

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION No. 178 OF 2019
WITH
CRIMINAL APPLICATION No. 179 OF 2019**

Nikunj Mansukhlal Turakhia
Occupier/ Manager,
M/s.Turakhia Steels Pvt. Ltd.

...Applicant

Versus

The State of Maharashtra
At the instance of
Shri V.V.Katamwar, Dy. Director,
Industrial Safety & Health, Raigad

...Respondent

Mr.A.A.Pande i/b. Ms.Pratima V. Rao for the Applicant in both Applications.
Mr.N.B.Patil, APP for the Respondent -State in Criminal Application No. 178 of 2019.
Mr.A.R.Patil, APP for Respondent-State in Criminal Application No. 179 of 2019.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 27 MARCH 2019**

P.C.:

1. These Criminal Applications are directed against the orders dated 6th July, 2018 passed by the learned Chief Judicial Magistrate, Raigad Alibag thereby issuing process against the applicant/accused in Summary Criminal Case Nos. 390 of 2018 and 392 of 2018 respectively.

2. As the facts and the parties are same, these Applications are disposed of with following common order :

3. On 5th April, 2018, a fatal accident occurred and one worker died while working in the factory. On receiving the information, the Deputy Director, Industrial Safety and Health, Raigad conducted an inquiry and filed two complaints against the applicant/accused, who is owner of the said factory. The learned Chief Judicial Magistrate, Raigad Alibag has issued process under sections 115 (1) and 115 (2) of the Maharashtra Factories Rules, 1963 read with section 92 of the Factories Act, 1948 and he has also issued process in other case under section 92 of the Factories Act, 1948, as the offence was found to be committed under section 7A(2) (a) of the Factories Act, 1948.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused is the owner of the factory, but he is not managing day-to-day activities of the factory and, therefore, he cannot be held responsible for the offences committed under the Factories Act. He has further submitted that the applicant/accused was not present at the time of accident. He has further submitted that the applicant/accused is not aware about working and operation generally which take place in the factory. He

has further submitted that the learned Magistrate ought to have taken into account specific role attributed to the applicant/accused and, therefore, he has prayed that the orders of issuance of process are to be quashed and set aside.

5. The learned APP has pointed out the averments made in the complaints dated 06.07.2018.

6. My attention is drawn to the averments made in paragraph Nos. 8 and 9 of the complaints.

7. Considered the submissions made by the learned Counsel and the averments made in both the complaints. I am of the view that the orders passed by the learned Magistrate are legal and correct. The submissions made by the learned counsel for the applicant/accused is a probable defence of the accused, which cannot be taken into account at the time of issuance of process. No interference is required in the orders passed by the learned Magistrate.

8. Both the Criminal Applications are dismissed summarily.

(MRIDULA BHATKAR, J.)