

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1917 of 2018

1. D. K. Mehta Aged About 62 Years Sr. Vice-President (Works) JK Lakshmi Cement Village- Malpurikhurd, Khasdih, Ahiwara, District- Durg, Chhattisgarh
 2. S.K. Wali S/o Late Shri Omkar Nath Wali Aged About 67 Years Whole Time Director JK Lakshmi Cement, Village- Malpurikhurd, Khasdih, Ahiwara, District- Durg, Chhattisgarh
- Petitioners**

Versus

State Of Chhattisgarh Through Deputy Chief Factory Inspector, Deputy Controller Industrial Health And Safety, Durg, Chhattisgarh --- **Respondent**

For Petitioner	:	Shri Kishore Bhaduri, Advocate with Shri N.Naha Roy, Advocate
For Respondent/State	:	Shri Ashish Shukla, Dy. A.G.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

19/09/2018

Heard on admission.

1. This petition under Section 482 Cr.P.C. has been preferred against order dated 31.08.2018 passed by the learned Judicial Magistrate First Class/Labur Court Durg, by which, the petitioners' application for discharge under Section 245 Cr.P.C. has been rejected.
2. Learned counsel for the petitioners submits that the application for discharge filed by the applicants has been rejected without adverting to the ground raised therein, merely because in earlier round of litigation before this Court, the petition under Section 482 Cr.P.C. against the order taking cognizance and issuance of summons was dismissed.
3. Learned counsel for the petitioners submits that they had raised substantial ground particularly that the complaint taken as it is, does not make out a case and the Court could not have taken cognizance in the manner it has done. He would submit that earlier order passed by the State Industrial Court on 31.03.2017 would not come in the way of the petitioners in seeking discharge under Section 245 Cr.P.C. in as much as the order passed by this Court in exercise of jurisdiction under Section 482 Cr.P.C. does not close the petitioners' remedy to otherwise seek

discharge at appropriate stage of proceeding before the Magistrate if a case is made out.

4. Earlier when a complaint was filed by the Factory Inspector against the petitioners herein, alleging violation of Section 41 read with Rule 73 (e) and Section 21(1)(iv)(b) of the Factory Act, 1948 and summons were issued by the Magistrate/Labour Court thereby taking cognizance, the order of the Magistrate/Labour Court taking cognizance and issuance of summons was challenged before the State Industrial Court, C.G. Raipur which dismissed the same vide order dated 31.03.2017. Aggrieved by the said order, a petition under Section 482 Cr.P.C. was filed before this Court registered as Cr.M.P. No.475/2017. The challenge to the order taking cognizance and issuance of summons by the Magistrate on the complaint filed by the Factory Inspector was challenged on various grounds as referred to in para 4,5 & 6 of order dated 20.07.2017 passed in Cr.M.P. No.475 of 2017. This Court after taking into consideration the submission recorded its finding as below:

“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 [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued:

[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 [twenty-five thousand rupees] in the case of an accident causing death, and [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.

The petition was accordingly dismissed.”

5. It appears that after dismissal of the petition, the petitioners approached the Magistrate and moved an application under Section 245 Cr.P.C. for their discharge. It is relevant to mention here that it is not a case where prayer for discharge was made after recording of some evidence by the Magistrate. The prayer for discharge has been made, after the order passed by this Court, on the same material which was placed before this Court and upon perusal of which, this Court dismissed the petition.

6. Therefore, in view of the above consideration and in view of the order passed by this Court earlier, this petition is misconceived and accordingly dismissed in limine.

Sd/-
(Manindra Mohan Shrivastava)
Judge