

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1526 of 2011

Narad Muni Mishra

-Vs-

The State of West Bengal & Anr.

For the Petitioner	: Mr. Ayan Bhattacharjee Mr. Meghajit Mukherjee Ms. Visisha Gupta
For the State	: Mr. Suman De
Heard on	: 22.01.2024, 21.02.2024, 13.03.2024, 30.04.2024, 23.08.2024
Judgment on	: 05.12.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceeding pending before the Court of the Learned 2nd Judicial Magistrate, Barasat in Complaint Case No. C-1356 of 2002 under Section 92 of the Factories Act, 1948 for contravention of the provisions of para 3(g) of Schedule-I appended to Rule 47 of the West Bengal Factories Rules, 1958 prescribed under Section 21(2) of the Factories Act, 1948 and also for contravention of the provisions of Section 7A of the said Act as amended up to date.

2. The petitioner had been the Manager of Hooghly Mills Projects Ltd. The M/s Hooghly Mills Projects Ltd., including a factory viz. 'Humukchand Jute Mill' situated at Post Office Hasinagar, P.S. Nalhati, District: North 24-Parganas.
3. A complaint was filed by the opposite Party No.2 before the Court of the Learned Chief Judicial Magistrate, North 24-Parganas at Barasat on 30.09.2002, therein alleging commission of an offence by the petitioner and another punishable under Section 92 of the Factories Act, 1948 for contravention of the provisions of para 3(g) of Schedule-I, appended to Rule 47 of the West Bengal Factories Rules, 1958 prescribed under Section 21(2) of the Factories Act, 1948 and also for contravention of the provisions of Section 7A of the said Act as amended up to date.
4. On 13.08.2002 the complainant/opposite party no. 2 along with Sri R.P. Chakraborty, Deputy Chief Inspector of Factories, Barrackpore, and Sri Samar Roy, Inspector of Factories, Serampore, went to investigate the occasion of a fatal accident, encountered by a worker namely Ganganagar Yadav (E.S.I No. 3522979), at about 7-15 a.m. on 13.8.2002 being engaged as a picker cooly in the said factory. The said factory was inspected after receiving a telephonic message as well as the notice of accident in Form no. 18 from the Manager of the factory on 13.8.2002 reporting the aforesaid incident.
5. The enquiry on 13.8.2002 revealed just prior to accident, the deceased was deputed to clear the clutter of jute fiber in area between first doffer roller, 4th worker roller and the main cylinder of No. 2 Finish Carding Machine, installed in the new extension Unit of the factory. For cleaning the above

jam, the power, i.e. electric supply to the machine, was not put off and all the rollers and different machinery parts of the said machine were in motion. For such work, the deceased at first climbed into the Guard fabricated from strong steel rod and provided on the top of the first doffer roller. Then he had opened the cover fabricated from steel sheet, hinged in the rear and front, and was resting on the top of the said doffer guard protecting the area from the rest of the first doffer roller to the 4th worker roller and the main cylinder, for clearing the area in the said running machine with a broom made of coconut leaf sticks. Suddenly he lost his balance and fell into the gap caused by the opening of the cover and was entangled with the first doffer roller, the 4th worker roller and the main cylinder causing fatal injury. Such work of clearing the jam of jute fibre in the aforesaid danger zone of the running carding machine was undertaken by the said worker by allowing him to open the cover as mentioned earlier without cutting off the supply of power to the machine and without bringing the machinery into complete rest by braking or otherwise, violating the provisions of para 3(g) of Schedule-I appended to Rule 47 of the West Bengal Factories Rules, 1958 prescribed under Section 21(2) of the Factories Act, 1948 as amended up to date.

6. It was also alleged that there was also lack of supervision from the Management, which did not prevent the deceased from carrying out such dangerous and unsaved work of clearing the jam by opening the cover as mentioned earlier, violating the provisions of Section 7A of the said act as sufficient information, interaction, training and supervision was not provided

to the deceased by the Management to ensure his health and safety at his such work.

7. It was further alleged that the opposite Party No.2 submitted enquiry report vide No. 341/ER/3 dated 26.09.2002 and same also was forwarded to the Manager and occupier of the factory under registered post with acknowledgement due card to the factory address in connection with the above alleged fatal accident.
8. It was also alleged that the petitioner being the manager of the said factory. It is also alleged that the petitioner has committed an offence punishable under Section 91 of the Factories Act, 1948 for contravention of the provisions of para 3(g) of Schedule 1 appended to Rule 47 of the West Bengal Factories Rules, 1958 prescribed under Section 21(2) of the Factories Act, 1948 and also for contravention of the provisions of Section 7A of the said act as amended up to date.
9. The Learned Chief Judicial Magistrate, North 24 Parganas at Barasat, upon receipt of the aforesaid petition of complaint, issued summons against the petitioner.
10. Petitioner further stated that subsequently on 23.07.2003, 09.09.2003, 04.11.2003, 02.01.2004, 16.03.2004, 18.06.2004, 29.09.2004 and also subsequent dates, the petitioner appeared before the Learned Court. On 29.07.2005 the case records was transferred to the Learned Judicial Magistrate, 2nd Court, Barasat and on 26.8.2005 record was received by the Learned Judicial Magistrate, 2nd Court, Barasat for final disposal of the case.

