

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**C.R.R. 2959 of 2004
With
IA NO. CRAN 1 of 2019 (Old No. CRAN 2357 of 2019)**

**Dipankar Chatterjee
Vs.
S.Kundu Inspector of Factories, W.B.**

**For the petitioner : Mr.Sandipan Ganguly, Sr. Adv.
Mr.Somopriyo Choudhury, Adv.
Mr.Arunabha Deb, Adv.
Mr. Ayush Jain, Adv.**

For the State : Mr. Sandip Chakrabarty, Adv.

Heard on : 08.11.2021

Judgment On : 09.11.2021

Bibek Chaudhuri, J.

Affidavit-of-service be kept with the record.

The instant criminal revision under Section 482 of the Code of Criminal Procedure praying for quashing of proceedings in Case No.C-

2895 of 2000 pending before the learned Chief Judicial Magistrate, Alipore, South-24-Parganas under Section 92 of the Factories Act and all orders passed therein including order dated 18th May, 2001.

Indisputably the petitioner is a business man. He used to carry on a business under the name and style of "Dipankar Industries" at premises No.1, Nimak Mahal Road within South Port Police Station. It is the case of the complainant that the petitioner set up a factory as per approved plan dated 17th December, 1993. On 14th September, 2000, the complainant inspected the said factory premises and found that the petitioner constructed the said factory deviating from the approved plan. One door on the existing western side of the wall of the machine room and five windows of the entire south side wall of the machine room and office room were not yet constructed, in contravention to the provision of Rule 3(3) of the West Bengal Factories Rules, 1958, prescribed under the provision of Section 6(1) and 112 of the Factories Act, 1948. It was alleged that such deviation in constructing the factory amounts to an offence under Section 92 of the Factories Act. On the basis of the said complaint, the learned Chief Judicial Magistrate, Alipore took cognizance of the offence.

It is submitted by Mr. Sandipan Ganguly, learned Senior Advocate on behalf of the petitioner that the petitioner used to manufacture audio cassette cover in his factory. At present the said

factory is closed. He also submits under instruction that on the date of inspection of the factory by the complainant, the construction of the factory was not completed. It is pertinent from the written complaint itself that the complainant has alleged that the petitioner has not yet constructed the door and windows in the factory premises as per the approved plan. According to Mr. Ganguly the word "yet" in the petition of complaint denotes that the construction work was yet to be completed on the date of inspection of the factory by the complainant. Mr. Ganguly further submits that subsequently the petitioner constructed one door and five windows in his factory premises as per the approved plan. So he has prayed for quashing of the entire proceedings in case No.C-2895 of 2000.

Section 92 of the Factories Act, 1948 is the provision for general penalty for offences. The provision runs thus:-

"92. General penalty for offences.- Save as is otherwise expressly provided in this Act and subject to the provisions of Sec.93, if in, or in respect of, any factory there is any contravention 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 Sec.87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty-five rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury.”

Rule 3(1) of the West Bengal Factories Rules, 1958 deals with approval of site and plan. It is provided that no building shall be constructed, extended or taken into use as a factory or a part of a factory on any site unless previous permission in writing has been obtained from the State Government or the Chief Inspector for the site and for the construction, extension or use of the building on such site. Rule 3(3) of the said Rules states that no deviation of any kind from approved plan shall be made without written permission of the Chief Inspector.

During the pendency of the instant revision for last 17 years, the opposite party, the Inspector of Factories did not appear in spite of service of notice. However, the State of West Bengal is represented by Mr. Sandip Chakrabarty.

A close perusal of Rule 3(3) read with Section 92 of the Factories Act goes to show that deviation of any kind from approved plan in constructing factory is not *per se* an offence inviting penalty under Section 92 of the Factories Act. If the Inspecting Officer finds some deviation in construction of a factory from the approved plan, he is under obligation to give an opportunity to the occupier or the user of the factory to obtain written permission of the Chief Inspector. If Chief Inspector on consideration of the extent of deviation does not grant permission, then only there will be violation of Rule 3(3) of the West Bengal Factories Rules, 1958. On the first blush no complaint can be lodged by the Inspector of Factories finding deviation in construction from the approved plan. He shall first give opportunity to the factory owner to obtain written approval from the Chief Inspector to regularize such deviation.

In the instant case, no document has been filed on behalf of the opposite party or the State of West Bengal under whom the opposite party is a functionary to show that opportunity was given to the petitioner to regularize the deviation by filing an application before the Chief Inspector. During the hearing of the instant proceeding, the learned Advocate for the State fails to file any approved plan of the factory in question. There is no report as to whether the construction work of the factory was complete or not. In the absence of such

documents, I am of the considered view that it was not proper for the learned Chief Judicial Magistrate, Alipore to take cognizance on the basis of the written complaint.

As the petitioner was not given opportunity to regularize so-called deviation from the approved plan, while constructing factory and that the petitioner has completed the construction following the approved plan by setting up the door and windows in the factory, I find that the instant complaint is not maintainable.

As a result, the instant criminal revision is allowed on contest, however, without costs.

The order of taking cognizance by the learned Chief Judicial Magistrate, South-24-Parganas at Alipore in C Case No.2835 of 2000 on 15th September, 2000 and all subsequent orders are quashed.

(Bibek Chaudhuri, J)