

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

CRIMINAL WRIT PETITION NO.620 OF 2018

Pawankumar Girdharilal Deora,
Age : 59 years, Occ. Director,
r/o.B-501, Ackruti Creations,
Sir P.M. Road,
Extn. Pramanik CHS Ltd.,
Vile Parle (East),
Mumbai 400 057

..Petitioner

Vs.

The State of Maharashtra

..Respondent

AND

CRIMINAL WRIT PETITION NO.702 OF 2018

Madhu Surendra Kumar Mohatta,
Age : 61 years, Occ. Business,
r/o. Floor 15 and 16 Plot number
85, Mittal Grandeur Khatau Road,
Colaba, Mumbai 400 005

..Petitioner

Vs.

The State of Maharashtra

..Respondent

AND

CRIMINAL WRIT PETITION NO.310 OF 2020

Surendra Kumar Mohatta,
Age : 61 years, Occ. Business,
r/o.B/501, Ackruti Creations,
Sir P.M. Road
Extn. Pramanik CHS Ltd.,
Vile Parle (East),
Mumbai 400 057

..Petitioner

Vs.

The State of Maharashtra

..Respondent

Mr.Niteen Pradhan, Senior Advocate i/b. Ms.Swapna Kode and Mr.Hemantkumar Pawar, Advocates for petitioners in Criminal Writ Petition Nos.620 of 2018 and 310 of 2020

Ms.Swapna Kode, Advocate for petitioner in Criminal Writ Petition No.702 of 2018

Mr.A.R.Kale, APP for respondent - State

CORAM : R.G.AVACHAT AND

SANJAY A. DESHMUKH, JJ.

RESERVED ON : JUNE 27, 2023

PRONOUNCED ON : OCTOBER 16, 2023

JUDGMENT (*PER R.G.AVACHAT, J.*) :-

This group of three Writ Petitions is heard finally at admission stage with consent of the parties, since the challenge therein is to one and the same crime, being C.R. No.9 of 2018, registered with M.I.D.C. Police Station, Jalgaon, for the offences punishable under Sections 285, 287, 337, 338 and 304 of Indian Penal Code and the consequential proceedings in R.C.C. No.289 of 2020, pending before learned Judicial Magistrate, First Class, Jalgaon.

FACTS :-

2. The petitioners are/were Directors of Gitanjali Chemicals Pvt. Ltd. (G.C.P.L.). It is engaged in manufacturing of fine chemicals, drug intermediates, etc. The manufacturing unit is at

M.I.D.C., Jalgaon. The manufacturing process was on. It was a shift from 03.00 p.m. to 11.00 p.m. Some of the workers were on duty. A few of them were engaged in arranging of caustic soda bags. An explosion took place in a reactor (RK 15) at G.C.P.L.'s manufacturing unit by 9:15 p.m. on 07.01.2018. Same is said to have taken place due to leakage of gas and bursting of a kettle. Nine workers on duty were seriously injured. During enquiry with some of them, it was revealed that there was a metre installed for control of heating process of chemicals in the kettle. There was no trained meter operator. Thus, the workers raised accusing finger towards the management of G.C.P.L.

3. Mr.Samadhan Patil, Asst. Police Inspector, M.I.D.C. Police Station, Jalgaon, lodged FIR on 08.01.2018 against six accused persons, namely, Jitendra Yashwant Patil, Deelip Dayaram Ingale, Shrikant Kantilal Kabra, Surendrakumar Ravikumar Mohta, Mrs.Madhu Surendrakumar Mohta and Pawankumar Girdharilal Dewra. Five out of nine injured workers succumbed to the injuries. Section 304-A of Indian Penal Code, therefore, came to be invoked additionally. It appears that Section 304 of Indian Penal Code has also been invoked lateron.

4. Mr.Nitin Pradhan, learned counsel, appearing for the petitioners in Writ Petition Nos.620 of 2018 and 310 of 2020, would submit that the G.C.P.L.'s manufacturing team was aware of the requirements essential for running of chemical manufacturing unit. It took all necessary steps to ensure due care to prevent any unwarranted and unfortunate incident. The petitioners had arranged safety mock drills, awareness programmes, lectures on damage control, etc. and deputed a Safety Officer to supervise safety provisions in the factory. G.C.P.L. also appointed a C.E.O. to look after operations at the manufacturing unit as these petitioners were unable to attend the factory and were unknown to manufacturing process. They were also not residents of Jalgaon.

He would further submit that G.C.P.L. engaged not less than six independent agencies to investigate the accident and ascertain the cause thereof. The reports submitted by those agencies were submitted to the Investigating Officer. The reports have, however, not been made part of the police papers. Although some of the injured workers gave statements that there was no meter operator, the investigating agency did not take efforts to take services of an expert to ascertain the cause of the accident. The Investigating Officer has also not concluded that the explosion took

place on account of the reasons attributed by some of the injured workers.

