

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1641 OF 2021

Zakiur Motiur Rahman,
Age-44 years, Occu:Service,
R/o- At present-Old Jalna,
Jalna.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Incharge,
Chandanzira Police Station,
Jalna, Tq. and Dist-Jalna,
- 2) Omsing Pappusingh Chavan,
Age-19 years, Occu:Agri.,
R/o-Rangnath Nagar,
Indewadi, (Chandanzira)
Tq. and Dist-Jalna

...RESPONDENTS

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Mr. S.S. Gangakhedkar Advocate along with Mr. Ram Nirmal
Advocate for Applicant.

Mr. A.M. Phule, A.P.P. for Respondent No.1 – State.

None present for Respondent No.2 though served.

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**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 1st AUGUST, 2022

ORDER :

1. By invoking the inherent powers of this Court under

Section 482 of the Code of Criminal Procedure, the applicant seeks quashment of the First Information Report (for short "FIR") bearing Crime No.184 of 2021 dated 26th May 2021 registered with Chandanzira Police Station, District-Jalna for the offence punishable under Sections 279, 337, 338 of the Indian Penal Code, and later on by way of amendment the applicant seeks to quash the proceedings i.e. after filing of the charge-sheet, the proceeding bearing S.C.C. No. 1632 of 2021 pending before the learned Judicial Magistrate First Class, Jalna.

2. Heard learned Advocate Mr. Gangakhedkar along with learned Advocate Mr. Nirmal for the applicant and learned APP Mr. Phule for respondent No.1 – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant was serving as a supervisor (melter) in Saptashringi (Rajuri) Steel Company, Jalna. The informant – Omsingh Pappusingh Chavan i.e. respondent No.2 was serving as a helper. It has been alleged that on 24th May 2021 the informant had duty from 4.00 p.m. to 12.00 midnight. His colleagues Rakeshsingh and Amitsingh were with him. Informant went near furnace No.1 panel room at about 8.30 p.m. to

9.00 p.m. along with his colleagues and they were inspecting the furnace. At that time they found that there was a crack to the furnace and the liquid from the same was coming down on a coil. However, because of the pressure there was a big noise and the informant had tried to go away from the furnace but the steam had caused burn injuries to his neck, both the hands, back and right toe. His colleagues had left away from the spot and therefore, they had not sustained any injuries. The informant says that the said incident had taken place due to the negligence on the part of the applicant and therefore, he lodged the report.

4. The learned Advocate appearing for the applicant submits that perusal of the above said contents of the FIR would clearly show that the alleged incident had taken place within the factory premises. In fact the requirements of Section 7-A and 7-B of the Factories Act were complied with by the factory management. Certificate of stability, as is required to be obtained in view of the provisions of Rule 3-A in Form 1-A of the Maharashtra Factories Rules, 1963, was also received by the factory. Various parts of the machinery were structurally sound. When the incident takes place in the premises of the factory then in respect of any contravention, the prosecution would be under Section 92 of the

Factories Act or even if we accept that being a supervisor / melter the applicant was liable to inspect the machinery regularly; he also being a worker the act may attract the offence prescribed in Section 97 of the Factories Act. Further, in view of Section 105 of the Factories Act, which deals with the cognizance of the offences, no Court shall take cognizance of any offence under the Act except on complaint by, or with the previous sanction in writing of the Chief Inspector, the FIR under Section 154 of the Code of Criminal Procedure was not maintainable at all.

5. Learned Advocate for the applicant has relied on the decision by the learned Single Judge of the Gauhati High Court in ***Vivek Agrawal and another vs. State of Assam, (2016) 4 Gauhati Law Reports 624***, wherein it has been held that the FIR lodged before the Police alleging negligence against the owner who can be prosecuted under Section 92 of the Factories Act then the FIR filed was not maintainable in view of Section 105 of the Factories Act, so also the charge-sheet filed on the basis of the said FIR needs to be quashed. Further, the learned Advocate has relied on the decision in ***State by Public Prosecutor vs. P. Kaleeswaran, 1988 1 MLJ (Cri) 628 : 1988 0 Supreme (Mad)***

377, wherein the learned Single Judge of the Madras High Court acquitted the accused when the complaint was not filed by the competent officer. Further, in ***S.K. Gue and another vs. State, 1987 Cri. L.J. 882***, the learned Single Judge of the Orissa High Court has held that for taking cognizance of offence under Section 92 of the Factories Act, the complaint should be by the Factory Inspector or with his previous sanction in writing. Cognizance on the basis of complaint filed before the Police is barred under Section 105 of the Factories Act. He, therefore, prayed that the FIR as well as proceedings be quashed and set aside.

6. Learned APP strongly opposed the Application and in spite of serving respondent No.2, he failed to appear.

7. In fact, a very short point is involved in this case, as to whether FIR filed under Section 154 of the Code of Criminal Procedure by respondent No.2 in respect of the incident which had taken place within the factory premises was maintainable or otherwise and whether it can be said to have attracted provisions of Section 279, 337, 338 of the Indian Penal Code and thereby the learned Magistrate could have taken cognizance of the

offence. The facts are very clear and not only the FIR but the charge-sheet in which statements of said colleagues of the informant, viz. Rakeshsingh and Amit Singh, would show that around 8.30 p.m. to 9.00 p.m. on 24th May 2021 informant had gone near the furnace No.1 and then he found that it had a crack. The liquid from the furnace was coming down on a coil resulting in steam and then because of the pressure, informant had sustained burn injuries. Here the applicant was working in the said factory as supervisor (melter) and being a supervisor, at the most we can say that, he was having duty to supervise the activities.

8. Section 92 of the Factories Act deals with general penalty for offences. It provides that, save as otherwise expressly provided in the 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 the Act or of any rule made thereunder or of any order given in writing thereunder, the occupier and manager of the factory shall be guilty of an offence and punishable with imprisonment for a term which may extend to two years or fine which may extend to one lakh rupees or both. Herein this case the applicant is neither occupier nor manager of the factory.

Supervisor (melter) is a different post, who might be having duty, in addition to other duty, to supervise the work of the workers. Even for the sake of argument if we accept that it was the part of his duty to supervise the machinery also, then his act or omission may also come under Section 97 of the Factories Act, which prescribes for offences by workers. Said provision makes a worker employed in a factory contravening any provision of the Act or rules or orders made thereunder, liable to pay fine which may extend to five hundred rupees. So even if we consider the case either under Section 92 or Section 97 of the Factories Act, because the entire incident has taken place within the factory premises, then definitely the Factories Act being a complete Code in itself, governing the activities within the factory, it will not attract the offences under the provisions of the Indian Penal Code.

9. Learned Advocate appearing for the applicant has submitted that though Section 4 of the Code of Criminal Procedure prescribes for investigation and inquiry of the cases falling under the Indian Penal Code or any other special enactment, yet the special enactment will prevail over the Code of special law. We agree with the said submission and such view

which was taken by the learned Single Judge of the Guahati High Court in ***Vivek Agrawal and another vs. State of Assam***, (supra) needs to be confirmed. Here, we will have to take into consideration that the Factories Act was enacted in 1948 with an intention to consolidate and amend the law regulating labour in factories. It has been enacted for securing the safety, welfare, health etc. of the workers or the persons employed in the factories and therefore, the provisions are made to make it a complete Code in itself and being a special enactment it would over ride the general provisions of the Code of Criminal Procedure.

10. Section 105 of the Factories Act makes it mandatory that in respect of any such offence which has been prescribed or can be covered of which cognizance can be taken by a Magistrate, should be filed by the Chief Inspector or with his consent. Under such circumstance, the First Information Report contemplated under Section 154 of the Code of Criminal Procedure is not maintainable. The investigation could not have been carried out by the Police and therefore, the charge-sheet that has been filed before the Magistrate needs to be quashed and set aside.

11. It would be a futile exercise to ask the applicant to face the trial in view of the above said provisions under the Factories Act and therefore, we are of the considered view that we should exercise our powers under Section 482 of the Code of Criminal Procedure in the light of the decision in ***State of Haryana and others V/s Ch. Bhajan Lal and others, AIR 1992 SC 604.***

Hence, the following order:-

O R D E R

(I) The Application stands allowed in terms of prayer clause "(B)" and "(C-1)", thereby quashing the First Information Report bearing Crime No.184 of 2021 dated 26th May 2021 registered with Chandanzira Police Station, District-Jalna for the offence punishable under Sections 279, 337, 338 of the Indian Penal Code and further quashing the proceedings in S.C.C. No. 1632 of 2021 pending before the learned Judicial Magistrate First Class, Jalna.

(II) The Application stands disposed of.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE