

(2006) 12 JH CK 0005

Jharkhand High Court

Case No: None

Ashwini Kumar Singh and
Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Dec. 2, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 300, 482
- Factories Act, 1948 - Section 105, 2, 32, 33, 92
- Penal Code, 1860 (IPC) - Section 287, 288, 304A, 338

Citation: (2007) 2 JCR 334

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

The present petition has been filed u/s 482, Cr PC by the petitioners for quashment of the order dated 2.2.2006 passed by the CJM Jam-shedpur whereby and whereunder the cognizance of the offence was taken under Sections 287/288/338 of the IPC arising out of Golmuri (Burma Mines) P.S. Case No. 187/05 corresponding to G.R. No. 2112/05 presently pending in the Court of Shri D.C. Awasthi, Judicial Magistrate, 1st Class, Jamshedpur. It is further prayed for the quashing of the entire criminal proceeding as against the petitioners.

2. The prosecution story in brief is that on 28.9.2005 while one Mukesh Singh (since deceased) was working in Golbana Engineering Department, under the supervision of contractor of Tube Company, namely Suresh Singh, Supervisor Nagina Sharma and the Engineer A.K. Singh and Ranjit Singh (Petitioners) the workman Mukesh Singh was asked to hand over a hammer to the supervisor, and pursuant to that,

while he was moving towards the supervisor, he slipped in the open metal chamber and as a result of which he sustained serious burn injuries and was immediately admitted to Tata Main Hospital, Jamshedpur where he succumbed while undergoing treatment and it is alleged that only on account of negligence on the part of the aforesaid persons including the petitioners the occurrence took place. The victim Mukesh Singh delivered his Fardbeyan on the same day at about 18.15 hours before his death.

3. Learned Counsel submitted that the information regarding the accident in which Mukesh Singh sustained severe burn injuries was immediately given to Inspector of Factories on 26.9.2005 and subsequently the Inspector of Factories filed a complaint for the offence punishable u/s 92 of the Factories Act in the Court of the CJM, Jamshedpur and as such cognizance of the offence was taken in C/2 case No. 5211/05 (Annexure-11).

4. Advancing his argument learned Counsel submitted that for the same set of facts and occurrence there cannot be two criminal cases viz. police case on the instance of Mukesh Singh (Informant deceased) as well as the complaint case on the instance of the Inspector of Factories u/s 92 of the Factories Act. In that manner the petitioners have been harassed twice for single accident which is restricted u/s 300 of the Code of Criminal Procedure.

5. Finally the learned Counsel submitted that there cannot be two separate investigation irrespective of the same incident. He further submitted that regarding any occurrence being taken place inside the factory, the provisions as laid down in the Factories Act are applicable as warranted in the present accident. The facts stated in both, the complaint as well as in the First Information Report, relates to the same occurrence and the accident being fully covered by the penal provisions of the Factories Act in which cognizance of the offence has been taken u/s 92 of the Factory Act, the general law of the Indian Penal Code is not applicable when the case is covered under the Special Act. The special Act shall prevail over the general law and the enquiry by the Factory Inspector bars any enquiry by the police under the provisions of Section 105 of the Factories Act as far as any offence/accident takes place in the factory premises. For such incident the Factory Inspector is the competent person to file a complaint. Finally learned Counsel submitted that when already case has been filed under the Factories Act and the same is pending the continuation of the present proceeding in the Penal Sections of the IPC would cause miscarriage of justice and therefore, the entire criminal proceeding against the petitioners including the order impugned dated 2.2.2006 by the CJM, Jamshedpur taking the cognizance of the offence in Golmuri (Burma Mines) P.S. Case No. 187/05 corresponding to G.R. No. 2112/05 be quashed.

6. Learned APP conceded that the present case is governed by the penal provisions of the Factories Act.

7. Having regard to the facts and circumstances of the case, I find that the prosecution has not disputed that the occurrence/accident took place within the factory premises of Golbana Engineering Department, a factory defined u/s 2(m)(i) of the Factories Act, 1948. The Factories Act, 1948 is an enactment meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises as well as the safety measures. For its objective against exploitation and to regulate the safety provisions in the factories penal provisions have been made in the Factories Act, 1948. The enactment is for the safety and security of the workers in the hazardous process of the factory and for such motive and beneficial construction Act is made self contained. I find from the record that on the statement of the victim recorded on 28.9.2005 Golmuri (Burma Mines) P.S. Case No. 187/05 was registered on 1.10.2005 and the FIR was received in the Court of CJM, Jamshedpur on 5.10.2005 and the police after investigation submitted charge-sheet on 2.2.2006 and accordingly cognizance of the offence was taken against the accused persons under Sections 287/288/338 and 304-A, IPC. At the same time, I find that on information given by the authority of the factory in respect of the accident which took place in the Tubes Division of Tata Steel Limited to the Factory Inspector, Jamshedpur Circle No. 1, Jamshedpur on 26.9.2005 in Form No. 17-A, a preliminary enquiry was conducted and upon being satisfied and finding a prima facie case the Factory Inspector filed a complaint against the occupier and director of the Tubes Division of Tata Steel Limited as well as its Manager and the case was numbered as C/2 No. 5011/05 for the alleged offence u/s 92 of the Factories Act, 1948 for the alleged contravention of Sections 32(a) and 33(i) of the Factories Act.

8. The law is settled in the various decisions that the special law shall prevail over the general law but both shall not run concurrently for the same cause of action. I find that when the complaint case has been instituted vide C/2 No. 5211/05 under Special law (Factories Act, 1948) the continuation of the criminal prosecution against the petitioners for the offence prescribed in the general law of Indian Penal Code is unsustainable. In both the statutes viz. under- Section 304-A, Indian Penal Code (general law) and u/s 92 of the Factories Act, 1948 the sentence prescribed to the convict is similar but with additional fine to the extent of Rs. One lakh in the Special Act to the occupier and in this manner the extent of fine is more severe in special law and both cannot proceed at a time. The criminal prosecution of the petitioners, therefore, under Indian Penal Code is unsustainable.

9. In the facts and circumstances, the criminal prosecution of the petitioners in G.R. No. 2112/05 arising out of Golmuri (Burma Mines) P.S. Case No. 187/05 including the order taking cognizance of the offence is quashed and this petition is allowed. Petition allowed.