

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

CRIMINAL WRIT PETITION NO. 5898 OF 2021

Pratap Sigh Bohra

...Petitioner

Versus

The State of Maharashtra

...Respondent

....

Dr. Yusuf Iqbal Yusuf a/w Shaista Pathan, Feroj Qureshi, Sufiyan Mirchiwala i/by Y & A Legal, Advocate for the Petitioner.

Mr. A.D. Kamkhedkar, APP for Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th AUGUST, 2022.

P.C.

1. The Petitioner is aggrieved by order dated 8th September, 2021 passed by learned Metropolitan Magistrate, 29th Court, Dadar Mumbai in C.C. No.587/SS/2012 rejecting the application preferred under Section 265-B of Cr.P.C. of plea bargaining.

2. The Petitioner was the Director of M/s. Gaurav Mercantiles Limited a Company engaged in the business of ship breaking of old and used ships at the designated area provided by the Mumbai Port Trust. The Deputy Director, Industrial Safety and Health, Mumbai and Inspector under Section 8(1) of Factories Act, 1948 has filed a complaints in the Court of learned Metropolitan Magistrate, 29th Court, Dadar Mumbai which is numbered as C.C. No.2900587/SS/2012 for offence under Section 7(A)(2)(a) of

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Factories Act, 1948 punishable under Section 92 of the Factories Act. The complaint relates to the incident occurred in the factory wherein fire took place in the engine room of the ship on 14th November, 2011 causing injuries to workmen. The incident had resulted in death of workman Ram Swaroop Saroj while taking treatment and injuries to Sunil Budhu Rai and Vijay Jana.

3. The learned Commissioner for workman's compensation and Judge, 6th Labour Court, Mumbai by order dated 30th November, 2012 passed in Distribution Application No.772/A-122/2012 declared that the widow Smt. Chandani Ramswarup Saroj and five minor daughters are dependent of deceased and legally entitled to share compensation amount in question. Out of the compensation amount of Rs.7,73,560/-. Smt. Chandani Ramswarup Saroj being widow of the deceased was allotted share amount of Rs.5,23,560/- and daughters were allotted share amount of Rs.50,000/- each.

4. The Petitioner filed an application for plea bargaining before the trial Court on 19th December, 2018 and prayed that, the application for plea bargaining may be considered with minimum penalty of fine as per the provisions of Section 265-B of Cr.P.C. The Petitioner had also filed affidavit of the widow of the deceased stating that she had received the compensation amount.

5. The learned Magistrate directed to convey meeting for deciding mutual satisfaction disposition. The Accused and parties filed mutual satisfaction disposition on 10th May, 2019. Since the mutual satisfaction disposition was filed without signature of heirs of deceased and injured, the Court directed about calling heirs of deceased and injured. The Accused moved an application dated 5th February, 2020 through Smt. Chandani Ramswarup Saroj, whose affidavit was filed on 24th March, 2020 vide Exh.8 and further mutual satisfaction disposition was filed with signature of Smt. Chandani Ramswarup Saroj. The trial Court then passed order dated 11th November, 2020 with direction as per the law for accepting mutual satisfaction disposition. The Accused moved application of issuance of notice to victims. R.P.A.D. report returned back unsearved with endorsement "Not Known". One report shows that, "Door Locked".

6. The learned Magistrate vide order dated 8th September, 2021 observed that, further mutual satisfaction disposition Exh.7 was filed with signature of Smt. Chandani Ramswarup Saroj only. The Court noticed that, there were other injured Vijay Jana and Sunil rai. The said fact was not specifically mentioned in the application for plea bargaining or mutual satisfaction disposition on record. The notice

to injured have neither been served nor called upon by Accused for taking part in meeting for forming the mutual satisfaction disposition. As per the provisions of Section 265-C(b) of Cr.PC., all the victim should participate in the working out disposition. The Accused has not given specific names in the application of plea bargaining and suppressed the fact of two injured and given details of only Smt. Chandani Ramswarup Saroj. The Court is required to ensure process of working out mutual satisfaction disposition is voluntarily by the parties participating in the meeting. There is no application for pleading guilty as claimed by the Advocate. The mandate of provisions of plea bargaining is not complied. No steps for compliance of mandate of Section 265-C(b) of Cr.PC. are taken. With these observations the application was rejected.

