



Judgment

473 wp30.25

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.30 OF 2025

Ram Bharat,
age-46 years,
occupier of
Patanjali Foods Limited,
having its residence address at,
house No.90,
Vidya Vihar Colony,
Kankhal – Haridwar,
Uttarakhand – India
249408.

..... **Petitioner.**

:: VERSUS ::

State of Maharashtra,
at the instance of J.P.Moharkar
Deputy Director,
Industrial Safety & Health,
Nagpur.

..... **Respondent.**

**Shri Kushal Mor, Counsel and Shri Rohan Deo, Advocate
for the Petitioner.**

**Shri D.V.Chauhan, Public Prosecutor (Senior Counsel)
assisted by Shri Anant Ghongare, Addl.PP for Respondent/
State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 13/08/2025

PRONOUNCED ON : 15/09/2025

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JUDGMENT

1. Heard learned counsel Shri Kushal Mor for the petitioner and learned Public Prosecutor Shri D.V.Chauhan for the State. **Rule.** Heard finally by consent of the parties.

2. By this petition, the petitioner seeks quashing and setting aside criminal complaint bearing Summary Criminal Case No.3184/2024 filed before learned Additional Chief Judicial Magistrate, Nagpur and also seeks quashing and setting aside order of issuance of summons dated 4.9.2024.

3. Brief facts of the case are as under:

The petitioner is the occupier of “Patanjali Foods Limited” having its registered office at 616, Tulsiani Chambers, Nariman Point, Mumbai. The petitioner’s company is a leading Consumer Food Company known

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for its commitment to quality and excellent in edible oil, soya products, and consumer food manufacturing. Complainant Shri J.P.Moharkar, Deputy Director, Industrial Safety and Health, Nagpur visited the factory namely "Patanjali Foods Limited", situated at Butibori-Umrer Road, Nagpur on 14.12.2023 and 15.12.2023 for enquiry as to the fatal accident occurred in the factory wherein one Rajendra Dewade fell from the Cooling Tower Area on 13.12.2023 and died. The petitioner is the occupier of the said factory. The factory is engaged in manufacturing of edible oil by solvent extraction plant. There are four Water Cooling Towers having a Common Cooling Water Tank. The Water Tank contains water upto a height of 3 meters. Out of 4 Cooling Towers, Cooling Tower Nos.1 and 2 are not working due to damage. Cooling Tower Nos.3 and 4 are in working condition. There is a pump house with RCC Slab near Cooling

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Tower No.4. The top level of Cooling Tower NO.4 and RCC Slab of the pump house are the same. One temporary wooden plant (1.5. meters in length by 1 meter in width) was laid in between the top level Cooling Tower No.4 and RCC Slab of the pump house. It was used as walkway to move from slab of pump house and top of Cooling Tower NO.4 and *vice versa*. One Rajendra Dewade was employed as a Contract Worker in the factory through Contractor M/s.Shiv Shiva Consultant for the last two years. On 13.12.2023, he reported on duty at 9:30 am and came to the cooling tower area of the factory. Cooling Tower Nos.3 and 4 were taken under shut-down for maintenance on the same day. At about 4:00 pm, Shri Dewade climbed on the top of the RCC Slab of the pump house and, thereafter, went on the top of Cooling Tower No.4 by walking on the wooden board which laid between top level of Cooling Tower No.4 and

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RCC Slab of the pump house. Being the wooden board became fragile, it was broken and the deceased fell and sustained injuries and died on the spot. During enquiry by the Deputy Director, Industrial Safety & Health, Nagpur, it revealed that the petitioner has committed an offence under Section 32(a) punishable under Section 92 of the Factories Act, 1948. Therefore, he filed the complaint in the Court of learned Additional Chief Judicial Magistrate, Nagpur. Perusal of the complaint, learned Additional Chief Judicial Magistrate issued process.

4. Being aggrieved with the same, the present petition is filed for quashing of the proceeding and order of issuance of summons.

5. Learned counsel for the petitioner submitted that it was sheer negligence of the deceased who has to

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use ladder, but he has used the short cut method and the plank was placed by the worker and he fell down. There was a compliance of Section 32 of the Factories Act, but it was the worker due to whose negligence the alleged incident has occurred. He invited my attention to Section 7-A of the Factories Act which deals with general duties of the occupier and submitted that the general duties are complied by the petitioner. The continuation of the said criminal proceeding would amount to abuse of process of law as the recital of the complaint neither discloses *prima facie* commission of an offence as alleged or at all against the petitioner nor shows a *prima facie* role played by the petitioner. He further submitted that learned Judge below should have conducted an enquiry under Section 202 of the CrPC before issuing the process either by Trial Court or by directing the concerned police authorities to conduct

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investigation. However, no such order under Section 202 of the CrPC is passed in the present case and, therefore, order of issuance of process by learned Chief Judicial Magistrate deserves to be quashed and set aside. On the these grounds, he prayed for quashing of the proceeding.

6. In support of his contentions, learned counsel for the petitioners has placed reliance on following decisions:

1. **Sivagnanamoorthy and ors vs. Deputy Director-1, Industrial Safety and Health, reported in MANU/TN/0262/2022;**
2. **D.S.Chavan and ors vs. P.K.Krishnan, reported in MANU/MH/1127/2015;**
3. **D.Kumarswamy and ors vs. State of Karnataka, reported in MANU/KA/3011/2013;**
4. **S.Aswin Chandran and ors vs. The State and ors, reported in MANU/TN/4631/2022;**

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5. J.J.Irani and ors vs. The State of Jharkhand and ors, reported in MANU/JH/1871/2012,

6. Lalankumar Singh and ors vs. State of Maharashtra, reported in 2022 SCC OnLine SC 1383;

7. Aristides Protonotarios and ors vs. State of Karnataka, reported in MANU/KA/65879/2019, and

8. Nees Wadai vs. State of Tamil Nadu, thr. its Deputy Director, Industrial Safety and Health, reported in 2022 SCC OnLine Mad 7210.

7. *Per contra*, learned Public Prosecutor for the State submitted that death of the deceased is caused during the course of his employment. The object of the enactment requires to be looked into. The Factories Act is enacted primarily object of protecting workers engaged in factories against the Industrial and Occupational Hazards by seeking to impose upon owners or occupiers the certain obligations for protecting workers and securing

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for them employment in condition conducive to their health and safety. He submitted that the statement of Manager of the factory itself shows that one wooden plank was kept to use to approach the top level of Cooling Tower No.4 and RCC Slab of the pump house. It was used as a walkway to move from slab of pump house and top of Cooling Tower No.4 and *vice versa*. In view of Section 32 of the Factories Act, it is obligatory on the part of the occupier to provide the safety measures to approach Cooling Tower No.4 and the pump house. Thus, there is contravention of Section 32 which is punishable under Section 92 of the Factories Act. He submitted that defence of the accused cannot be seen at this stage. He also invited my attention to reply to the show cause notice and the statement of the Manager recorded. He submitted that as per the contention of the petitioner even the Factory Manager was not aware about

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the use of the plank by the workers. However, the statement of Manager shows that on the day of the incident, when the deceased approached the Cooling Tower No.4 and RCC Slab of the pump house, the Manager was supervising the same and the accused and the accident in his presence. It is pertinent to note that provisions of Section 7-A of the Factories Act elaborate the duties of the occupier wherein it is also made clear that it is the ultimate responsibility of the occupier to ensure health, safety and welfare of all the workers working in the factory at all locations of the factory premises. Therefore, it was the duty of the petitioner to install appropriate and safe way for the employees to approach the place to be maintained and prepared by him in regular course of his work. As per the enquiry report of complainant the Deputy Director, Industrial Safety and Health the wooden board laid between the top

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of Cooling Tower No.4 and RCC Slab of the pump house was used as a walkway and this fragile wooden board was not of a sound construction and was not properly maintained by the occupier to ensure the safety of worker working on it. Therefore, it is apparent that the petitioner who is occupier of the factory has contravened the provisions of Section 32(a) of the Factories Act.

8. After hearing both the sides and perusing the complaint as well as various documents filed on record, it discloses the petitioner was owner of the said factory which covers within the definition of occupier. Form No.1 shows the petitioner as occupier of the said factory. There is no dispute as to the incident which shows that on the day of the incident i.e. 13.12.2013 the deceased approached top level of Cooling Tower No.4 and RCC Slab of the pump house and while approaching the Tower

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No.4, he has used one temporary wooden plank which was broken and he fell and succumbed to the injuries. The enquiry was conducted by the complainant and statement of Manager Manoj Nimbhulkar of the said factory was recorded, who stated that on the day of the incident, the deceased, at about 4:00 pm, from staircase of the pump house went to the slab and by using wooden plank, approached to Cooling Tower No.4 for giving support to the pipeline of the tower and while returning back, the plank was broken and he fell on the ground and succumbed to the injuries. At the relevant time, he was supervising the work of the said worker. After reporting of the said incident, the show cause notice was given to the petitioner and while replying the same, he mentioned that he has no personal role in the incident as the factory was being run under the control of the factory Manager and denied his liability.

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9. It is further contention of learned counsel for the petitioner that the deceased was not employee of the factory owned by him as he was employed by the contractor basis and as per the agreement, it was the contractor who is responsible to pay compensation or for any untoward incident, if happened, and, therefore, the petitioner is not liable. Condition No.10 of the agreement between M/s.Parakram Security India Limited vs. M/s.Shiv Shiva Consultant shows that safety of the workers will be responsibility of the second party. No legal liability shall raise on the company in case of any accident due to negligence on the part of the workers and employees employed by them. All types of personal protection equipment shall be provided by first party. In view of the above said condition, the petitioner is not responsible for any act which is caused death of the deceased due to his own negligence.

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10. Before entering into the merits of the matter, it is necessary to mention some provisions of the Factories Act.

11. Section 2(n) defines “occupier” which means that a person who has ultimate control over the affairs of the factory, provided that (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier; (ii) in the case of a company, any one of the directors shall be deemed to be the occupier; and (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

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12. Section 2(l) defines “worker” means a person⁶[employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union.

13. Thus, in view of definition given under Section 2(n), even the person employed through any agency including contractor with or without the knowledge of the principal employer is covered under the definition of “worker”.

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14. Section 7-A of the Factories Act, speaks about general duties of the occupier, which is reproduced as under:

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

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

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

(3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work

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and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed”.

15. Section 32 of the Factories Act deals with floors, stairs, and means of access. In view of Section 32, in every factory ---

(a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip, and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe

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means of access to every place at which any person is at any time required to work, and

(c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

16. Insofar as the Factories Act is concerned, the preamble of the Act states that it is an Act to consolidate and amend the law regulating the labour in factories. It is enacted primarily with object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the onus or occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety. This Act also requires that the workers should

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work in healthy and sanitary conditions for that purpose it provides that precaution should be taken for the safety of the workers and prevention of accidents. A conjoint reading of Section 2(k), 2(l), and 2(m) of the Factories Act becomes clear that factory is that establishment where manufacturing process is carried on with or without the aid of power. Carrying on the same manufacturing process and manufacturing activities is thus a pre-requisite. It is equally pertinent to note that it covers only those workers who are engaged in the said manufacturing process.

17. Insofar as the deceased is concerned, who was engaged through the contractors, falls within the definition of “worker” under the Factories Act.

18. Learned Public Prosecutor for the State placed reliance on the decision in the case of **Lanco Anpara**

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Power Limited vs. State of UP and ors, reported in (2016)10 SCC 329 wherein the Hon'ble Apex Court considered the object of enactment and observed that preamble of the Act mentions that enactment it was enacted to consolidate and amend the law regulating labours in factories. By referring the judgment in case of **Bhikusa Yamasa Kshatriya (P) Ltd. vs. Union of India and anr, reported in (1964)1 SCR 860**, the Hon'ble Apex Court highlighted the necessity and rational being legislating the Factories Act and the objectives, which is sought to achieve in the following manner:

“The Factories Act, as the preamble recites, is an Act to consolidate and amend the law regulating labour in factories. The Act is enacted primarily with the object of protecting workers employed in factories against

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industrial and occupational hazards. For that purpose it seeks to impose upon the owners or the occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety. The Act requires that the workers should work in healthy and sanitary conditions and for that purpose it provides that precautions should be taken for the safety of workers and prevention of accidents. Incidental provisions are made for securing information necessary to ensure that the objects are carried out and the State Governments are empowered to appoint Inspectors, to call for reports and to inspect the prescribed registers with a view to maintain effective supervision. The duty of the employer

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is to secure the health and safety of workers and extends to providing adequate plant, machinery and appliances, supervision over workers, healthy and safe premises, proper system of working and extends to giving reasonable instructions. Detailed provisions are therefore made in diverse chapters of the Act imposing obligations upon the owners of the factories to maintain inspecting staff and for maintenance of health, cleanliness, prevention of overcrowding and provision for amenities such as lighting, drinking water, etc. etc. Provisions are also made for safety of workers and their welfare, such as restrictions on working hours and on the employment of young persons and females, and grant of annual leave with wages. Employment in a

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manufacturing process was at one time regarded as a matter of contract between the employer and the employee and the State was not concerned to impose any duties upon the employer. It is however now recognised that the State has a vital concern in preventing exploitation of labour and in insisting upon proper safeguards for the health and safety of the workers. The Factories Act undoubtedly imposes numerous restrictions upon the employers to secure to the workers adequate safeguards for their health and physical well-being. But imposition of such restrictions is not and cannot be regarded, in the context of the modern outlook on industrial relations, as unreasonable....”

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19. Thus, in view of the above said observations of the Hon'ble Apex Court, while considering the application, the object of the Act is to be kept in mind.

