

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 475 of 2017

1. D. K. Mehta Aged About 60 Years Vice President (Works) J K Lakshmi Cement Ltd., Village- Malpurikhurd, Khasidh, Ahiwara, District Durg, Chhattisgarh.
2. S K Wali S/o Late Shri Omkar Nath Wali Whole Time Director J K Lakshmi Cement Ltd. Aged About 66 Years, Village Malpurikhurd, Khasdih, Ahiwara, District Durg, Chhattisgarh.

---- Petitioners

Versus

- State Of Chhattisgarh Through Deputy Chief Factory Inspector, Deputy Controller Industrial Health & Safety, Durg, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri N.K. Shukla, Sr. Advocate with Shri N. Naha Roy, Advocate.
For State/Respondent	:	Shri Anil Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/07/2017

1. Heard.
2. This petition has been brought under Section 482 of Cr.P.C. with prayer to exercise inherent powers for quashing the criminal proceedings against the petitioner pending before the Judicial Magistrate First Class, Labour Court, District-Durg in Criminal Case No.147 Factories Act/2016 (Fatal) and the order passed by the Industrial Court in Criminal Revision dated 31.03.2017.
3. Petitioner No.1 is the Senior Vice President and petitioner No.2 is the Whole Time Director in J.K. Laxmi Cement Ltd., Durg. Deceased Ishwar Prasad Verma was a labour employed in J.K. Laxmi Cement Ltd., the Industry. On 25.03.2016, deceased was cleaning the dust below the pulley of the running conveyor belt with bare hands when his left hand got entangled in the conveyor belt and amputated from shoulder, who was admitted to hospital for treatment, but he expired as a result of injuries caused to him on 23.06.2016. Factories Inspector after conducting enquiry, filed a complaint before the Labour Court against the Manager of the J.K. Laxmi Cement alleging violation of Section 41 r/w Rule 73(e) and Section 21(1)(iv)(b) of the Factory Act, 1948. The learned

Magistrate/Labour Judge after taking cognizance in the alleged offence passed order for appearance of the petitioners/accused persons.

4. The Cr.M.P. No.33/C.G.I.R. Act/V/2016 was preferred before the State Industrial Court, Chhattisgarh, Raipur in which order dated 31/03/2017 the order of trial Court was assailed on the grounds that petitioners were not responsible, as the work was not being done in their supervision, that the learned Court below has passed order without application of mind for appearance of the petitioners, that it was not considered by the Court below that Contractor had accepted his liability of compensation to the legal heirs of deceased. Considering all the questions and issues, the learned revisional Court below has dismissed the revision petition. Hence, this petition.
5. The grounds taken in this petition are these that on the basis of the complaint made, there is no statement to show violation of Section 92 of the Act, 1948, hence, the continuation of such criminal proceeding shall be abuse of the process of law. The performance of work was under the charge of the contractor, who was responsible for supervision of the work and workmen and to ensure the guidelines for the safety are being followed and there had been not overact on the part of the petitioners in the enforcement of guidelines on of the workmen. Hence, the allegation of violation of Section 41 of the Act, 1948 Rule 73(e) is totally a vague statement. The petitioner cannot be held responsible for the failure of contractor to supervise and control work and performance under his directions. There had been specific instructions by the management to restrain the workers from working on the running machineries. The statement of witnesses as well do not point out any negligence or violation of rules on the part of the petitioner and learned revisional Court below has failed to notice that no application of mind was done by the Trial Court.
6. Counsel for the petitioner submits that the complaint against the petitioner is not maintainable. Firstly for the reason that the company has not been made a party, the contents of the complaint **(Annexure P/13)** by itself demonstrate that the deceased was himself negligent and was cleaning the clinker/slag from the tail of the pulley when the conveyor belt was in running condition. The order sheet dated 16.05.2016 **(Annexure-P/2)** mentions that the case was perused and order of registration was passed along with for appearance of the accused persons, which clearly demonstrates that there had been no application of mind. Also submitted that on reading the complaint, there appears to be no violation of

Section 41 of the Act, 1948 read with Rule 73 (e) Factories Rules, 1962.

