

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP No. 1596 of 2004**

Anil Kumar Sinha, S/o. Mr. Thakur Balram Sinha, aged about 48 years, Dy. General Manager, Production, Simplex Castings Ltd., Unit-II, Urla, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through: Dy. Director, Industrial Health & Safety (Factory Inspector) Raipur, Chhattisgarh
2. Dy. Director, Industrial Health & Safety (Factory Inspector) Raipur, Chhattisgarh
3. Industrial Court, through its Presiding Officer, Raipur, Chhattisgarh
4. Judicial Magistrate First Class, Labour Court, Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Dr. N.K. Shukla, Sr. Advocate along with Mr. Vikram Sharma, Advocate
For State	:	Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/08/2018**

1. The present writ petition has been filed assailing the order passed by the Judicial Magistrate First Class, Labour Court, Raipur, in Criminal Case No. 533/Factory Act/1999, dated 10.10.2002, whereby the present petitioner has been held guilty of having committed the offence under Section 92 of the Factories Act with the imposition of fine of Rs.25,000/- and in case, if the fine amount is not paid, the petitioner shall have to undergo simple imprisonment of one month. The challenge also is to the order passed by the Industrial Court dated 24.03.2004, passed in Criminal Appeal No. 26/MPIR/04/2002 affirming the order of the Labour Court.
2. The fact which led to the prosecution case against the petitioner is that the petitioner was working as a Factory Manager at the Simplex Casting Limited, Raipur during the period 1999. An accident took place at the

factory, where the petitioner was the Factory Manager on 11.06.1999. The nature of accident was that some civil fabrication work was being undertaken and while affixing of asbestos sheet on the roof, the said sheet broke and a worker who was working over the asbestos sheet fell and succumbed to the injuries. The person who succumbed to the injuries was the labour namely Ramesh Prasad Pathak. The matter was thereafter taken cognizance of by the Factory Inspector and in due course of time a charge sheet was filed before the Labour Court on 17.02.2000 alleging violation of the provisions of Factories Act resulting in a fatal accident.

3. After the conclusion of the evidence recorded by either side, the Labour Court vide its order dated 10.10.2002 reached to the conclusion that of the two persons, the first accused namely Heeralal Shah was not the occupier as there was evidence brought on record to show that it was Ketan Shah who was the occupier at the relevant point of time and on account of this evidence said Heeralal Shah was acquitted from the charges. However since there was no dispute so far as the petitioner being the Factory Manager at the relevant point of time the petitioner was found guilty for the offence and sentenced to pay fine of Rs.25,000/- with default stipulation of simple imprisonment of one month.
4. The said judgment of conviction was put to challenge before the Industrial Court and the Industrial Court also dismissed the appeal affirming the order passed by the Labour Court, which led to filing of the present writ petition.
5. The contention of the counsel for the petitioner is that since the prosecution had made two of the persons accused i.e. one the occupier and other the petitioner, the Labour Court could not have acquitted one

and convicted the other, it could have been either conviction for both or acquittal for both with the same set of evidence and deposition made available before the Labour Court. It was also the contention of the counsel for the petitioner that from the evidences of the witnesses examined in defense, it would reveal that the petitioner had ensured all necessary steps and safety measures were being provided at the work site, however it was on the sheer negligence of the deceased himself that the accident occurred and for which the petitioner cannot be held responsible and thus prayed for setting aside of the two orders. It was also the contention of the counsel for the petitioner that the provisions of the Factories Act particularly Section 7(A) envisages that for the breach of any of the provisions of Section 7, it would be the occupier, who would be the responsible for the said offence and as such the petitioner since he was not the occupier, but was only the Factory Manager, conviction of the petitioner was bad in law and the order deserves to be set-aside on this ground also.

6. The State counsel however opposing the petition referred to Section 92 and submitted that Section 92 of the Factories Act dealing with the penalty and procedure, specifically envisages that it would be the occupier as well as the manager of the factory, who would be responsible for any breach of any of the safety measures or any of the provisions of the Factories Act and the Rules framed there under. He submits that the petitioner undisputedly was the Factory Manager at the time of accident and therefore the finding of the Labour Court and the Industrial Court in this regard does not warrant interference and the petition deserves to be rejected.

7. Having heard the contentions put forth on either side and on perusal of record, the admitted position as it stands are as under:-
- (i) That an accident took place at the Simplex Castings Limited, Raipur on 11.06.1999.
 - (ii) On the date of accident, the petitioner was the Factory Manager.
 - (iii) As a result of the accident, one labour Ramesh Prasad Pathak fell from the roof top and succumbed to the injuries.
 - (iv) The Factory Inspector filed a charge sheet against Heeralal Shah and A.K. Sinha stating them to be the occupier and the Factory Manager respectively.
8. Further, from the perusal of the evidence, it also reveals that there is ample evidence produced in the defense itself to show that it was not Heeralal Shah, who was the occupier at the relevant point of time, but it was one Ketan Shah who was the occupier, as is evident from the documents submitted before the authorities in the Industrial Health and Safety Department. There is no dispute so far as the present petitioner being the Factory Manager.
9. Given the aforesaid facts and circumstances of the case, when we take into consideration the provisions of Section 92, it clearly envisages that for the contravention of any of the provisions of the Factories Act or any Rules made there under. It would be the occupier and the Manager of the factory each to be guilty for the offence and would be punishable. Since there was a fatal accident on 11.06.1999, and the Factory Inspector found certain deficiencies in the safety measures which were adopted by the Factory Manager in the establishment. It cannot be said that the Factory Manager is not responsible for the said accident in view of the provisions of Section 92 of the Factories Act, neither can it be said that since the occupier has

been acquitted, the petitioner in the capacity of the Factory Manager would also be entitled for an acquittal on the ground of parity. This argument of the petitioner would not be sustainable also for the simple reason that the prosecution itself has not been able to conclusively prove that Heeralal Shah was the occupier, rather there is evidence on the contrary to show that it was Ketan Shah who was the occupier at the relevant point of time. Thus the said contention of the petitioner stands negated.

10. For all the aforesaid reasons this Court does not find any strong case made out by the petitioner calling for an interference with the orders passed by the Labour Court, so also by the Industrial Court. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge