

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4267 of 2009

ABHISEKH JAIN & ANR.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sourav Chatterjee, Adv.
Mr. Sailendra Jain, Adv.
Mr. Priyom Biswas, Adv.

For the Opposite Parties : Mr. Arijit Ganguly, Adv.
Mr. Avik Ghatak, Adv.

Hearing concluded on : 24th November, 2022

Judgement on : 2nd December, 2022

Siddhartha Roy Chowdhury, J.:

1. This proceeding stems out of an application under Section 482 of the Criminal procedure Code filed by the petitioners seeking quashment of the proceeding being C.R. No. 659 of 2009 pending before the learned Judicial Magistrate, Burdwan.
2. Briefly stated, Mr. Soumya Chatterjee, Inspector of Factories, Burdwan, filed a petition of complaint against Ashoke Kumar Jain and Abhisekh Jain, the Occupier and the Manager of the factory known and registered as Baahubali Ferro Tech and Power Private Limited, situated at village Bamunara, Gopalpur, P.S. Kanksa alleging, inter alia, that a fatal accident occurred to Randhir Singh while he was working inside the premises of the factory of Baahubali Ferro Tech

and Power Private Limited on 18th March, 2009. On 22nd May, 2009, the said factory Inspector went to the factory to investigate into the occurrence and in the process he examined Shyamji Shaw and Abhisekh Jain but did not find any eye witness. It was reported by Manager of the factory that eye witnesses were not present, at that point of time. Instruction was given to the Manger to produce the eye witnesses before the Factory Inspector on 25th May, 2009 which was not complied with. On 28th May, 2009, a letter was issued under registered post with acknowledgement due to the Occupier as well as Manager of the factory for production of eye witnesses on 15th June, 2009 and to submit the notice of the accident in Form No. 18 as stipulated in Rule 95 and 96 of the West Bengal Factories Rules, 1958, prescribed under Section 88 of the Factories Act, 1948. But the Manager only sent the notice of accident, rest part was not complied with. Again the Inspector issued notice to which the authorized signatory on behalf of the Occupier of the said factory, gave reply seeking time to appear before the Factory Inspector. Then again Samir Chakraborty, the representative of the management was told to produce eye witnesses on 20th July, 2009 and as usual it was not complied with. The factory Inspector then arrived at a conclusion that willfully the Manger and Occupier of the factory were obstructing the factory Inspector to exercise his power conferred under Section 9 (c) of the Factories Act, 1948. Hence the complaint.

3. Since the complaint was filed by a public servant, learned Chief Judicial Magistrate, was pleased to admit the case and to take

cognizance of the offence. Notice was served upon the accused persons. Said proceeding is now under challenge before this Court.

4. Mr. Sourav Chatterjee, learned Counsel representing the petitioners submits that an accident took place on 18th March, 2009 in the factory premises at about 1.30 a.m. The driver of hired vehicle registered as BR13-G-0358 while taking the vehicle back, after unloading the materials, ran over the driver of another vehicle registered as WB-41-6096, whose name was Randhir Singh. He was sleeping there. Randhir Singh died on spot. The driver of the offending vehicle fled away.
5. Abhisekh Jain being the Manager of the factory informed this accident to the Officer-in-charge of Kanksa Police Station and Kanksa P.S. Case No. 40 of 2009 was registered under Section 304 of the I.P.C. read with Section 184 of the M.V. Act. Pursuant to the direction of the Factory Inspector notice to accident was given indicating the fact that victim was driver of the truck bearing no. WB-41-6096 hired by company who came around 10.00 p.m. for the purpose of loading and unloading of materials and the accident was fatal. Copy of the FIR was annexed to notice of accident.
6. According to Mr. Chatterjee, the deceased driver was not a worker of the factory and learned Judicial Magistrate, Burdwan had no reasonable cause to issue notice under Section 95 of the Factories Act for contravention of Section 9 (c) of the Factories Act against the petitioners. According to Mr. Chatterjee the provision of Factories Act are applicable only to the workers of the factory as described under Section 2 (l) of the Factories Act. Neither the deceased driver nor the

driver of the offending vehicle was the employee/worker of the factory. Therefore, the factory Manager or Occupier of the factory cannot be said to have any obligation within meaning of the Factories Act.

