

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17461 of 2014

Arising Out of PS.Case No. -2 Year- 2014 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

- =====
1. Sushil Kumar Goenka @ S. K. Goenka, son of late Anandi Lal Gupta, occupier of M/s Riga Sugar Company Ltd., residing at 94/S Block, E. New, Alipur, Kolkata- 700 053.
 2. Ajay Tripathi, son of late Brij Mohan Tripathi, Vice President, M/s Riga Sugar Company Ltd., resident of Mohalla & P.O. - Riga, District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Dwivedi, the Factory Inspector, Muzaffarpur Circle, Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate with
Mr. Ashish Giri, Advocate

For the Opposite Party No.1: Mr. Md. Ansarul Haque, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 22-09-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.02.2014 passed by the Chief Judicial Magistrate, Sitamarhi, in Complaint Case No.C2/2/14, Trial No.1159 of 2014 by which the Court below has taken cognizance against the petitioner for having violated Section 7A of the Factories Act, 1948, (hereinafter to be referred as “Act”) which is punishable under Section 92 of the Act.

2. Opposite Party No.2, who is a Factory Inspector, Muzaffarpur Circle, Muzaffarpur, made complain before the Chief Judicial Magistrate, Sitamarhi, accompanying with a report alleging therein that M/s Riga Sugar Company Ltd. is a factory within the



meaning of Section 2 m (i) of the Act. On the basis of the information provided by the Factory Manager in Form-17A, dated 17.11.2013 under the Bihar Factory Rules, 1950, (herein after to be referred as “Rules”), it was made aware that an accident had taken place on 17.11.2013 in the factory premises in which the injured unskilled labour, namely, Uday Thakur died on 23.11.2013. An inspection regarding the accident was conducted on 19.12.2013, wherein, it was found that on 17.11.2013, electrical main panel weighing approximately 1 ton lying 150 feet away from the main door of the mill gate was being lifted by overhead crane to be placed on the first floor. The deceased was sitting on the top of the electrical panel for proper orientation. However, when the same was lifted half feet from the ground, the steel wire rope from one corner broke as a result of which the deceased received injury near his ear. He was taken to hospital from where he was referred to PMCH where he died on 23.11.2013 during the course of his treatment. In the Enquiry Report, it was concluded that the deceased, Uday Thakur, was unskilled labour working for the contractor, Sri Sunil Thakur. As such, technical work was being done by unskilled labour and, therefore, the accident had taken place leading to his death, which is non-adherence to Section 7A of the Act.

3. Counsel for the petitioner has submitted that provisions of Act are not attracted in the case of Sugar Mill in which the petitioner was employed. Section 116 of the Act clearly provides that unless



otherwise provided this Act shall apply to factories belonging to the Central or any State Government. M/s Riga Sugar Mill Factory does not belong either to Central Government or State Government. Same is also substantiated from the notification issued by the Governor of Bihar, dated 12th August, 1988, wherein, types of factories have been notified as defined under Section 2 (m) of the Act. The provisions of Factories Act will not apply in case of Riga Sugar Mill. Therefore, question of non-adherence to the provision of Section 7A and penal consequences under Section 92 does not arise and, hence, the order taking cognizance is bad in law.

4. It has further been submitted that as per Section 92 of the Act, it is the Occupier and Manager of the factory, who can be held guilty of an offence. In the present case, petitioner No.2 is neither an Occupier nor the Manager, but is a Senior Vice President and, therefore, cognizance against him is against the provision of the Act.

5. Rule 56-A of the Bihar Factories Rules, 1950, provides that no lifting shall be done unless it has been tested and all parts have been thoroughly examined by a competent person and a certificate of such a test specifying the safe working load has been obtained. In the present case, there was due compliance of the said provisions. The test certificates have been issued by Sri C. K. Singh, Deputy Chief Inspector of Factories (Retd.) Organizer, Industrial Analyzer, Patna, and Sri Chandradeo Singh, Member, Industrial Analyzer, Anandpuri, Patna.



Certificates show that the checking and testing was conducted on 11.10.2013 and 12.10.2013 and no defects were found. The crane capacity was also mentioned as 20 and 30 tons. Copies of the Certificates have been annexed as Annexure-3 series. As per complaint itself, load was approximately 1 ton. Thus, there was full compliance of provision of Section 29 of the Act read with 56 A of the Rules and, therefore, no liability or offence can be said to have been committed. It has further been submitted that in terms of provision of Section 88 of the Act, notice is required to be sent of an accident occurring in the factory. The same was also complied with and the notice in Form 17-A was sent by the Factory Manager dated 17.11.2013, which is a part of the Company.

6. Thus, after following all the procedure if certain unfortunate occurrence/accident takes place, same would not amount to violation of the provision of the Factories Act so as to constitute an offence punishable under Section 92 of the Act. Deceased, Uday Thakur, was not appointed by the petitioner, but work was being done through the Contractor, Sunil Thakur, and the deceased was his worker working under his direction as is evident from the statement given by Narendra Singh, which is part of the complaint. Elder brother of the deceased, Baiju Thakur, as well as one Ashok Kumar Thakur, in the letter dated 23.11.2013 has clearly stated that no one was responsible for death of the deceased. Aforesaid letter is annexed as Anneuxre-4. It



has been prayed that in the aforesaid background order taking cognizance is fit to be quashed.

7. On the other hand, it has been submitted on behalf of the Opposite Party No.2 that Section 116 of the Act provides that the provisions of the Act are applicable in all types of factories including the factories belonging either to Central or State Government. There is no ambiguity in the provision of the aforesaid Section of the Act. It has further been submitted that M/s Riga Sugar Company Ltd. is a registered factory under the Act and all the provisions of the Act will apply for the same. Petitioner No.2 is the senior most Manager of the factory, in question, and he himself informed to the authorities under Form-17A dated 17.11.2013 and, therefore, he cannot deny that he is not the Manager of the factory. It has further been submitted that at the time of investigation made by Opposite Party No.2, no such certificate as mentioned in para 14 and 15 of the petition (Anneuxre-3) was ever shown or produced before him and, therefore, these documents are not admitted by the Opposite Party No.2 at this stage. The deceased was certainly a worker of the factory as described in Section 2(1) of the Act, which says “worker” means a person [employed, directly or by or through any agency (including a Contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing processes, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any



other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union].

8. It is further submitted, with regard to statement of elder brother of the deceased and another person, with regard to the fact, that no one was responsible for the death of the deceased, is not fit to be considered, at this stage, as the same is totally a matter of fact, and this can only be looked into at the appropriate stage. A worker lost his life due to fatal accident in the factory in question. The occurrence took place on account of violation of provision of Act, which attracts penal provisions and, therefore, the petitioners are liable for prosecution and the order of cognizance is in accordance with law.

9. Having heard contention of both the parties, this Court finds that, admittedly, worker, namely, Uday Thakur, lost his life within the factory premises of M/s Riga Sugar Company Ltd. in an accident having taken place on 17.11.2013 as electrical main panel weighing approximately 1 ton lying 150 feet away from the main door of the mill gate was being lifted by overhead crane to be placed on the first floor. The deceased was sitting on the top of the electrical panel for proper orientation. However, when the same was lifted half feet from the ground, the steel wire rope from one corner broke as a result of which the deceased received injury near his ear. He was referred to PMCH where he died on 23.11.2013 during the course of his



treatment. This fact was informed by the Factory Manager in Form-17 A dated 17.11.2013 under the Rules. As such, such accident occurred due to violation of provision of Section 7 A of the Act as technical work was being done by unskilled labour through Contractor, Sunil Thakur and the accident had taken place leading to his death.

10. Section 116 of the Act provides that unless otherwise provided this act shall apply to factories belonging to the Central or any State Government. The factory of petitioners was registered under the Act and, therefore, all the provisions of the Act will apply for the same. Therefore, for non-adherence of provision under Section 7A of the Act, the petitioners will be liable for penal action in terms of provision of Section 92 of the Act.

11. Therefore, this Court does not find any illegality in the impugned order dated 12.02.2014 passed by the Chief Judicial Magistrate, Sitamarhi, in Complaint Case No.C2/2/14, Trial No.1159 of 2014.

12. This application is, accordingly, dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	22-08-2017
Uploading Date	23-09-2017
Transmission Date	23-09-2017

