

S.K. Gue and anr. Vs. State

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Court : Orissa

Decided On : Jun-17-1986

Reported in : 62(1986)CLT154; 1987CriLJ882

Judge : K.P. Mohapatra, J.

Appellant : S.K. Gue and anr.

Respondent : State

Judgement :

ORDER

K.P. Mohapatra, J.

1. This revision is directed against the order passed by the Sub-Divisional Judicial Magistrate, Koraput, taking cognizance of offences Under Sections 304A of the I.P.C. and 92 of the Factories Act ('Act' for short) against the petitioners.

2. The prosecution case in short is that petitioner 1 is the Project Manager and petitioner 2 is the Mechanical Engineer of the Hindustan Construction Co. Ltd., entrusted with the construction of the Cooling Plant of Kolab Dam Works. In the course of construction, the petitioners had erected a platform at a height of 60' from the ground level approachable through a ladder. The floor of the platform, however, was not complete, inasmuch as, there was a blank space though surrounded by four parapet walls. There was an iron barricade on the right side of

the ladder but there was no such protection on the left side. On 24-6-1983 at about 12.45 p.m. the deceased, named Md. Mustafa Khan, was working along with two other labourers on the platform. During the course of work when he attempted to get down the ladder from the platform, his feet slipped and he fell down on the ground, about 60' below, by the left side of the ladder where there was no iron barricade. He sustained injuries and while on treatment he died. If the platform would have been complete and there would have been a barricade on the left side of the ladder, the deceased could be protected. The petitioners, who Are in charge of construction of the Cooling Plant, were negligent and were responsible for the death of the deceased attracting Section 304A, I.P.C. Further, they violated the provisions of Section 32 and are liable to be punished Under Section 92 of the Act. The Sub-Inspector of Kolab Outpost drew up F.I.R. and after investigation the investigating officer submitted charge-sheet against the petitioner for having committed offences Under Sections 304A, I.P.C. and 92 of the Act.

3. The learned Sub-Divisional Judicial Magistrate, Koraput, on consideration of the materials available in the police case diary took cognizance of the aforesaid offences against the petitioners by the impugned order.

4. Mr. B. M. Patnaik, learned Counsel appearing for the petitioners, contended that for contravention of the provisions of Section 105 of the Act, the order of the learned Sub-Divisional Judicial Magistrate, Koraput, taking cognizance of the offence Under Section 92 of the Act against the petitioners must have to be quashed. The contention requires careful examination.

5. In the charge-sheet, there is specific mention that the petitioners had violated the provisions of Section 32 punishable Under Section 92 of the Act. Section 32 provides the safety measures that should be taken for constructions of floors, stairs and the means of access in every factory. If such precautions have not been taken and the obligations incumbent Under Section 32 have not been discharged and breach of the statutory duty results in injury or death, the persons responsible can be punished Under Section 92 which is the general penal provision for all offences under the Act. According to the prosecution, the petitioners had the statutory duty of taking safety measures as provided Under Section 32 and as they

did not fulfil the obligations incumbent under that section, which occasioned the death of a labourer, they are ordinarily liable to be punished Under Section 92 of the Act.

6. Section 105(1) of the Act, which is relevant for the purpose of our discussion, is quoted below for easy reference.

No Court shall take cognizance of any offence under this Act except on complaint by,, or with the previous sanction in writing of, an Inspector.

The section envisages two alternative conditions before cognizance of an offence under the Act can be taken by a competent Court. The first is that the complaint must be made by an Inspector appointed Under Section 8 of the Act or, second, with the previous sanction in writing of an Inspector. Unless either of the conditions is fulfilled, taking of cognizance by the competent Court is prohibited. The basic principle underlying the provisions of Section 105 is that before cognizance of an offence under the Act is taken, the alleged offence must be thoroughly investigated or enquired into by a competent person, such as an Inspector appointed under a specific provision of the Act, namely, Section 8 according to which a person who possesses prescribed qualification can only be appointed as an Inspector by the State Government for the purposes of the Act. A duly appointed Inspector has special knowledge as to the safety measures to be taken by the Manager of a factory and the manner in which there has been breach of statutory duties cast under the Act. An ordinary person, though he may be a police officer, may not have the special knowledge of the provisions of the Act like an Inspector. Therefore, in order that false ,and vexatious criminal proceedings are not initiated against Managers of factories, the safeguards have been provided in Section 105 of the Act, according to which either the complaint must be filed by an Inspector or with his previous sanction in writing. In this case, the record does not reveal that the complaint was filed by an Inspector or with the previous sanction in writing of an Inspector appointed Under Section 8 of the Act. On the other hand, as already stated, a Sub-Inspector of Police lodged F.I.R. and the case was investigated and charge-sheet was submitted by an investigating police officer. The aforesaid discussion will thus show that cognizance of the offence Under

Section 92 against the petitioners is barred Under Section 105 of the Act. Accordingly, the order of cognizance of the offence Under Section 92 of the Act against the petitioners has to be quashed.

7. Mr. B. M. Pa tnaik next urged that there are no materials on record to prima facie show that an offence Under Section 304A, I.P.C, could be made out against the petitioners. He is not correct in making the submission. The materials in the police case diary prima facie show that there was negligence in erection of the platform at a height of 60r from the ground level in an incomplete manner and in not providing a barricade on the left side of the ladder. Whether for such . negligence the case Under Section 304A, I.P.C. shall be proved against the petitioners or not is a matter which has to be gone into during the trial of the case. At this stage, however, it cannot be said that materials for the offence are lacking. I am, therefore, of the view that there is a prima facie case against the petitioners Under Section 304A, I.P.C. and the impugned order of taking cognizance of that offence cannot be vacated.

8. For the reasons stated above, the criminal revision will succeed in part. The order of the learned Sub-Divisional judicial, Magistrate taking cognizance of the offence Under Section 92 of the Act against the petitioners is quashed. The case shall, however, proceed against them for the offence Under Section 304A, I.P.C. Thclower Court records be sent back at once.