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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1057 of 2014****Order Reserved on 16.07.2021****Order Delivered on 18.08.2021**

- S.Murli, S/o Shri H.R. Shivkumaran, aged about 62 years, Occupation – Executive Vice President, RKM Powergen Pvt. Ltd. P.S. & P.O. Dabhra, Distt. Janjgir-Champa (CG) Pin 495688. Civil and Revenue Distt. Janjgir-Champa (CG)

---- Petitioner**Versus**

- State of Chhattisgarh, Through – The Station House Officer, Police Station Dabhra, P.O. Dabhra, Distt. Janjgir-Champa (CG) Pin 495688. Civil and Revenue Distt. Janjgir-Champa (CG)

---- Respondents**And****Cr.M.P. No. 165 of 2015**

- N. Krishna Kumar, S/o Shri Nagamanickam, aged about 44 years, Occupation – Deputy General Manager (Electrical), M/s RKM Powergen Pvt. Ltd. P.S & P.O. Dabhra, Distt. Janjgir-Champa (CG) Pin 495688. Civil and Revenue Distt. Janjgir-Champa (CG)

---- Petitioner**Versus**

- State of Chhattisgarh, Through – The Station House Officer, Police Station Kotra Road, P.O. Kotra Distt. Raigarh (CG) Pin 496001. Civil and Revenue Distt. Raigarh (C.G.)

---- Respondent

For Petitioners	: Mr. Vipin Tiwari, Advocate
For Respondent	: Mr. Devendra Pratap Singh, Deputy Advocate General

Hon'ble Shri Justice Narendra Kumar Vyas**CAV Order**

1. Since common question of law and facts are involved in both the petitions under Section 482 of the Code of Criminal Procedure, 1973 (henceforth 'the Code'), they heard analogously and are being disposed of by this common order.
2. Petitioner – S. Murali has filed the petition Cr.M.P. No. 1057/2014 challenging the entire proceedings in Criminal Case No. 428/2014 pending before Judicial Magistrate, First Class, Dabhra, Distt. Janjgir-Champa arising out of the FIR No. 65/14 registered at Police Station Dabhra, Distt. Janjgir-Champa for the offence punishable under Section 304-A/34 of the Indian Penal Code **whereas** Petitioner – N. Krishna Kumar has filed the petition Cr.M.P. No. 165/2015 challenging the entire proceedings in Criminal Case No. 406/2014 pending before Judicial Magistrate, First Class, Raigarh, District Raigarh arising out of the FIR No. 33/2014 registered at Police Station Kotra Road, Distt. Raigarh for the offence punishable under Section 304-A/34 of the Indian Penal Code. [For the sake of convenience, Cr.M.P. No. 1057/2014 is taken-up as lead case]
3. Brief facts are projected by the petitioners are that the petitioners are working on the posts of Executive Vice President & Deputy General Manager, respectively in M/s RKM Powergen Pvt. Ltd., Chennai-TN, which is establishing a 4/360 MW coal based thermal Power plant at Dabhra, Distt. Janjgir-Champa. The said Company has given its construction work to Axon Construction Pvt. Ltd. and the said Axon Construction Pvt. Ltd., in turn, has given a contract to M/s Brothers Engineering and the said M/s Brothers Engineering entrusted the work to M/s Preeti Erectors. While the Preeti Erectors was executing the work, one of the workers namely Gogli Prasad, while working, met with an accident on 03.10.2013 and during the course of treatment, he succumbed to the injuries on 18.10.2013. Thereafter, the Police of Police Station Dabhra, District- Janjgir-Champa registered an FIR being Crime No.65/2014 on 27.02.2014 for the offence

punishable under Section 304-A/34 of the Indian Penal Code against the petitioner and three others. After usual investigation, the police has submitted the charge sheet/ final report before Judicial Magistrate First Class, Dabhra, District Janjgir-Champa on 16.07.2014, which was registered as Criminal Case No. 428/2014 for committing offence punishable under Section 304-A/34 of IPC,

4. Learned counsel for the petitioners in both the petitions would submit that the petitioners' establishment where the accident took place, is a factory as defined in Section 2(m) of the Factories Act, 1948, which is extracted below :-

“Section 2(m): “factory” means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any date of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

5. Learned Counsel for the petitioners would further submit that since the establishment where the accident took place is a Factory premises as defined under Section 2(m) of the Factory Act, 1948 and the said incident had occurred due to negligence of the deceased/employee, therefore, a complaint under Section 105 of the Factory Act, 1948 has been filed before the Judicial Magistrate First Class (Labour Court), Janjgir- Champa which was registered as Criminal Case No. 106/FA/2013 (State of Chhattisgarh Vs. Dr. S. Arumugam) against the occupier of the factory for alleged negligence of the occupier which is violation of Section 7 A (2)(d) of the Factory Act, 1948, which is extracted below:-

“**7A. General duties of the occupier.-** (1) Every

occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include-

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) The provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.”

