

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2216-2018 (O&M)

Date of Decision:-11.7.2018

Ashish Mohan Gupta and another ... Petitioners

Versus

The Deputy Director of Factories, Mohali ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vikas Kuthiala, Advocate for the petitioners.

GURVINDER SINGH GILL, J.(Oral)

1. By way of filing this revision petition, the petitioners assail order dated 24.5.2018 passed by learned Chief Judicial Magistrate, SAS Nagar, Mohali, whereby an application filed by the petitioners for staying proceedings in respect of a complaint under Section 28(1) of Factories Act, 1948, has been dismissed.
2. A few facts necessary to notice for disposal of this revision petition are that the respondent-complainant filed a complaint under Section 28(1) of Factories Act, 1948 against the petitioners on account of the fact that an accident had taken place in the factory on 30.10.2013, in which an Electrician by the name Ajay Kumar Passi had died. Upon inquiry, it was found that a lift was being maintained in the premises and that a door of the lift was lying open on the first floor as a result of which, the worker fell down in the said duct of the lift.
3. Section 28 of Factories Act, 1948, which deals with adequate safety measures required to be adhered to with regard to lifts, reads as follows:-

(1) In every factory:-

(a) every hoist and lift shall be:-

- (i) of good mechanical construction, sound material and adequate strength;
- (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

(b) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;

(d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

(e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:-

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

- (3) The Chief Inspector may permit the continued, use of a hoist of lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.
- (4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.
- Explanation.—For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

4. Subsequently, the petitioners filed solvency proceedings under Section 10 of Insolvency and Bankruptcy Code, 2016 and National Company Law Tribunal (NCLT), Chandigarh vide order dated 9.3.2017 declared moratorium. Thereafter vide order 12.9.2017, NCLT, Chandigarh ordered for liquidation in the matter pertaining to the petitioners' company i.e. Hind Motors. However, the said order of liquidation was challenged by the petitioners before National Company Law Appellate Tribunal, New Delhi and the Appellate Tribunal vide order dated 21.12.2017 stayed the liquidation proceedings. Ultimately, the Appellate Tribunal upheld the order of liquidation vide judgment dated 26.4.2018. The petitioners thereafter moved an application before the trial Court for staying of proceedings on the ground that once liquidation had been ordered all the legal proceedings have to come to a stand still qua the ex-directors. However, the learned trial Court dismissed the application, which has been challenged by way of filing the present revision petition.
5. I have heard the learned counsel for the petitioner and have also gone through the documents annexed with the petition including the impugned

order.

6. It needs to be noticed that the prosecution in respect of the complaint under Section 28(1) of the Factories Act, 1948 was lodged in the year 2014 i.e. much prior to initiation of the insolvency proceedings, which were initiated in the year 2016. Though, it is correct that once liquidation has been ordered all other legal proceedings are come to a stand still but the term 'legal proceedings' cannot be interpreted to mean to include criminal liability, which had arisen prior to even initiation of the insolvency proceedings especially when such criminal liability has nothing to do with any fiscal aspect. In the present case, the criminal liability is in respect of the obligation on part of the petitioners to maintain safety standards, so as to ensure that no harm or any injury is caused to its employees. In the present case, it was on account of negligence and carelessness on part of the petitioners in not maintaining the lift and in not having ensured that all the doors on the duct of the lift are kept closed, which resulted in death of one of its employee. The prosecution on account of such negligence having been launched much prior to initiation of the insolvency proceedings, cannot come to a stand still and the petitioners cannot escape from such liability.
7. During the course of arguments, the learned counsel referred to Section 279 of Companies Act, 2013, which reads as follows:-

“(1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

8. Having perused the aforesaid Section, this Court is of the opinion that the word ‘legal proceeding’ would not include in its ambit cases where criminal liability is in respect of an incident not related to any fiscal matter, which occurred much prior to initiation of the insolvency proceedings and which pertains to some violation on part of the employer in having remained negligent in not having taken adequate safety measures in the factory premises and thus endangering life of its employees. As noticed above, the present case is a case of death of a worker in 2014 in factory premises of petitioners on account of the fact that requisite safety measures had not been taken in the premises to safeguard lives of workers, especially on account of violation of Section 28 of Factories Act, 1948.
9. In these circumstances, I do not find any infirmity in the impugned order and the same is hereby upheld. There is no merit in this revision petition and the same is hereby dismissed.
10. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

11.7.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No