5. Learned senior counsel would further submit that by no stretch of imagination, ingredients of Section 304 of Indian Penal Code could get invoked. According to him, the Factory Inspector filed three complaints against the petitioners and the co-accused for breach of various rules under the Maharashtra Factory Rules, 1963, punishable under Section 92 of the Factories Act, 1948 ("Factories Act", for short). Learned senior counsel relied on Section 5 of the Code of Criminal Procedure. According to him, the Factories Act and the rules framed thereunder, is the complete code in relation to regulate labours in the factory as well as their welfare and safety. Provisions thereof even cover the aspects relating to hazardous process and maintenance of the factory premises that provided standards to avoid accidents. Factories Act and rules thereunder cover every aspect of the matter. Section 105 of the Factories Act mandates that no Court shall take cognizance of the offence under the said Act, except on complaint filed by or with the previous sanction of the an Inspector appointed under the said Act. Learned senior counsel meant to say that application of the Indian Penal

Code and the Code of Criminal Procedure has, thus, been expressly excluded. Factories Act being special statute would prevail over Indian Penal Code and the Code of Criminal Procedure. Section 5 of Cr.P.C. bars police intervention during the enquiry and investigation of the offences in relation to the manufacturing process and collateral damage. No sooner the incident took place, the Factory Inspectors visited the spot. They took assessment of the damage caused to men and material. On due enquiry and investigation by them, three complaints have been filed by the Factory Inspector. The Court of Chief Judicial Magistrate has taken cognizance thereof and issued process. In short, according to learned senior counsel, invocation of the provisions of Indian Penal Code in the facts and circumstances of the case, was unwarranted and not maintainable. In support of his contentions, learned senior counsel has relied on the following authorities:-

- (i) Akki Veeraiah Vs. State (Inspector, Special Police Establishment, 1957 Cri. L.J. 1078;
- (ii) Jeewan Kumar Raut and anr. Vs. Central Bureau of Investigation, (2009)7 SCC 526;
- (iii) Sharat Babu Digumarti Vs. Government (NCT of Delhi), (2017)2 SCC 18;

(iv) Bombay High Court judgment dated 26.10.2018; in the case of Gagan Harsh Sharma and anr. Vs. The State of Maharashtra and anr., (Criminal Writ Petition Nos.4361 of 2018 with connected matters);

(v) Apex Court order dated 07.12.2018 in the case of Shadab Abdul Shaikh Vs. Gagan Harsh Sharma and anr., Petition(s) for Special Leave to Appeal (Crl.) No(s)10264-10265/2018.

(vi) Yakub Abdul Razak Memon Vs. State of Maharashtra, through CBI, Bombay, (2013)13 SCC 1;

(vii) Judgment of the Apex Court dated 04.09.2019 in the case of The State of Uttar Pradesh Vs. Aman Mittal and anr., Criminal Appeal Nos.1328-1329 of 2019 and connected matters;

(viii) Keshub Mahindra Vs. State of M.P., (1996)6 SCC 129;

(ix) Abdul Salim Shaikh Vs. State of Maharashtra, 2015(1)Bom.C.R. (Cri.) 138

6. Ms. Kode, learned counsel for the petitioner in Criminal Writ Petition No.702 of 2018, reiterated the submissions made by

learned senior counsel for the petitioners in other petitions. She would further submit that the petitioner – Smt.Madhu tendered resignation from her office of Directorship on 17.11.2017. The Board of Directors accepted her resignation in its meeting held on 01.12.2017. The Registrar of Companies (RoC) had duly been informed. As such, on the day of the mishap, this petitioner was not a Director and therefore, not liable to be prosecuted.

7. Learned APP, on the other hand, relied on Section 26 of General Clauses Act. According to him, there are statements of the injured workers, indicating that no expert was employed as operator of the meter installed on the kettle, to control heating process of chemical mixture. He would further submit that no mini trial could be conducted for quashment of the criminal proceedings. According to him, the petitioner Pawankumar was an “occupier” of G.C.P.L. He was managing director as well along with other two petitioners. It being a private limited company, all the petitioners were in the control and management of the company’s day-to-day affairs. The petitioners did not take exception to the complaints filed/lodged by Factory Inspector for breach of certain rules under the Maharashtra Factory Rules, 1963, punishable under Section 92 of

the Factories Act. In view of Section 26 of the General Clauses Act, the petitioners are also liable to be prosecuted on the same facts constituting an offence under Indian Penal Code. Turning to the case of the petitioner – Smt. Madhu, learned APP would submit that the so called resignation and acceptance thereof in the meeting of the Board of Directors are created documents so as to escape from the criminal liability. The Registrar of Companies was informed about the so called resignation long after the incident took place. As such, the documents relied on by the petitioner – Smt. Madhu could not be said to be of sterling quality to be relied on in a proceedings for quashment of a prosecution. Learned APP, relying on the following set of authorities, ultimately, urged for dismissal of the petitions:-