7. Reliance has been placed on the judgment of Hon'ble Supreme Court in ***Sharad Kumar Sandhi Vs. Sangeeta Rane*** reported in (2015) 12 SCC 781 in which it was held that initiation of criminal proceedings against the Managing Director or any Officer of company shall be not maintainable if, there are no specific allegations against them or if allegations are made of vague nature. Reliance has been placed on the judgment of the Apex Court in ***GHCL Employees Stock Option Trust Vs. Kranti Sinha*** in which it was held that while passing an order of summoning of accused the order must reflect that Magistrate has applied his mind to facts of case and law applicable thereto. Petitioners have also relied upon the judgment in ***M/s. Pepsi Foods Ltd. Vs. Special Judicial Magistrate*** reported in SCC (1998) 5 SCC 741 it has been held that summoning of an accused in criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied mind and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. Reliance has also been placed on the judgment of the Supreme Court in ***State of Gujrat Vs. Jethalal Ghelabhai Patel*** reported in AIR 1964 SC 779 and ***State Vs. L.C. Patel*** reported in AIR 1960 Bombay 1.
8. On behalf of the State, it is submitted that the serious incident that took place in the factory premises of the petitioners, was a result of the negligence and violation of safety guidelines by the petitioners. The petition has been brought at a premature stage, hence, is not maintainable. All the arguments submitted by the petitioner are in fact required to be raised in defence before the Trial Court, hence, there is no scope for interference in the proceeding against the petitioner.
9. In reply, it is submitted on behalf of the petitioners, that the material in the charge sheet mentions that the conveyor belt was fenced which is a requirement under Section 21 of the Factories Act, 1948. The only gap left was 600 ml (60 centimeter) which was for the purpose of maintenance and cleaning and not for the purpose of doing any work while the conveyor belt was in running condition. Photographs of the notices have been produced as **(Annexure P/8)** in which the safety rules are clearly mentioned that doing any work on running conveyor belt, is prohibited. Death of the deceased in this case can be attributed either to his own negligence or of the contractor.

10. There are specific pleadings or allegations against the petitioners. Section 92 of the Factories Act, 1948 is as under :

“92. General penalty for offences—Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to ²[two years] or with fine which may extend to ³[one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to ⁴[one thousand rupees] for each day on which the contravention is so continued:

⁵[Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than ⁶[twenty-five thousand rupees] in the case of an accident causing death, and ⁷[five thousand rupees] in the case of an accident causing serious bodily injury.

Explanation.—In this section and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.]”

11. The first objection raised by the petitioner is that the company has not been made a party does not hold any ground, the reason that there is nothing in the provision under Section 92 of the Act, 1948 that the company has to be made a party. The responsibility has been fixed on the occupier or the Manager of the factory for violation of any provisions of the Act or rules whether directly controlled by them or by any person executing their orders or any person authorized by them to supervise control and perform the functions in the factory.

12. Although, it is requirement that orders summoning the accused persons in a complaint case, has to be a speaking order with reasons mentioned therein, but there is no prescribed format for passing such orders as has been held in Pepsi Foods Ltd.(supra), Sharad Kumar (supra) and Mohd. Ullahman (supra). This by itself is not a ground to quash the proceeding initiated on the basis of complaint. The complaint against the petitioner has disclosed that the commission of offence as per the requirement of Section 190 of Cr.P.C., was made out. In the impugned order dated 31.03.2017, it was held that the complaint for violation of provisions of the Factory Act and rules shall continue and shall have overriding effect with respect to criminal case pending against the contractor.

13.Hence, there is no reason to come to this conclusion that the prosecution against the petitioners, is not maintainable on the grounds of the reasons mentioned herein above, Section 92 of the Act, 1948, holds the occupier or the Manager of the factory vicariously liable for every contravention of the provisions of the Act, 1948 and the rules therein. It is for the petitioners to raise defence before the trial court and discharge the burden of proof with respect to their role in the incident and thereafter pray before the trial Court for acquittal. Although, the order passed by the trial Court is not a speaking order, but looking to the criminal liability upon the petitioners under the provisions of Section 92 of the Act, it cannot be held manner that the proceeding against the petitioner is abuse of process of law, hence, this petition is without substance.

14. Accordingly, the petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE