

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 22/08/2017****Judgment delivered on: 04/10/2017****WPCR No. 10 of 2016**

- Satpal Singh Bal S/o Late Bandhan Singh Bal, Aged About 40 Years R/o Village Jhalmala, P.S. Jutemill Chowki, Tahsil & District Raigarh (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Ministry Of Home, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Station House Officer, Police Station Pussour, District Raigarh, (Chhattisgarh)
3. The Office Of Public Prosecutor, District Court, Raigarh, (Chhattisgarh)

---- Respondents

For Petitioner : Shri B.P. Sharma, Advocate.

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

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****04/10/2017**

Heard.

1. Learned counsel for petitioner submits that the project for construction of cooling tower for the power plant was undertaken on contract by Paharpur Cooling Towers Ltd. from Korba West Power Company Limited. Petitioner was the Project Manager of the company under whose supervision the construction work was going on. On the date of

incident 23.07.12, the Labourers namely Lolarakh Saroj, Lav Kush Kumar, Jitendra Kumar, Ravindra Kumar and Kriparam, who were present at the work site and the jump from, which is a platform which is being raised to reach to the height of the cooling tower on which work was going on. All of a sudden, due to some technical fault, the jump form got separated from the cooling tower and fell down because of which the Labourer present on the platform suffered grievous injury and died on spot. It is submitted by the counsel for petitioner that earlier a writ petition bearing WPCR No.78/2014 was filed before this Court which was withdrawn as charge-sheet was filed during the pendency of that petition. Later on, a Cr.M.P. 49/2016 was filed under Section 482 of Cr.P.C. which was disposed of vide order dated 13.01.2016. Hence, this petition.

2. It is submitted that petitioner and others have been charge sheeted for offence under Section 304 of IPC whereas offence under Section 304 of IPC is not made out in any manner and the act attributed to the petitioner falls within the ambit of Section 304A IPC i.e. culpable homicide not amounting to murder. Reliance has been placed on the judgment of ***Sushil Ansal Vs. State***, reported in **2014 (6) SCC 173**, ***Kumar and Others Vs. State of Kerala***, reported in **2012 CRLJ 3193** (Kerala High Court) and the judgment of Supreme Court in ***A.D. Bhatt Vs. State of Gujrat***, reported in **AIR, 1972 SC 1150**. It is submitted that accident occurred at the construction site and for that nobody can be charged with offence under Section 304 of IPC which requires knowledge or likelihood of causing such bodily injury resulting in death of person, which cannot be attributed to the petitioner in this case on the basis of the material available in the charge-sheet. Hence, it was purely a case of accident. On these grounds it is prayed that the case against the petitioners

pending before the court of JMFC Raigarh be quashed.

3. Counsel for respondents has opposed the grounds raised in this petition and arguments submitted on behalf of the petitioner. It is submitted that the case has been investigated and there is ample evidence against the petitioner that the incident occurred due to the inadvertent act of the petitioners and others who failed to provide safety equipments to the Labourers and also failed to provide other safety measures which could have saved the lives of the Labourers and therefore it shall be deemed that petitioners had knowledge that this disregard to safety measures and non-availability of the safety equipments to the labourers which was likely result in some accident even then the petitioner and others allowed or compelled the labourers to attend the job which resulted in the accident which caused death of the labourers. It is also submitted that the petitioner has also opportunity to argue before framing of charge before the trial Court, hence, there being remedy available to the petitioners because of which this petition is not maintainable.
4. Both the parties are heard and perused the material on record.
5. It is alleged by the prosecution, that petitioner and others failed to provide the safety equipments to the Labourers and also failed to arrange other safety measures to safeguard the lives of the Labourers which is an inadvertent act on their part. Hence, case of culpable homicide is made out.
6. Attention was drawn to the documents of merg intimation recorded and other documents which do not speak of any liability of the petitioners and other concerns but there are statements of witnesses who have stated in support of the prosecution. The case is already pending before the trial

Court for framing of charge and thus the petitioners have option to raise such defence. It is well settled that when equally efficacious remedy is available in the statute, the writ petition under Article 226 of the Constitution is not maintainable.

7. For the aforesaid reasons, this petition is not maintainable and it is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE