Deshmukh for the non-applicant/State is seeking time of two weeks to make appropriate statement in this respect.

Adjourned accordingly.

Stand over to 16.9.2016.

Interim orders to continue.”

Learned APP today states that offence under Section 304-A, Indian Penal Code, as also for violation of the provisions of Section 92 of the Factories Act, is to be tried by the same Court, i.e., Court of Judicial Magistrate First Class.

In the present matter, offence under Section 66 (2) (4) of the Factories Act read with Section 304-A of Indian Penal Code has been registered at Bhandara Police Station vide First Information Report No. 51/16 on 5th March, 2016. Thereafter, the authorities under the Factories Act have instituted a complaint on 7th April, 2016.

Submission of learned counsel for applicants is, the finding of violation of provisions of Factories Act or

the Rules framed thereunder and, therefore, of any negligence by the applicants will be required to be reached first in prosecution under the Factories Act and contingent upon that, thereafter the trial under Indian Penal Code may follow. He submits that thus, at this stage, cognizance under Section 304-A, Indian Penal Code, by the police authorities is unwarranted. In addition, he also points out that police authorities could not have taken a note of alleged violation of Factories Act or Rules framed thereunder or alleged breach of safety measures.

Learned APP is opposing the contentions. According to her, police authorities have taken cognizance rightly, as commission of a cognizable offence was brought to their notice.

We find the fact that offence has been taken cognizance of on 5th March, 2016, is not in dispute. Only contention is because of provisions of Factories Act, the police authorities could not have, at that stage, invoked Section 304A, Indian Penal Code. We find the submission misconceived. Whether said invocation is correct or not will be looked into by the Trial Court at the appropriate stage. The course to be followed by that Court can also be worked out by that Court only depending upon the facts presented to it.

Without observing anything on merits of the

controversy, we leave it open to the Trial Court to follow the course which it may deem fit and proper in the circumstances of the case. Needless to mention that all contentions of applicants are kept open and can be pressed into service by them before said Court.

At this stage, we find that no case is made out for interference. Leaving all other contentions of learned Adv. Mr. Sirpurkar open, we dispose of the Criminal Application.

Judge

Judge

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C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 16th Sept., 2016