“(i) State of NCT of Delhi and ors. Vs. Sanjay and ors., MANU/SC/0761/2014;

(ii) Kanwar Pal Singh Vs. The State of Uttar Pradesh and ors., MANU/SC/1776/2019;

(iii) Pradeep S. Wodeyar Vs. The State of Karnataka, MANU/SC/1158/2021;

(iv) The State of Maharashtra and ors. Vs. Sayyed Hassan Sayyed Subhan and ors., MANU/SC/1021/2018

8. Considered the submissions advanced. Perused the police papers relied on.

9. G.C.P.L. is a private limited company. The petitioner – Pawankumar was named “occupier” thereof. The G.C.P.L. was engaged in manufacturing of fine chemicals, drug intermediates, etc. An explosion took place in the reactor - RK 15 of its manufacturing unit in M.I.D.C., Jalgaon, by little past 09.15 p.m. on 07.01.2018. Nine workers on duty suffered grievous injuries as a result of the explosion. Five of them succumbed to the injuries. The incident was reported at the M.I.D.C. Police Station, Jalgaon. An enquiry thereof was made. Two of the injured namely, Atul Gajare and Anil Shirsale gave their statements. It is in the statement of Atul Gajare that his duty hours were 07.00 a.m. to 03.00 p.m. On the fateful day, he performed overtime duty in the next shift during 03.00 p.m. to 11.00 p.m. According to him, the explosion occurred on account of mixing of chemicals in the kettle beyond requisite proportion and overheating thereof.

10. It is in the statement of Anil Shirsale that on the fateful day, he worked during the shift of 03.00 p.m. to 10.00 p.m. After taking dinner by 09.00 p.m., he along with co-workers, was engaged

in arrangement of caustic soda bags. An explosion occurred all of a sudden. It occurred due to leakage of gas and bursting of kettle. A meter was installed on the kettle to monitor heating process of chemicals in the kettle. According to him, had there been a trained meter operator employed to oversee the process, the explosion would not have occurred. The statement of Dilip Ingle indicates that the explosion took place on account of over pressure in the reactor.

11. It is true that the officials of the Department of Industrial Safety and Health, Jalgaon, immediately paid visit to the site. Three different complaints have been filed against the petitioner - Pawankumar in his capacity as "occupier" of G.C.P.L. First one is S.C.C. No.1014 of 2018, filed by Shri.K.T.Zope, Deputy Director, Industrial Safety and Health, Jalgaon. It is in relation to violation of Rule 4(2) and Rule 4(1)(d) of the Maharashtra Factories Rules, 1963 punishable under Section 92 of the Act. A copy of the complaint has been relied on by the petitioners themselves. It has been specifically averred in Clause "B" as follows:-

"B) Contravention of "Rule 4(1)(d) of Maharashtra Factories Rules, 1963 - During enquiries it was revealed that on date 07/01/2018 at about 9:20 p.m. the trial production of 2, 4, 6 tri bromo phenol with bromine route was going on in reaction vessel no.-RK-

15 in the production plant of the factory. This was new manufacturing process carried out in the factory on date 07/01/2018 at about 9:20 p.m. The latest revised plans of factory building and machinery layout are approved by Joint Director, Industrial Safety and Health, Nashik as per the plan approval no.PLN/126-2013/AKD/SGK/7948-50/13 dated 11/10/2013.

Above changes in manufacturing process were not got approved by Chief Inspector of the Factories or Deputy Chief Inspector of the Factories i.e. Joint Director, Industrial Safety and Health, Nashik and hence by not getting approval for changes in manufacturing process, the provisions of Rule 4(a)(d) of the Maharashtra Factories Rules, 1963 have been contravened by the Occupier of the factory.

12. It has further been observed in the said complaint that during the routine course of work, the material stuck inside the reactor (to the gas lining) was removed by poking with the metal rod from bottom nozzle of the reactor as and when required. Due to this practice, there is possibility of damaging the inside glass lining of the reactor. The probable cause of explosion as follows:-

“ For the reaction of 2, 4, 6 tri bromo phenol product, Phenol (500 kgs), Hydrogen Peroxide (1085 kgs) and water (1450 kgs) were charged into Glass lined reactor RK-15 and almost 138 Kgs of Bromine addition was done till 9:20 p.m. The inside glass lining of RK-15 reactor might have been damaged. Due to damage of glass lining the metal part of the reactor might have in direct contact with hydrogen peroxide present in the mixture of chemicals inside the reactor.