11. Petitioner further stated that on 19.04.2007, the Learned Judicial Magistrate, 2nd Court, Barasat was pleased to issue warrant of arrest against the petitioner although without cancelling the order of bail passed by the Learned Chief Judicial Magistrate, North 24-Parganas at Barasat.
12. Being aggrieved by the issuance of the warrant of arrest against the petitioner by the Learned Magistrate, the petitioner filed a revisional application before the Court of the Learned Sessions Judge, North 24 Parganas at Barasat, which was duly registered as Criminal Revision No. 155 of 2008. The said revisional application was subsequently transferred for hearing before the Learned Additional Sessions Judge, 6th Court, Barasat and the Learned Judge after hearing all the parties, was pleased by his judgment and order dated 25.02.2011 to dismiss the said revisional application and affirm the order dated 29.08.2008 passed by the Learned Magistrate in the proceeding impugned.
13. The Learned Advocate representing the petitioner submitted as follows:-
- a) The said company for safety of the said deceased along with other workers had taken all measures for safety of the workers.
 - b) All preventive measures, precautions were taken by establishment for security and safety of employees by way of fixing safeguards to all rotating machines, by proper maintenance etc. for supervising work of the employees, several supervisors have been appointed by the establishment and there was also five safety officers of the establishment.

- c) All the employees/workers had been repeatedly cautioned by the supervisory staff, under instructions of the Management/authority of the Mill, not to check or open or do anything in the running machine. It was also informed before checking and cleaning of any machine, if required, the same should be informed to be supervisory staff or the safety officer. However, the deceased did not pay any heed to the requests of his co-worker who asked the deceased not to do anything in the running machine but the deceased, of his own accord, engaged himself in cleaning the jam of jute fibres and thereafter met with the accident.
- d) For safety of the employees, the machine was properly fenced and covered. However, such protective covers were removed by the deceased employee and same will be evident from report of the Inspector of Factories.
- e) About 10,000 employees are employed in the said mill.
- f) There were no latches on the part of the management and/or occupier and in taking safety measures of the employees and the deceased employee was not directed or ordered by the management to clean jam and jute from the running machine.
- g) It may also be noted that the establishment has paid all dues to the family of the deceased employee, viz. Provident Fund, Gratuity etc. and the son of the deceased employee has been provided employment in the said mill.

14. The allegations in the petition of complaint by the opposite party no. 2 did not at all prima facie satisfy the ingredients of the offence under Section 92 of the Factories Act, 1948 for contravention of the provisions of Para 3(g) of Schedule-I appended to Rule 47 of the West Bengal Factories Act, 1948 and also for contravention of the provisions of Section 7A of the said Act as amended up to date and as such, the order of issuing summons and subsequent order thereto are bad in law and contrary to the law of the land and continuation of the procedure in question as well as the orders made thereunder are abuse of the process of court and same is liable to be quashed.
15. Sub-paragraph (g) of paragraph 3 of Schedule-1 appended to Rule 47 provides work for clearing a jam or attention otherwise shall not be undertaken unless the supply of power to the machine was cut off and the machine was completely brought to rest by breaking or otherwise.
16. However, in the instant case the petitioner was the Manager in the said jute mill and he had no responsibility or duty to look after the day-to-day work of the mill. It is also clear from the record that there are a number of supervisors to look after the day-to-day business of the company. So the question of violation of the said provision against the petitioner does not arise and as a result of which the question of punishment under Section 92 of the Factories Act does not arise.
17. Considered the rival submissions of the Learned Advocate representing the State.

18. Section 7A of the Factories Act provides the general duty of the occupier as follows:-

“7A(1) - Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers which 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 of maintenance of plant and systems of work in the factory that are safe and without risk to health;

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

(c) The provision of such information, instruction, training and supervision as are necessary to ensure of 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 regards facilitates and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of works at work and organization and management for the time being in force for carrying on that policy, and to bring the statement and any revision thereof of the notice of all the workers in such manner as may be prescribed.”

19. The report of enquiry into the Fatal Accident dated 26.09.2002 inter alia stated as follows:-

“It was reported during enquiry that on the date of accident i.e., on 13.08.2002, the deceased, Ganga Sagar Yadav (E.S.I. No. 3522979), aged about 46 years was required and allowed to work in the factory as a picker coolly and he joined his duty on the said day at 06:00 a.m. for “A” shift i.e., from 06:00 a.m., to 11:00 a.m., and from 2 p.m., to 5 p.m. The witness, Sri Taraknath Singh (E.S.I. No.9855991) also joined for the same duty hours as a Sardar of loom operation and another witness, Mr. Thuja Hossain (E.S.I. No.3522505) joined for same duty hours as the loom mistry on that day. It was reported that just before the accident the deceased was required and allowed to clear the jam of jute fibre in the area between the 1st doffer room, 4th worker roller and the main cylinder of the no.2 Finisher Carding machine installed in the new extension unit of the factory. All the above rollers were made wooden stoves fitted with sharp steel pins. For clearing the above jam, electric supply to the machine was not cut all rollers and different transmission machinery parts of the said machine were in motion. To get access to

the place of work the deceased at first climbed onto the gurd of the top of the 1st doffer roller which was fabricated from strong steel fastened with steel plates at the end. Thereafter he had opened the cover, fabricated from steel sheet and hinged at the rear while the front end was resting on the top of the aforesaid doffer guard, protecting the area from the rear of the 1st doffer roller to the 4th worker roller and main cylinder. He had done so by lifting and then turning over the sheet metal guard about its hinges at its rear as the front end of the same was rested on the top of the doffer guard. **Then he engaged himself in blending of the area in the said running machine with a broom made of coconut left stick. It was reported that during such cleaning operation at about 07:15 a.m., on 13.08.2002 the deceased lost his balance and fell into the gap caused by the opening of the cover and was entangled with the first doffer roller, the 4th worker roller and the main cylinder causing fatal injury.**

...

It was observe during enquiry that the said no.2 Finisher Carding machine was situated in the shed at the Eastern side of the spinning line and at the north side of the drawing machines in the new extension area of the factory. Make of the machine "Mackie". It was a full circular finisher carding machine. The delivery and feed end was on the same side of the machine. There were four sets of roller causing at the back-half along with circumference of the main cylinder. Each set consisting of one striper roller (outside dia. 10") and one worker roller (outside dia. 12"). At the front half there were 2 nos. doffer rollers (length 72", outside dia. 16" for each roller), and one at the top and one at the middle along the circumference of the main cylinder (outside dia. 60"). The feed roller and the feed stripper roller were at the bottom of the front half along the circumference of the main cylinder. There were 3 nos. rollers along with the width of the machine in front of the 1st doffer roller (rubber roller,

drawing pressing roller and a drawing roller). There was a platform made of M.S. Sheet and structure in front of the machine at a height of about 5 ft. from ground level for standing onto it and for cleaning the doffer rollers. It was observed that the doffer roller guard as mentioned earlier, made of steel rods (3/4" outside dia.) and half circular in shape, had a gap of about 1 ½ " between each rod. Another guard made of M.S. sheet was provided for protection of the area from the rear side of the doffer roller to the 4th worker roller and the main cylinder as explained earlier. The front end of this guard was resting on the top of the aforesaid doffer guard and it was hinged at its rear which the deceased turned over for cleaning the jam, causing the accident."

20. Paragraph 3(g) appended to Rule 47 of the West Bengal Factories Rules provide that the machine should be stopped before clearing any jam, it would be apparent from the petition of complaint itself that there was no direction upon the deceased workman by the management to clear the jam while the machine was in a running condition. It was apparent that such dangerous operation was carried out/initiated by the deceased workman of his own initiative, bereft of any direction from the Management.
21. The provision of Section 7A of the Factories Act, 1948, would be applicable only against the occupier of a factory. Section 2(n) of the Act defined occupier of a factory as one who had ultimate control over the affairs of the factory and in case of a company, any one of the Directors shall be deemed to be an occupier. In the instant case, it was apparent that the petitioner was not the Director of the company and as such, could not be termed to be an "occupier" within the meaning of the Factories Act and as such, the provisions of Section 7A of the Factories Act was not applicable to the petitioner.

22. The enquiry report itself reflected the accident to have been caused momentarily due to lack of prudence of the workman. He exceeded the limits of the extent to have been circumscribed to fall a prey to inevitability. The victim lost his alertness and immediate sense to discern the ultimate probability and unfortunately fell into the danger zone which he should not have traversed into. It was a situation too abrupt and acute that immense knowledge, training etc., if at all imparted to the victim could not have prevented the occurrence of the accident since he had lost his balance. The area was fenced and the safety measures were in place. The flow of electricity should have been disconnected prior to enter the disputed area, however, the victim in his own spree invited the fatality to his misfortune which could not be attributed to the fault and guilt of the petitioner.
23. To allow to continue with the impugned proceedings would result in gross abuse of the process of law.
24. In view of the above discussions, the proceeding being Complaint Case No. C-1356 of 2002 under Section 92 of the Factories Act, 1948 for contravention of the provisions of para 3(g) of Schedule-I appended to Rule 47 of the West Bengal Factories Rules, 1958 prescribed under Section 21(2) of the Factories Act, 1948 and also for contravention of the provisions of Section 7A of the said Act, pending before the Court of the Learned 2nd Judicial Magistrate, Barasat is quashed.
25. Under such circumstances, the instant criminal revisional application being CRR 1526 of 2011 is allowed.
26. Accordingly, CRR 1526 of 2011 is disposed of.

27. There is no order as to costs.

28. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

29. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)