

(2012) 04 JH CK 0075

Jharkhand High Court

Case No: Criminal M. P. No. 450 of 2012

Raj Kumar Bansal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: April 24, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 287, 304A

Citation: (2012) 3 JCR 390 : (2012) 3 JLR 117

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Indrajit Sinha, for the Appellant; G. S. Prasad, Assistant Public Prosecutor For the State, for the Respondent

Final Decision: Allowed

Judgement

R. R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel for the State. This application is directed against the order dated 25.5.2009, passed by the then learned Chief Judicial Magistrate, Seraikella, in Gamaharia P.S. Case No. 93 of 2008, (G.R. No. 882 of 2008), whereby and whereunder, cognizance of the offences punishable under Sections 287 and 304A of the Indian Penal Code was taken against the petitioner.

2. The case of the prosecution as it appears from the First Information Report is that one Prabhat Pillai who was working at Aadhunik Alloy and Power Ltd., was asked to do repairing of a conveyor belt and while he was doing so one Puran Chand Maharathi put the switch on as a result of which hand of Prabhat Pillai got crushed in the conveyor/belt. Subsequently he succumbed to injuries. When such information was given by one Rajendra Puhan, a case was registered as Gamaharia Kandra (O.P.) P.S. Case No. 93 of 2008, under Sections 287 and 304A of the Indian

Penal Code not only against Puran Chand Maharathi, but against this petitioner working as Assistant General Manager, Mechanical and one other person.

3. Upon submission of charge-sheet cognizance of the offences as aforesaid was taken against all the three persons.

4. Being aggrieved with that order, this application has been filed u/s 482 of the Cr.P.C. for quashing of the entire criminal proceeding including order taking cognizance. Mr. Indrajit Sinha, learned counsel appearing for the petitioner submits that taking the entire allegation to be true, no case is made out either u/s 287 or 304A of the Indian Penal Code against the petitioner, the petitioner has never been alleged to have done anything rashly and negligently due to which accident took place and as such, order taking cognizance is fit to be quashed.

5. As against this, learned counsel appearing for the State submits that it is true that the petitioner has not been alleged to have done any act rashly and negligently resulting into an accident causing death of the deceased, but the petitioner being Assistant General Manager, Mechanic can be held vicariously liable for the alleged offence.

6. Having heard learned counsel appearing for the parties, and on perusal of the record, I do find that it is the case of the prosecution that while Prabhat Pillai was doing repairing of a conveyor belt, Puran Chand Maharathi put the switch on, as a result of which, hand of Prabhat Pillai got crushed resulting into his death.

7. Thus, it does appear that whatever allegation of rash and negligent act has been attributed that has been attributed to Puran Chand Maharathi and not against the petitioner. Hence, the petitioner cannot be held responsible for an offence under Sections 287 of the Indian Penal Code, as it speaks about the prosecution of the person on whose negligent act, a person receives injury or hurt. AT the same time, one can also be prosecuted, if he knowingly or negligently omits to take precaution against any probable danger. Similarly one can be punished for an offence u/s 304A of the Indian Penal Code, if he causes death on account of his rash and negligent act. The said provisions read as follows :-

"287. Negligent conduct with respect to machinery - Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause, hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

304A. Causing death by negligence. - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. Here in the instant case, nowhere it is the case of the prosecution that it is on account of negligence act on the part of the petitioner, hand of Prabhat Pillai got crushed resulting into his death. Nor there appears to be any allegation that the petitioner knowingly or negligently failed to take precaution against probable danger, Under the circumstances, one can easily come to the conclusion that no offence is made out either u/s 287 or 304A of the Indian Penal Code.

9. Accordingly, entire criminal proceeding of Gamaharia P.S. Case No. 93 of 2008 (G.R. No. 882 of 2008), including the order dated 25.5.2009, passed by the Chief Judicial Magistrate, Seraikella, under which cognizance of the offences has been taken against the petitioner under Sections 287 /304A of the Indian Penal Code, is hereby, quashed. In the result, this application stands allowed