20. Though learned counsel for the petitioner placed reliance on the decision in the case of **Sivagnanamoorthy and ors** *supra*, the observations made therein are on the basis of the evidence adduced during the trial.

In the case of **D.S.Chavan and ors** *supra*, wherein also the observation as to the negligent and exonerating the occupier is on the basis of the evidence and, therefore, both the judgments are not helpful to the present petitioner as far as quashing of the proceeding is concerned.

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21. In the cases of **D.Kumarswamy and ors** and **S.Aswin Chandran and ors**, facts therein are not identical to the facts in the present case.

22. Perusal of the entire material reveals that there were 4 water cooling towers having common cooling water tank. The water tank contains water level upto a height of 3 meters. Out of 4 Cooling Towers, Tower Nos.1 and 2 are not working. Whereas, Tower Nos.3 and 4 are working. There is a pump house with RCC Slab near Cooling Tower No.4. One temporary wooden plank was used by laying between the top level of Cooling Tower No.4 of the RCC Slab of the pump house. It was used as a walkway to move from slab of pump house and top of cooling Tower No.4 and vice versa. On the day of the incident, the deceased used the said plank as he approached to the said Cooling Tower to ascertain the

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support which was given from the RCC Slab to the Tower No.4. Admittedly, nothing is on record to show that occupier has provided any provisions for approaching to Tower No.4 from RCC Slab and, therefore, the workers were using the walkway to move from the slab of a pump house and top of Cooling Tower No.4 and vice versa.

Thus, it is contravention of Section 32 of the Factories Act which is punishable under Section 92 of the Factories Act.

23. The another ground raised by the petitioner is that, before issuance of process, no enquiry was conducted by learned Additional Chief Judicial Magistrate before issuance of process.

24. It is submitted that as the petitioner is resident of Uttarakhand, beyond the jurisdiction of Chief Judicial Magistrate, in view of Section 202 of the CrPC, it is

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obligatory on the part of learned Magistrate to conduct an enquiry before issuance of process.

25. This aspect is dealt with by the Hon'ble Apex Court in the case of **Expeditious Trial of Cases under Section 138 of the NI Act, 1881, suo motu W.P. (Cri) No.2/2020, reported in (2021)16 SCC 116** wherein it is observed that for conduct of the enquiry Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit in suitable cases. The Magistrate can restrict the enquiry to examination of documents without insisting for examination of witnesses.

26. Admittedly, in the present case, the order of issuance of process is passed without assigning any reasons. Even, the Magistrate is left with discretion to dispense with the enquiry, he should assign reasons for

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the same as to why he is restricting himself to the examination of the documents.

27. This Court in the case of **Shivshankar Shrikrushna Dhole vs. State of Maharashtra, thr.AGP Akola, reported in AIR OnLine 2021 Bom 2149** observed that merely reading of the complaint and verification statement on oath given by the complainant while issuing process would not constitute sufficient compliance with mandatory requirement of Section 202 of the Code, particularly in the teeth of law laid down by the Hon'ble Apex Court in constitution bench judgment.

28. It is well settled that if the Magistrate holds an enquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202 of

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the CrPC. Although examination of all witnesses is not required to comply the mandate under Section 202 of the CrPC, the minimal requirement of tendering evidence affidavit of the complainant, consideration of documents and assignments of the requisite reasons for dispensing with the detail enquiry is necessary. Merely reading of the complaint and verification statement on oath would not constitute sufficient compliance with mandatory requirement of Section 202 of the CrPC, particularly in the teeth of law laid down by the Supreme Court of India in constitution bench judgment.

29. Keeping in mind the aforesaid aspects, if the impugned order is examined, apparently, it shows requisite reasons for dispensing with the enquiry are not mentioned. The satisfaction behind the issuance of order

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is also not recorded. Resultantly, the order bereft of the mandate of Section 202 of the Code.

30. In this view of the matter, the writ petition deserves to be allowed by remanding the matter to learned Additional Chief Judicial Magistrate, Nagpur. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **allowed**.

(2) Summary Criminal Case No.3184/2024 is remanded to the Chief Judicial Magistrate.

(3) The Additional Chief Judicial Magistrate shall proceed from the stage of Section 202 of the Code.

(4) Learned Magistrate may conduct the enquiry under Section 202 of the Code.

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(5) The evidence of the witnesses on behalf of the complainant may be permitted to be taken on affidavit.

(6) Learned Magistrate may or restrict the enquiry to the examination of the documents without insisting for examination of the witnesses by assigning adequate reasons for dispensing with the enquiry.

(7) The procedure under Section 202 of the Code shall be conducted as expeditiously as possible and in any event within a period of two months from the date of receipt of writ of this order.

Rule accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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