7. Mr. Avik Ghatak, learned Counsel representing the Opposite Parties submits that the factory Inspector was not informed about the accident till the time the Manager of the factory was directed to submit notice of accident in the prescribed Form No. 18. Petitioners since inception had the tendency to veil the accident from the notice of the factory Inspector and being directed by the factory Inspector time and again both the Occupier as well as factory Manager did not produce any eye witness; thereby obstructed the Inspector willfully to discharge his duty and thus made themselves culpable. According to Mr. Ghatak, proceeding before the learned Trial Court has been taken out following due process of law. Therefore, this Court may not have any cogent reason to interfere with the order impugned at this stage and to quash the proceeding as a whole pending before the learned Trial Court.
8. From the attending facts of the case it is admitted that driver of a stationed vehicle Randhir Singh was sleeping within the factory premises and on the fateful day in the witching hour of night the driver of another vehicle while driving the vehicle putting it on the reverse gear accidentally ran over the said person. The victim and driver of the offending vehicle both drove in with trucks hired by the company and they were no way connected with the company and they cannot be treated as worker within the meaning of Section 2 (l) of the Factories Act, 1948 which defines worker in the following manner:-

“worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union];”

The drivers were no way connected with the manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process or in any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process.

9. The question that calls for consideration, in this case is whether the injuries to which Randhir Singh one of the truck drivers, succumbed to death could be termed as employment injury or not, and to appreciate such issue the factual scenario is required to be considered. As I have pointed out one driver of a hired truck was sleeping on the ground and the driver of another hired truck negligently drove the truck backward without noticing the man sleeping and ran over the man resulting into his death. Therefore, the death of Randhir Singh by no stretch of imagination can be said to be death arising out of his employment in the factory which makes the Manager or Occupier of the factory responsible and because the accidental death of Randhir Singh can never be said to be the death while in employment in the factory, the Manager or Occupier of the

factory, had no obligation to submit notice of accident in the prescribed Form No. 18. This notice of accident was submitted in compliance with the direction of the factory Inspector. Therefore, in my view, factory Inspector had no reason to hold an enquiry within the meaning of Factories Act, 1948 (as then was).

10. Object of the Factories Act, 1948 was to ensure adequate safety measure and to promote health and welfare of the workers employed in the factory as well as prevent mushrooming growth of factory in addition thereto regulate the health safety and welfare of the workers and to enact special provision in respect of young persons, women and children who worked in the factory.
11. The Factories Act, 1948 was made applicable in factory in order to safeguard essentially the interest of workers and to protect them from being expedited.
12. The unfortunate driver Randhir Singh in my view, cannot be said to be associated with the factory as worker within the meaning of Section 2 (l) of the Factories Act, 1948. Learned Trial Court had no obligation to entertain the petition of complaint and the factory Inspector had no reason to initiate proceeding against the Occupier and Manager of the factory. Learned Trial Court took cognizance of the offence mechanically. In my view, if the proceeding is allowed to remain in force it would amount to abuse of process of law, resulting into miscarriage of justice.
13. Upon perusal of record I find that the notice of accident was duly given to the Factory Inspector albeit being directed by him, though there was no nexus between the factory and the accident caused by

motor vehicle in use resulting into death of one of the drivers of the hired truck who cannot be considered as worker within the meaning of Section 2 (l) of the Factories Act, 1948.

14. As the Opposite Parties did not serve any notice of accident even after being directed by Factory Inspector according to the complainant they have made themselves culpable for committing offence within the meaning of Section 92 of the Factories Act, 1948. Learned Trial Court was pleased to issue summon however, without taking into consideration the averment made in paragraph 2 of the petition of complaint. The Factory Inspector admittedly received the notice of accident in prescribed Form No. 18 on 22nd June, 2019. Since the notice of accident was given to the Factory Inspector albeit directed by him despite there being no nexus between the factory and the accident caused by hired motor vehicle in use resulting into death of driver of another hired motor vehicle, who was sleeping in the factory premises. The petitioners did not try to bury the fact and informed police. At the instance of Abhisekh Jain Kanksa P.S. Case No. 40 of 2009 was registered. In my humble opinion continuance of the proceeding before the learned Court below would amount to abuse of process of law.
15. Accordingly exercising the inherent jurisdiction of the Court, I quash the said proceeding. Application, if any, stands disposed of.
16. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.
17. Parties are to act on the server copy of this judgement.

18. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)