7. Learned Advocate for the Petitioner submitted that, compensation was provided to legal heirs of deceased. The Commissioner had passed an order of distribution of compensation. The injured Vijay Jana had suffered ten percent burn injuries. The cost of treatment of Vijay Jana was borne by Petitioner. Ram Swaroop Saroj succumbed to injuries in December, 2011. The cost of treatment of Mr. Saroj amounting to Rs.7,89,927.61/- was borne by Petitioner. Sunil Rai had suffered 20% burn injuries. The entire cost

of his treatment amounting to Rs.8,29,194.50/- was borne by Petitioner. Affidavit was filed by Smt. Chandani Saroj. Notices were issued to Vijay Jana and Sunil Rai. They could not be served. The proceedings were adjourned from time to time. The Petitioner has made his best efforts to trace Sunil Rai and Vijay Jana to secure their presence. The learned Magistrate rejected the application of plea bargaining. Although there was no impediment in allowing the said application, the Court observed that there is no application for pleading guilty. The Petitioner was also willing to exercise the option of pleading guilty.

8. Learned APP submitted that, there is no infirmity order passed by learned Magistrate. All the victims were not present before the Court. Notice could not be served upon them. All the victims are required to participate disposition. Except legal heirs of deceased, the other victims were not party to the plea bargaining proceeding. Reliance is placed on the decision of this Court in the case of *Guerrero Lugo Elvia Grissel & Ors. V/s. The State of Maharashtra, 2012 ALL MR (Cri) 2787*.

9. The documents on record indicate that, complaint was filed by Deputy Director, Industrial Safety and Health, Mumbai under Section 8(1) of Factories Act, 1948. The contention of Petitioner is that

compensation was provided to the legal heirs of deceased. The medical expenses towards treatment of deceased and other victims were borne by Petitioner. However, while adjudicating the application for plea bargaining injured persons had not partied in the process of plea bargaining. It appears that notices were forwarded to them. The notices could not be executed. The learned Magistrate rejected the application on the ground that, the mandate of provisions of plea bargaining were not complied. Steps for compliance of Section 265-C(b) of Cr.P.C. were not taken.

10. Chapter XXI-A relates to plea bargaining. It is inserted by Act 2 of 2006, w.e.f. 5th July, 2006. Section 265-A deals with application of the chapter. Section 265-B relates to application for plea bargaining. Section 265-C provides the guidelines for mutually satisfaction disposition. Section 265-D relates to report of the mutually satisfactory disposition to be submitted before the Court. Section 265-E refers to disposal of the case. Section 265-F relates to Judgment of the Court. Section 265-G is about finality of the Judgment. Section 265-H refers to power of the Court in plea bargaining. Section 265-I provides for period of detention undergone by the Accused to be set off against the sentence of imprisonment. Section 265-J refers to saving the provisions of this

chapter. Section 265-K is about not using the statements of the Accused and Section 265-L relates to non application of the chapter.

11. On perusal of order dated 8th September, 2021 it is apparent that, the Court directed that the legal heirs of the deceased and injured be called to participate in the proceedings. Affidavit was filed by Smt. Chandani Ramswarup Saroj. She is the wife of the deceased Ram Swaroop Saroj. Application for mutual satisfaction disposition was filed with the signature of Smt. Saroj. There were other injured i.e. Vijay Jana and Sunil Rai. The learned Magistrate then directed the parties to act as per the law for accepting mutual satisfaction disposition. The Accused preferred an application for issuance of notice to victims. Notice could not be served upon the victims. Section 265-C(b) of Cr.PC. provides that in a case instituted otherwise than on police report, the Court shall issue notice to the Accused and the victim of the case to participate in a meeting to workout a satisfactory disposition of the case. It shall be the duty of the Court he ensure, throughout such process was working out a satisfactory disposition of the case that it is completed voluntarily by the parties participating in the meeting. As per Section 265-D, if in a meeting under Section 265-C a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such

disposition. As per Section 265-E the Court shall dispose of the case in the manner provided therein where a satisfactory disposition of the case has been worked out under Section 265-D of Cr.P.C. Thus, the participation of all the concerned parties is imperative for deciding an application of plea bargaining. The notice issued to the victims could not be executed. They were not participants in the meeting and thereby not party to the mutual satisfaction disposition. In this circumstances, I do not find any infirmity in the impugned order dated 8th September, 2021. The impugned order also refers to the fact that, the Advocate for the Accused claimed passing of the order of plea bargaining or accepting his plea of guilty. Learned Magistrate observed that, when the application for plea bargaining is pending it is not expected to consider plea bargaining as well as plead guilty on the dictum of Advocate. There is no application for plea guilty. In this circumstances, the Petitioner will be at liberty to prefer an application for pleading guilty in the subject proceedings.

ORDER

- i. The Criminal Writ Petition No. 5898 of 2021 stands rejected and disposed off.
- ii. The Petitioner is at liberty to prefer an application for pleading guilty, before the trial Court.

iii. If the Petitioner prefers application for pleading guilty in C.C. No.2900587/SS/2012 pending before the Court of Metropolitan Magistrate, 29th Court, Dadar Mumbai, the trial Court shall decide such application expeditiously.

(PRAKASH D. NAIK, J.)