Hydrogen Peroxide is strong oxidizing agent and violently react and decompose rapidly in presence of metal oxides. This reaction is extremely exothermic and the rise in temperature cause fast acceleration of this reaction. This reaction generates nascent oxygen and in presence of organic compounds, at peroxide and hydro peroxides are formed. These compounds are extremely unstable and can lead to force radical reaction. It might have generates tremendous pressure suddenly inside the reactor and resulted into heavy explosion of the reactor.

13. The second complaint being S.C.C. No.1015 of 2018 has been filed by the very Officer for breach of Rule 73-H(1)(a), Rule 73-H(4)(iv) and Rule 73-H(4)(ix) of Maharashtra Factories Rules, 1963 punishable under Section 92 of the Act. It has been stated in the complaint as under :-

b) Contravention of Rule73-H(4)(iv) of Maharashtra Factories Rules 1963 - Enquiries also revealed that reaction vessel RK-15 was not provided with a suitable rupture disk, spring loaded safety valve on the vessel. The pipe duct leading away from the rupture disk taken out of the work room was also not provided in order to avoid any chance of a secondary vapor/air explosion. Though the reactor was connected to the scrubber through the glass column fitted on the reactor, considering the risk of exothermic reaction and explosion during reaction, the reactor should also fitted with the rupture disk and pipe duct arrangement.

The rupture disk, spring loaded safety valve and pipe duct arrangement were not provided to reaction vessel no.RK-15 on date 07/01/2018 at the time of accident (explosion) and hence the provisions

of Rule 73-H(4)(iv) of the Maharashtra Factories Rule, 1963 have been contravened by the Occupier of the factory.

c) Contravention of Rule 73-H(4)(ix) of Maharashtra Factories Rules 1963-

Enquiries further revealed that reaction vessel no.-RK-15 was not provided with an alarm system linked to the pressure indicator of the vessel so that automatically an audible warning will be given as soon as the pressure exceeds the present safe limit. Therefore by not providing an alarm system linked to the pressure indicator of the vessel on date 07/01/2018 at the time of accident (explosion), the provisions of Rule 73-H(4)(ix) of the Maharashtra Factories Rules, 1963 have been contravened by the Occupier of the factory.

14. The third complaint being S.C.C. No.1016 of 2018 pertains to Rule 65(4)(a) of the Maharashtra Factories Rules, 1963, punishable under Section 92 of the Factories Act. It has been specifically averred in the complaint that the enquiries revealed that the concerned reactor vessel was not thoroughly examined by the competent personnel externally since 26.10.2016. Same was required to be done once in every six months. Reactor vessel was operated at pressure greater than the atmospheric pressure .

15. According to learned senior counsel Mr.Pradhan, since the occupier of G.C.P.L. is being prosecuted for contravention of Rules 4(2), 4(1)(d), 73-H(1)(a), 73-H(4)(iv) and 73-H(4)(ix) of

Maharashtra Factories Rules, 1963 punishable under Section 92 of the Factories Act by filing complaints, the prosecution of the petitioners for the offence under Indian Penal Code is unsustainable. Reference to relevant provisions of the Code of Criminal Procedure and General Clauses Act is, therefore, apposite.

Sections 4 and 5 of Cr.P.C. read thus:-

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 26 of General Clauses Act, reads thus :-

26. Provision as to offences punishable under two or more enactments.- Where an act or omission constitutes an offence under two or more

enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Section 119 of the Factories Act has been heavily relied on, which reads thus:-

119. Act to have effect notwithstanding anything contained in Act 37 of 1970.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 or any other law for the time being in force.

16. Section 92 of the Factories Act provides that for breach of any of the provisions of the Act or the Rules made 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.

17. It is true that the Investigating Officer did not make scientific investigation nor has he obtained any report of the expert to ascertain the cause of explosion. It is, however, a matter of evidence to be considered by the trial court. It is also true that the G.C.P.L. had approached six independent agencies to ascertain/find

the cause of explosion. Those reports have been placed on record. It is informed that all those reports have been submitted to the Investigating Officer. The reports have, however, been not part of the police papers. In our view, those reports or findings have been arrived at by the concerned authorities at the instance of the petitioners herein. Those reports would, therefore, be in the nature of documents to be relied on by the petitioners in their defence during trial of the case. In our view, those reports could not be said to be of sterling quality or of impeccable in nature to rely on the same in view of the Apex Court judgment in the case of **State of Orissa Vs. Debendra Nath Padhi, (2005)1 SCC 568**.

18. Relying on Section 119 of the Factories Act, learned senior counsel would submit the same to have overriding effect over the provisions of Indian Penal Code. According to him, the Indian Penal Code is the general statute. In support of his contentions, most of the authorities referred to herein above, have been relied on. We have carefully perused each one of them.