6. He would further submit that Judicial Magistrate First Class (Labour Court), Janjgir-Champa taking cognizance of the complaint under Section 105 of the Act, 1984 has issued summons to the Managing Director of RKM Powergen Pvt. Ltd namely Dr. S. Arungam, who has admitted the guilt, therefore, the Judicial Magistrate First Class (Labour Court), Janjgir-Champa convicted the accused by imposing a fine of Rs. 80,000/- vide its order dated 26.11.2013 and in case of default in payment of fine to undergo imprisonment for 9 months. He would further submit that the dependents of the deceased have already been compensated by their Employer i.e. Preeti Construction Erectors and compensation of Rs. 6,77,760/- has already been deposited before the Labour Commissioner cum Labour Court, Janjgir-Champa and Rs. 3,22,240/- has also been paid to the wife of the deceased through cheque, as such, the family members of the deceased have been compensated by the employer of the

deceased.

7. On the above factual matrix, the petitioner would submit that the registration of FIR and subsequent filling of *Chalan* by the Police under Section 304-A read with Section 34 of IPC is nothing but abuse of process of law and it is the violation of Article 20(2) of the Constitution of India as well as Section 300 of Cr. P. C., as no one can be prosecuted for the same offence twice. He would further submit that looking to the allegation made in the FIR and Police report, it is crystal clear that offence under Section 304A read with Section 34 of IPC is not made out against the petitioners, therefore, registration of FIR in connection with Crime No. 65/2014 and subsequent charge-sheet filed by the Police Station Dabra District- Janjgir-Champa in criminal Case No. 428/2014 may kindly be quashed.
8. Learned counsel for the petitioners has submitted the written synopsis on 09.07.2021, reiterating the submissions made in writ petition and also relied upon the judgment of Hon'ble Supreme Court in case of **Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharastra** reported in **AIR 1965 SCC 1619** and in case of **Sathish Mehra Vs State of N.C.T. of Delhi** reported in **2012 AIR SCW 6446** and also referred to Judgment passed by this Court in case of **A. S. Ali and Others Vs. State of Chhattisgarh** reported in **2015 (1) ANJ 99** to substantiate that no ingredients of 304 of IPC is made out from the bare perusal of the charge-sheet, therefore, the criminal proceeding is liable to be quashed.
9. On the other hand, learned counsel for the State would submit that the prosecution has rightly initiated the proceedings against the petitioners as there is no violation of Article 20(2) of the Constitution of India in the instant case. He further submits that petitioners have been prosecuted for the offence under Section 304-A/34 of IPC as death of workman by doing rash and negligent act of the petitioner has taken place. Section 304A of

IPC is extracted below:-

“ **304A. Causing death by negligence.**--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

10. Whereas as per Section 7A(2)(d) of the Factories Act, 1948, it is the duty of the occupiers/ to maintain all the places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
11. I have heard learned counsel for the parties, and perused the material available on record.
12. The point to be determined by this Court is whether initiation of prosecution under Section 304-A of IPC against the petitioners will amount to *double jeopardy*, violation of Article 20 (2) of the Constitution of India or Section 300 of Cr. P. C. for the same offence and the fact that the Judicial Magistrate (Labour Court) has already convicted to the occupier by imposing fine.
13. At this stage, it would be appropriate to notice the provisions contained in Section 92 of the Factories Act, 1948, which reads thus :-

“92. **General penalty of 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.”

14. From perusal of the Provision of Section 92 of the Factories Act, it is clear that Factories Act is not a part of general penalty law but arise out of a breach of a duty provided in it. The offence

punishable under the Factories Act is based on the strict statutory offence for which *mensrea* is not a necessary ingredient therefore, the ingredient of Section 92 of the Factories Act, 1948. and Section 304-A/34 of IPC constituted an offence are altogether different. In the present case, the occupier of the company has been punished for the contravention of the provision of the Factories Act, 1948 which even in case of death or injury due to the accident in the factory but the commission of the offence by the petitioners is yet to be examined by the competent Court, on the basis of material collected by the prosecution, therefore, there cannot be any bar to prosecute the petitioners under the provisions of IPC by virtue of the Section 300 of Code of Criminal Procedure and Article 20(2) of the Constitution of India.

15. It is well settled legal proposition of law that to attract the protection of Article 20(2) of the Constitution of India or Section 300 of Cr. P. C. the offence should be of similar nature. The Hon'ble Supreme Court in case of State of **Arunachal Pradesh Vs. Ramchandra Rabidas @ Ratan Rabidas** reported in **2019 (10) SCC 75** has considered that whether a person who causes hurt to any person while driving a motorcycle in a rash and negligent manner under the Motor Vehicle Act can also be convicted under the provisions of IPC. The Hon'ble Supreme Court after elaborating the provision of law has held as under:

“19. In our considered view the position of law is well-settled. This court has consistently held that the MV Act, 1988 is a complete code in itself insofar as motor vehicles are concerned. However, there is no bar under the MV Act or otherwise, to try and prosecute offences under IPC for an offence relating to motor vehicle accidents. On this ground as well, the impugned judgment is liable to be set aside.”

16. The issue has already been examined by the Coordinate Bench of this Court in case of **Firoz Alam Vs. State of Chhattisgarh** reported in **2009 (2) CGLJ 310**, wherein it has been held as under:-

“10. In the instant case, offence under Section 7A(2)(c) of the Factories Act, 1948 read with Rule 73 of the Chhattisgarh Factory Rules, 1962 and Sections 88, 92 of the Factories Act, 1948 read with Rules 108(1) & 108(4) of the Chhattisgarh Factory Rules, 1962 are mainly related to taking necessary steps for safety of the persons employed in the factory with a view to save them from any casualty and offence of causing death by doing any rash & negligent act punishable under Section 304A of the I.P.C. is distinct from offence under Section 92 of the Factories Act, 1958. A person may be tried for offence punishable under Section 92 of the Factories Act, 1948 as well as under Section 304A of the IPC separately and both the offences are not one and the same or not based on same facts. The Court below has rightly rejected the application for discharge of the applicant and it has not committed any illegality or infirmity in the order impugned.”

17. The order passed by the Coordinate Bench has also been considered by another Coordinate Bench of this Court in **WPCR No. 202/2017** in the matter of **P. K. Tailang Vs. State of C. G.**, wherein it is held as under:

“11. Complying with the aforesaid analogy and provisions, the arguments advanced by the learned counsel cannot be appreciated in the facts of the case. Since the very operation of the statute is on the different forum and the object of the statute and the promulgation of the object is for the different reasons and the same cannot be amalgamated as it will defeat the social cause. Otherwise, the provisions if are read in juxtapose it will make each other pours which is under intent of the legislature under the circumstances, the petition has no merit.”

18. The order passed by the Coordinate Bench of this Court has also been considered by the Divisional Bench of the High Court of Madhya Pradesh in the case of **Vijay Parekh Vs. State of Madhya Pradesh** reported in **2021 LLR 151**, wherein it is held as under:

“31. It is clear from the aforesaid provisions that under the Factories Act and the Indian Penal Code the ingredients to constitute the offence are altogether different. Under the Factories Act there is a concept of vicarious liability of the occupier and the manager and they can be punished for the violations of notice of certain acts and omissions viz. not sending the information of accident in the factory, running the factory without obtaining appropriate license, not keeping the

attendance register of labourers, not providing adequate training to the labourers, not adopting safety mechanism in the factory etc. whereas under sections 287, 338 & 304-A IPC they can be punished for negligent conduct with respect to the machinery, causing grievous hurt by act endangering life or personal safety of others and causing death by negligence. The Magistrate prosecuting the accused under the Act of 1948 cannot examine the applicability of sections 287, 338 & 304-A of the IPC because no FIR or complaint was filed against him under these provisions. The petitioner pleaded guilty and the Magistrate has imposed fine and punishment till rising of the Court which was happily accepted by the petitioner but so far the allegations under sections 287, 338 and 304-A IPC are concerned, they are yet to be examined by the competent Court, therefore, the ingredients of both provisions of the Act are altogether different. Hence, in view of the verdict of the Apex Court, as discussed above, there is no bar in prosecuting the petitioner under both the enactments and over and above the Act of 1948, there is no bar or prohibition of separate trial in respect of the offence under the IPC.

19. The Hon'ble Supreme Court has examined "double jeopardy" in case of **Sangeetaben Mahendrabhai Patel Vs. State of Gujrat and Anr.** Reported in **2012 (7) SCC621** has held as under:

"17. In *Leo Roy Frey v. Superintendent, District Jail, Amritsar & Anr.*, AIR 1958 SC 119, proceedings were taken against certain persons in the first instance before the Customs Authorities under Section 167(8) of the Sea Customs Act and heavy personal penalties were imposed on them. Thereafter, they were charged for an offence under Section 120-B IPC. This Court held that an offence under Section 120-B is not the same offence as that under the Sea Customs Act:

"The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."
(Emphasis added)

18. In *The State of Bombay v. S.L. Apte and Anr.* AIR 1961 SC 578, the Constitution Bench of this Court while dealing with the issue of double jeopardy under Article 20(2), held:

"To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement therefore for attracting the Article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts

in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out.

20. From the above discussion, considering the law and material placed on record, it is quite clear that conviction under the Factories Act by the Judicial Magistrate First Class (Labour Court) Janjgir-Champa cannot create any bar for the Investigating Agency to register FIR under Section 304 of IPC and subsequent continuation of criminal proceeding before the Judicial Magistrate, Janjgir-Champa as both the offences are altogether different offences will not amount to double jeopardy as it is neither in violation of Section 300 of Cr.P.C. nor Article 20(2) of the Constitution of India, therefore, submission of the petitioner to the extent of protection of Article 20 (2), read with Section 300 Cr.P.C. is not available to the petitioner, as such contentions are liable to be rejected.

21. Learned counsel for the petitioner would further submit that there is no iota of evidence against the petitioner either in the FIR or in the police report and the petitioner has no direct nexus with the contractor which cannot be considered at this juncture as it is his defence. Further contention of the learned counsel for the petitioner is that as there was no negligence on the part of the petitioner and the mistake of contractor, therefore, this cannot be fastened with criminal liability or petitioner has no intention or knowledge of commission of offence, are the defence of the petitioner which cannot be examined while hearing this Criminal Misc. Petition for quashing of the charge-sheet.

22. Hon'ble the Supreme Court in **State of A.P. Vs. Golconda Linga Swamy & another**¹, held as under:-

“10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in

¹ (2004) 6 SCC 522

existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in *R.P. Kapoor and Bhajan Lal cases* (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval."

23. Hon'ble the Supreme Court in *Rajiv Thapar & others Vs. Madan Lal Kapoor*², held as under:-

"28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless

² (2013) 3 SCC 330

list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.”

24. Hon'ble the Supreme Court in *State of Telangana Vs. Habib Abdullah Jeelani & others*³, held as under:-

“15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in *Kurukshetra University* case compels us to observe that we are also surprised by the impugned order.”

25. From the above discussion and considering the law on the subject, it is quite clear that the petitioner is not entitled to get the benefits of Article 20 (2) of the Constitution of India, Section 300 of the Cr.P.C. and Clause 26 of the General Clauses Act. Even on merit, the contention raised by the petitioner is defence, which cannot be examined by this Court while hearing the present Cr.M.P. However, it is made clear that this Court has not expressed anything on merits of this case and facts have been considered for the present Criminal Petition. The prosecution is directed to proceed further in accordance with law without being influenced by any of the observation made by this court while deciding criminal petition.

26. In CRMP No. 165/2015 in case of N. Krishna Kumar Vs. State of Chhattisgarh, the petitioner has filed mainly contending that the petitioners have no direct nexus with the sub-contractor or with the incident and he cannot be fasten criminal liability as the petitioner was only responsible for providing technical direction and the petitioner does not supervise the contractor and their worker. It is further contended that there was no iota of evidence against the petitioner either in the FIR or in the police report,

³ (2017) 2 SCC 779

therefore, continuation of criminal proceeding is abuse of process of law. The judgment cited by the petitioner in case reported in 2012 AIR SCw 6442 (Satish Mehra Vs. State) and judgment of this Court in case of A.S. Ali & others Vs. State of Chhattisgarh are not applicable to the present facts of the case. In the case of A.S. Ali, the facts are that the students of school had gone to educational tour to Sirpur and three students were found dead on account of drowning, therefore, this Court has quashed the proceeding under Section 304 of IPC, whereas in the present, the accident took place in the factory and the whether the accident took place on account of negligency of the petitioner or not cannot be examined by this Court without evaluating the evidence, which have to be recorded during course of trial.

27. Accordingly, both the petitions are liable to be and are hereby dismissed.
28. The interim order passed by this Court on 13.10.2015, is vacated. The learned trial Court, Janjgir-Champa and Dhabhra are directed to proceed with the trial. Since the matter is pending since 2014, it is directed that the trial Court may conclude the proceeding within one and half year from the date of receipt of copy of this order.
29. Copy of the order be sent to both concerned Courts for necessary compliance of the order.

Sd/-

(Narendra Kumar Vyas)
Judge