

SMT. JUSTICE T.RAJANI

CRIMINAL PETITION No.7020 of 2012

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in C.C.No.61 of 2011 on the file of Additional Judicial First Class Magistrate, Kothapeta, East Godavari District, registered for the offences under Sections 304-A, 338 and 285 IPC, against the petitioner/accused.

2. Heard learned counsel for petitioner/accused and learned Public Prosecutor for the first respondent. None appears for the second respondent in spite of service of notice.

3. It is alleged in the charge sheet that Sodium Carbonate was used for cleaning purpose in the factory of the petitioner and a bag of said Carbonate was purchased on the evening of 15.05.2010 and stored in the godown on eastern side of factory. Though on 16.05.2010 was Sunday, as it was the season, the management intended to continue half day work and as such, the employees of Reddy Drugs Laboratory attended the factory. At about 10.30 AM on that day, when the packers were directed to pick up the ferric chloride tins from godown, they returned as the tins were in height, then, deceased Nos.1 and 2 went into godown and as part of it, while deceased No.1 was taking out ferric chloride tin stored at a height of about 7 feet with his hands, deceased No.2 was helping him and other two women packing workers were standing near to them. In that process, the ferric chloride tin got slipped from the hands of both the deceased and the entire powder had fallen on the

sodium carbonate powder which was stored very nearer to the ferric chloride storage point and when both the powders got mixed, a huge quantity of heat was generated in reaction and dust explosion occurred along with heavy clouds of white fumes/gases, due to which, the said four workers sustained severe burn injuries. While undergoing treatment, deceased Nos.1 and 2 succumbed to the injuries and two others sustained multiple burns and survived.

4. Learned counsel for the petitioner submits that a case was registered against the petitioner under the Factories Act and the same ended in acquittal. He placed reliance on the judgment of the High Court of Jharkhand in **Binod Kumar Das vs. State of Jharkhand**¹, wherein it was held at paragraph Nos.7 to 9 as under:

“7. Thus Sub-section (1) of [Section 4](#) of the Code provides that in absence of any specific provision to the contrary nothing in the code shall affect any special or local law for the time being in force. However the conjoint effect of that provision and Sub-section (2) of [Section 4](#) would be as follows:

1. That all offences, whether under the penal code or under any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions [of the Code](#).

2. This rule is subject to qualification that in respect of offences under other laws that is to say, under laws other than [Indian Penal Code](#), if there be an enactment regulating the manner of investigation, inquiring into, trying or otherwise dealing with such offences, such enactment will prevail over the code.

3. The provisions of special or local law will prevail over the provisions contained in [the Code](#) unless there is specific provisions to the contrary.

8. Having taken notice of the provision of [Section 4](#) of the Code of Criminal Procedure it would be pertinent to take notice of [Section 92](#) of the Factories Act so as to be ascertained as to whether allegation made in the First Information Report is within the ambit of [Section 92](#) of the Factories Act.

[Section 92](#) of the Factories Act reads as follows:

¹ 2007 Law Suit (Jhar) 179

General penalty for offences--Save as is otherwise expressly provided in this Act and subjected 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.

9. As perusal of the provisions as contained in [Section 92](#) of the Factories Act it is evidently clear that the allegation made in the first information report is well within the ambit of the provisions as contained in [Section 92](#) of the Factories Act.

10. Further I do find that the provision as contained in [Section 105](#) of the Factories Act does speak as to in which manner offences under the [Factories Act](#) is to be dealt with. The said as follows:

Cognizance of the offence--(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector. provision reads

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the 1st class shall try any offence punishable under this Act.

12. Thus, it does appear that the provisions of the [Factories Act](#) stipulate relating to investigation, enquiry or trial of the offences falling within the provision of the [Factories Act](#) and therefore, the provisions of the [Factories Act](#) being a special legislation would prevail over the provisions of the [Code](#) of Criminal Procedure. In other words, it can be said that the investigation, enquiry or the trial relating to the matter falling within the special legislation is not permissible to be gone into under the general law.

13. Under the circumstances, the First Information Report of Bistupur P.S. case No. 49 of 2006 corresponding to G.R. No. 409 of 2006 is hereby quashed so far the petitioners are concerned.

Learned counsel for the petitioner has also produced the judgment of acquittal dated 07.03.2017 passed in C.C.No.77 of 2011 on the

file of the Judicial Magistrate of First Class, Kothapeta, pertaining to the offence under Section 92 of the Factories Act.

This Court is in agreement with the ruling of the Jharkhand High Court.

5. In view of the above, this Court opines that continuation of proceedings against the petitioner would only be an abuse of process of law and the proceedings are liable to be quashed.

6. Accordingly, the Criminal Petition is allowed, quashing the proceedings in C.C.No.61 of 2011 on the file of Additional Judicial First Class Magistrate, Kothapeta, East Godavari District, against the petitioner/accused. Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

11th September, 2018.

sj

T. RAJANI, J