19. Our attention has been drawn to the facts and observations of the Apex Court in the case of **Akki Veeraiah** (supra),

so as to submit as to how the same is applicable to the facts and circumstances of the present case.

20. Next one is the judgment in the case of **Jeewan Kumar Raut** (supra). It was in relation to the provisions of Transplantation of Human Organs Act, 1994. The issue involved therein was relating to grant of default bail under Section under Section 167(2) of Cr.P.C. In para 23 of the judgment, it has been observed thus:-

23. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

It has further been observed in paragraphs 26 and 28 as under :-

26. It is a well-settled principle of law that if a special statute lays down procedure, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorisation under Section 13(3) (iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it.

But as it could not file a police report but a complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable.

27. XXX

28. To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.

The facts of the said case would indicate that an FIR covering offence under I.P.C. and TOHO Act was registered. Section 22 of TOHO Act prescribes taking cognizance on complaint made by appropriate authority. Since C.B.I. was the authority authorised by the Central Government, the crime was transferred to it for investigation. On completion of investigation, C.B.I. filed a complaint under Section 22 of the TOHO Act before learned Judicial Magistrate, First Class.

It is reiterated that the facts and circumstances in **Jeewan Kumar Raut** (supra) indicate that the issue involved therein was relating to grant of default bail in terms of Section 167(2) of Cr.P.C.

21. The Apex Court in the case of **Kanwar Pal Singh** (supra), in paragraph 10 of the judgment, has observed thus:-

“10. In **Jeewan Kumar Raut** (Supra), it was noted that the CBI has been designated as an appropriate authority under the provisions of the TOHO Act and therefore entitled to carry on investigation. In this context, it was observed that Section 22 of the TOHO Act prohibits taking of cognizance except on a complaint made by an appropriate authority and therefore the police report filed by the CBI was only a complaint petition made by an appropriate authority in terms of Section 22 of the TOHO Act. Consequently, Sub-section (2) to Section 167 of the Code would not be attracted as the CBI could not have submitted a police report in terms of Sub-section (2) to Section 173 of the Code. **Jeewan Kumar Raut** (supra) was, thus, dealing with a contention and issue entirely different from the one raised in the present case. It is undisputed that decisions of the courts cannot be blindly applied in disjunction of the factual circumstances and issues of each case. The court decisions expound on the law as applicable to the specific circumstances of each case and such exposition may not therefore be necessarily applicable to another case given its own peculiarities. Therefore, the contention predicated on the ratio in **Jeewan Kumar Raut** (supra) holds no merit.

22. There can be no two views over what has been submitted by learned senior counsel for the petitioners relying on the judgment of the Apex Court in the case of **Yakub Memon** (supra), wherein it has been observed that the later Act would prevail over the earlier Act. Where there is inconsistency between the provisions of the two statutes and both can be regarded as special in nature, conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein.

23. The observations in the case of **Sharat Babu Digumarti** (supra) revolve around the facts and circumstances of the said case. After discharge of the petitioner therein of the offence under Section 67 of the Information Technology Act (I.T. Act) and Section 294 of Indian Penal Code, a charge was framed against him for the offence punishable under Section 292 of Indian Penal Code. The central issue arisen was whether the appellant, who had been discharged under Section 67 of the I.T. Act, could be proceeded against Section 292 of the Indian Penal Code. The petitioner therein was intermediary. Similarly placed co-accused had already been granted

relief in toto. It was an offence relating to electronic record. Section 79 of the I.T. Act speaks of intermediaries not to be liable in certain cases. True, Section 81 of the I.T. Act speaks of overriding effect. It reads thus:-

“81. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the [Copyright Act 1957](#) or the [Patents Act 1970](#).”

It has further been observed :-

31. Having noted the provisions, it has to be recapitulated that [Section 67](#) clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with [Section 67-A](#) and [67-B](#) is a complete code relating to the offences that are covered under the [I.T. Act. Section 79](#), as has been interpreted, is an exemption provision conferring protection to the individuals. However, the said protection has been expanded in the dictum of *Shreya Singhal (supra)* and we concur with the same.

32. [Section 81](#) also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play

and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that **IT Act** is a special enactment. It has special provisions. **Section 292** of the IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of **Section 79** cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind **Section 81** of the IT Act. The additional protection granted by the **IT Act** would apply.

The Apex Court had even referred to the judgment in the case of **Jeewan Kumar Raut** (supra). We reiterate that in the facts and circumstances of the case and as the petitioner was intermediary, has been granted discharge from the offence punishable under Section 67 of the I.T. Act and the prosecution for the offence under Section 292 of Indian Penal Code came to be quashed.

24. Then comes the judgment in the case of **Gagan Sharma** (supra). Close reading of the said judgment indicates that relying on the judgment of Apex Court in the case **Sharat Babu Digumarti** (supra), the petitioners therein were granted relief. Our attention was also drawn to the orders indicating Special Leave Petition preferred against the order passed in **Gagan Sharma's** case (supra),

was dismissed in limine. It was also brought to our notice that the petition for review of the order of the Apex Court dismissing the Special Leave Petition, was also dismissed.

25. Then, there is judgment in the case of **Aman Mittal** (supra). It pertains to the offence under Sections 12/30 of the Legal Metrology Act, 2009. Section 51 of the said Act specifically excludes the application of Section 153 of I.P.C. insofar as it relates to the offence with regard to Weights and Measures Act, 1976, which were punishable under Special Act.

According to us, there is no provision like Section 51 of Legal Metrology Act in the Factories Act.

26. We lay emphasis on Section 26 of the General Clauses Act referred to herein above. In a matter for quashment of FIR and the consequential proceedings, no mini trial can be conducted. The veracity of the allegations in the FIR or in the charge sheet could not be tested in such proceedings. In the case of **State of N.C.T. of Delhi vs. Sanjay** (supra), it has been held:-

“ Whether provisions of Mines and Minerals Act explicitly or impliedly excludes provisions of Indian Penal Code when act of accused was offence both under Indian Penal Code and under

provisions of Mines and Minerals Act – Held, Section 22 of Act was not complete and absolute bar for taking action by police for illegal and dishonestly committing theft of minerals including sand from river bed – Merely because initiation of proceeding for commission of offence under MMDR Act on basis of complaint could not and shall not debar police from taking action against persons for committing theft of sand and minerals in manner mentioned by Code of Criminal Procedure – In case where there was theft of sand and gravels from Government land, police can register case, investigate same and submit final report under Section 173 of Code – Ingredients constituting offence under MMDR Act and ingredients of dishonestly removing sand and gravel from river beds without consent, which was property of State, was distinct offence under Indian Penal Code – Hence, for commission of offence under Section 378 of Code, on receipt of police report, Magistrate having jurisdiction could take cognizance of said offence without awaiting receipt of complaint that may be filed by authorised officer for taking cognizance in respect of violation of various provisions of MMRD Act.

Similarly, the Apex Court in the case of **Kanwar Pal Singh** (supra)

has held as under (Head Note ii):-

“ This Court advert to the decision in Sanjay which had overruled the decision of the High Court in Seema Sarkar Vs. State wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the Mines Regulation Act and Section 379 of the Indian

Penal Code, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the Mines Regulation Act, the cognizance was bad and contrary to law. The decision of the High Court which had directed that the FIR should not be treated as registered under Section 379 of the Indian Penal Code but only under Section 21 of the Mines Regulation Act. These decisions of the High Courts were reversed and set aside by this Court in Sanjay after referring to section 26 of the General Clauses Act and the meaning of the expression same offence, to observe that the offence under Section 21 read with Section 4 of the Mines Regulation Act and Section 379 of the Indian Penal Code are different and distinct. The said reasoning compel to reject the contention of the appellant that the action as impugned in the FIR was a mere violation of Section 4 which was an offence cognizable only under Section 21 of the Mines Regulation Act and not under any other law. There was no bar on the Court from taking cognizance of the offence under Section 379 of the Indian Penal Code. The violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the Mines Regulation Act, unlike Section 13(3)(iv) of the TOHO Act.

27. In our considered view, therefore, the prosecution of the petitioner for the offences punishable under Indian Penal Code is maintainable inspite of the fact that the occupier (one of the petitioners herein) is bring prosecuted on the same facts for the offence punishable under Section 92 of the Factories Act.

28. The petitioner – Smt. Madhu (in Writ Petition No.702 of 2018) has come with a case to have resigned from her office of Director of G.C.P.L. on 27.11.2017, i.e. before explosion occurred. Our attention has been drawn to certain documents in this regard. The first such document is her letter dated 27.11.2017, informing the Board of Directors to have put in her papers. The another document is in the nature of a copy of resolution passed at the meeting of Board of Directors of G.C.P.L. accepting petitioner's resignation. The meeting of Board of Directors is said to have taken place on 1st December, 2017, i.e. seven days before the explosion took place. Then, there is a copy of form no.DIR-12, indicating the petitioner to have resigned as Director on 27.11.2017 and resignation was accepted in the meeting of Board of Directors dated 01.12.2017.

29. Learned APP brought to our notice the fact that the Registrar of Companies (RoC) was informed about the petitioner's resignation about two weeks after the explosion. According to learned APP all these documents appear to have been got up so as to suit the petitioner – Smt.Madhu's case. These documents cannot be said to be of sterling quality. Their genuineness needs to be

tested during trial. We are at one with the submissions advanced by learned APP in this regard. Moreover, Section 168 of the Companies Act, 2013, needs to be adverted to :-

168. Resignation of director.—

(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:-

Provided that a [director may also forward] a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3)

30. The bracketed words appearing in the proviso have been introduced with effect from 07.05.2018. Before amendment, the proviso was as under:-

Provided that a **[director shall also forward]** a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

Before the amendment dated 07.05.2018, it was mandatory on the part of Director, who resign from the office, to forward a copy of resignation along with detail reason for the resignation, to the Registrar of Companies within 30 days of resignation. In the case in hand, there is non-compliance of the provision of Section 168 of the Companies Act and therefore, at this stage, the case of Smt. Madhu that she had resigned some days before the explosion occurred and was not Director of G.C.P.L., cannot be accepted.

31. The record indicates that the petitioners are/were Managing Directors of G.C.P.L. on the day of explosion occurred. Although they were not at the factory premises when the incident took place, by nature of their designation, they need to be specifically attributed with the responsibility/duty to take due care and caution to avert any mishap in the factory premises. They being Managing Directors, were statutorily presumed to have such duty/responsibility.

32. Here, the prosecution has, lateron, invoked Section 304 of I.P.C. Although no detailed submissions have been advanced as to whether, it is an offence under Section 304-A or 304 of I.P.C., the petitioners themselves have relied on the judgment in the case of **Keshub Mahindra** (supra). It was a case of Bhopal Gas Tragedy. The charges for offence under Sections 304 Part II, 326, 324, 429 read with Section 34 of Indian Penal Code were framed against the personnel of companies (Union Carbide), who were actually handling, while the Assistant Manager, Production Manager, Plant Superintendent, etc. Chairman, Managing Director and Vice-President in-charge of the plant were also charged with commission of the said offences. In paragraph 14 of the judgment, the Apex Court has observed thus:-

“14. Before we deal with the nature of the material produced by the prosecution before the Trial Court for framing the charges against the Concerned accused it will be necessary to keep in view the limited nature of the jurisdiction available to the court for deciding whether the charges framed are legally sustainable on the basis of the material available at this stage. Section 227 of the Cr.P.C. lays down that:

“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and prosecution in this behalf, the Judge

considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”

On the other hand as enjoined by Section 228, if after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence, then subject to the procedure laid down by sub-sections (a) and (b) of the said Section the charge shall be framed in writing against the accused. In the case of *Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijaya and ors.*, AIR (1990) SC 1962, one of us A.M. Ahmadl, J. (as His Lordship then was) speaking for the Division Bench of this Court in this connection observed as under (AIR Headnote P.1962)

"It seems well settled that at the Ss. 227-228 stage i.e., stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

It is also well settled that while exercising jurisdiction under Section 482 Cr.P.C. when the High Court is called upon to quash the charge pursuant to which proceedings at the stage of trial are pending, and even when the High Court is

called upon to quash proceedings pursuant to complaint, only a prima facie appraisal of the allegations made in the complaint and the material in Support thereof has to be done and the Court has jurisdiction to go into the merits of the allegations as that stage would come when the trial proceeds. In this connection we may usefully refer to a judgment rendered by a Bench of three learned Judges of this Court in the case of State of U.P, v, O.P, Sharma, (1996) 2 SCALE 356. Relying on earlier decisions of this Court the Bench in the aforesaid case made the following pertinent observations in paragraphs 11 and 12 of the Report:

"The question then is : whether the High Court is right in its exercise of inherent power under [Section 482 Cr. P.C.](#)? This Court in [State of Himachal Pradesh v. Pirthi Chand & Anr.](#), 1996 SCC (Cri) 210 decided on November 30, 1995 held as Under:-

'It is thus settled law that the exercise of inherent power of the High Court is an exceptional one Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under [Section 161](#) of the Code in support of the charge-sheet. At that

stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take Cognizance of the offence, On that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to Wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

It has further been observed in paragraph 19 and 20 as under :-

“19. Learned senior counsel for the appellant-accused on the other hand submitted that even if taking the material available on record at this stage on its face value the short question is whether any charge could have been framed against the accused under Section 304 Part II, IPC with or without the aid of Section 35, IPC and even for that matter any charges could have been framed under Sections 326, 324 or 429 with or

without the aid of [Section 35](#) of IPC. We may at once state that both the learned Sessions Judge as well as the High Court have taken the view on the aforesaid material that a prima facie case has been made out by the prosecution requiring accused to face the aforesaid charges and the trial of the accused on these charges cannot be cut short or nipped in the bud in the light of the aforesaid material which has to be accepted as prima facie true and reliable at this preliminary stage of framing of charges.

20. It, therefore, become necessary for us now to address ourselves on this moot question. As noted earlier the main charge framed against all these accused is under Section 304 Part II, IPC. So far as accused No's. 2, 3, 4 and 12 are concerned they are also charged with offences under Sections 326, 324 IPC and 429 IPC read with Section 35 IPC while accused 5 to 9 are. charged substantially with these offences also. We shall first deal with the charges framed against the concerned accused under the main provisions of Section 304 Part II, IPC. A look at Section 304 Part II shows that the concerned accused can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act to the concerned accused is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death the charge offences would fall under Section 304 Part II. However before any charge under Section 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the concerned accused falls short of even prima facie

indicating that the accused appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get put of the picture. In this connection we have to keep in view Section 299 of the Indian Penal Code which defines culpable homicide. It lays down that:

“whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least prima facie indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death. The entire material which the prosecution relied upon before the Trial Court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates prima facie that on that fateful night when the plant was run at Bhopal it was run by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. It cannot be disputed that mere act of running a plant as per the permission granted by the authorities would not be a criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in tank No. 610 could not even prima facie suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to prosecution it was not suggested and could not be suggested that the accused had an

intention to kill any human being while operating the plant. Similarly on the aforesaid material placed on record it could not be even prima facie suggested by the prosecution that any of the accused had a knowledge that by operating the plant on that fateful night whereat such dangerous and highly volatile substance like MIC was stored they had the knowledge that by this very act itself they were likely to cause death of any human being. Consequently in our view taking the entire material as aforesaid on its face value and assuming it to represent correct factual position in connection with the operation of the plant at Bhopal on that fateful night it could not be said that the said material even prima facie called for framing of a charge against the concerned accused under Section 304 Part II, IPC on the spacious plea the said act of the accused amounted to culpable homicide only because the operation of the plant on that night ultimately resulted in deaths of number of human beings and cattle. It is also pertinent to note that when the complaint was originally filed suo motu by the police authorities at Bhopal and the criminal case was registered at the police station Hanumanganj, Bhopal as case No, 1104/84 it was registered under Section 304-A of the IPC. We will come to that provision a little later. Suffice it to say at this stage that on the entire material produced by the prosecution in support of the charge it could not be said even prima facie that it made the accused liable to face the charge under Section 304 Part II. In this connection we may refer to a decision of the Calcutta High Court to which our attention was drawn by learned senior counsel Shri Rajendra Singh for the appellants; In the case of Adam Ali Taluqdar and Ors. Vs. King-Emperor, AIR (1927) Calcutta 324 a Division Bench of the Calcutta High Court made the following pertinent observations while interpreting Section 304 Part II-read with Section 34 IPC:

"Although to constitute an offence under Section 304, Part 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that the act, they are jointly doing, is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore Section 34 can apply to a case Under Section 304, Part 2;"

Once we reach the conclusion that the material produced by the prosecution before the Trial Court at the stage of framing of charges did not even prima facie connect the accused with any act done with the knowledge that by that act itself deaths of human beings would be caused the accused could not be even charged for culpable homicide and consequently there would be no question of attracting Section 304 Part II against the concerned accused on such material. When on the material produced by the prosecution no charge could be framed against any of the accused under Section 304 Part II there would remain no occasion to press in service the applicability of Section 35, IPC in support of such a charge for those accused who were not actually concerned with the running of the plant at Bhopal, namely, accused Nos, 2,3, 4 and 12.

33. Relying on the aforesaid observations of the Apex Court in the case of **Keshub Mahindra** (supra) and in the facts and circumstances of the present case, we find the prosecution ought not to have invoked Section 304 of I.P.C. The trial Court, while framing charge/recording plea, would take this aspect into consideration. If the case is pending before the Court of Magistrate/C.J.M., it shall try the same. If during the course of time, the case has already been committed to the Court of Session, then the Court of Session shall exercise its powers under Section 228(1)(a) of Cr.P.C., necessarily on hearing the accused and the prosecution. The trial Court shall grant the petitioner – Smt.Madhu, being lady, permanent exemption from appearance before it, provided the Advocate representing her in the case would assist to take the case to its logical conclusion. The trial Court may enforce her presence before it for effective hearing as and when required, i.e. for framing of charge/statement under Section 313 of the Code of Criminal Procedure, recording of plea, etc.

34. We expect learned Chief Judicial Magistrate to decide the case instituted on police report and the three complaints filed under the Factories Act, simultaneously.

35. With the aforesaid observations and for the reasons stated herein above, we find the petitions sans merit and therefore, liable to be dismissed. The petitions are, therefore, dismissed.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

36. After pronouncement of judgment, learned counsel for the petitioners submit that there was interim relief operating for long, though it was vacated thereafter. They submit that the petitioners propose to approach the Hon'ble Supreme Court and therefore, the interim relief may be continued.

Learned APP opposes continuation of the interim relief.

37. The interim relief that was granted earlier to continue for a period of five weeks from today.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP