

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (Cr.) No. 202 of 2017**

P.K. Tailang S/o Shri K.D. Tailang, aged about 62 years, R/o Ex-Deputy General Manger Water Management Department Pump House, Bhilai Steel Plant, Bhilai, Address – Block No. 47-A, Plot No. 8, Nehru Nagar, (W), Bhilai, District Durg (C.G.)

---- **Petitioner**

Versus

State of Chhattisgarh Through Superintendent of Police, Durg, District Durg (C.G.)

---**Respondent**

For Applicant : Shri T.K. Jha, Advocate.
For Respondent/State : Shri Vaibhav A. Goverdhan, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order

22/01/2019

1. The present petition is to quash the prosecution of the petitioner who is working as Deputy General Manager to the Bhilai Steel Plant for which he has been charge-sheeted under Sections 287, 337, 304(A) read with Section 34 of IPC under the FIR No. 24/2015.

2. It is contended by learned counsel for the petitioner that the petitioner was posted as Deputy General Manager, Water Management Department with Bhilai Steel Plant. On 12.06.2014, due to leakage in the pipeline of the factory the Carbon Monoxide gas leaked out and spread around in which 06 persons died and 30 were injured for which charge-sheet under Section 87, 337, 304(A) read with Section 34 of IPC was filed against the petitioner and other persons. It is further contended that on the same facts the petitioner has been convicted under Section 92 of the Factories Act, 1948 (hereinafter referred to as

the 'Act of 1948') for violation of Section 31 read with Rule 67(3) of C.G. Factory Rules, 1962 (hereinafter referred to as the 'Rules of 1962') and has been sentenced to six months simple imprisonment with a fine of Rs.1 lacs. The petitioner was further convicted under Section 92 of the Act of 1948 for violation of Section 31 read with Rule 67(7) of Rules 1962 and sentenced to six months simple imprisonment and fine of Rs. 1 Lacs. The petitioner was further convicted under Section 92 of the Act of 1948 for violation of Section 109 of the Act of 1948 read with Section 114 of the Rules of 1962 and sentenced to three months simple imprisonment with a fine of Rs. 1 lacs by the Judicial Magistrate, First Class i.e. Labour Court, Durg vide judgment dated 02.12.2016. It is contended that the present petitioner cannot be convicted for the same offence for which he stood convicted by the Labour Court, Durg. It would be covered under double jeopardy.

3. To support his contention reliance was placed on **Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr.**¹ and advancing the technology it is stated that the present petitioner was convicted under Section 138 of the Negotiable Instruments Act and it was held that he cannot be punished for the same offence and likewise for the same offence since the petitioner was convicted by the Labour Court, Durg for the same facts for which the incidence took place, the trial under IPC cannot continue. Learned counsel for the petitioner further submits that at the relevant point of time the petitioner was on leave from 06.06.2014 to 23.06.2014.

1 2011 AIR SCW 788

4. Per contra, learned State counsel opposes the arguments and submits that conviction made by the Labour Court, Durg was under the Factories Act and Rules which is completely separate and distinct from the provisions of the IPC therefore, even though the petitioner is convicted by the Labour Court, the prosecution can continue under the different sections of IPC. Reliance was placed on **2009 (2) C.G.L.J. 310.**

5. Perused the documents attached to the petitioner and considered the reply.

6. In the instant case, the petitioner has been convicted by the Labour Court under Section 31 of the Act of 1948 read with Rule 67(3) of the Rules of 1962 and has been convicted under Section 92 of the Act of 1948 which prescribed the penalty. For the sake of brevity, Section 31 of the Act of 1948 read with Rule 67(3) of the Rules of 1962 are reproduced herein below :-

“S.31. Pressure plant.- (1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

(2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

(3) The State Government may, by rules, exempt,

subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

R. 67(3). Design and construction : Every pressure vessel or plant used in a factory-

- (a) shall be properly designed on sound engineering practice;
- (b) shall be of good construction, sound material, adequate strength and free from any patent defects; and
- (c) shall be properly maintained in a safe condition :

Provided that the pressure vessel or plant in respect of the design and construction of which there is an Indian standard or a standard of the country of manufacture or any other law or regulation in force, shall be designed and constructed in accordance with the said standard, law or regulation, as the case may be, and a certificate thereof shall be obtained from the manufacturer or from the competent person which shall be kept and produced on demand by an Inspector.”

7. Likewise, the petitioner is convicted under Section 31 of the Act of 1948 read with Rules 67(7) of the Rules of 1962 which is reproduced herein below :-

“67(7). Service test and examination.- Every pressure vessel or plant in service shall be thoroughly examined by a competent person-

- (a) externally , once in every six months;
- (b) internally, once in every twelve months;

if by reason of the construction of a pressure vessel or plant, a thorough internal examination is not

possible, this examination may be replaced by a hydrostatic test which shall be carried out once in every two years :

Provided that for a pressure vessel or plant process which cannot be frequently opened, the period of internal examination may be extended to four years; and

(c) hydrostatically tested once in every four years :

Provided that in respect of pressure vessel or plant with thin walls such as sizing cylinder made of copper or any other non-ferrous metal periodic hydrostatic test may be dispensed with subject to the conditions that the requirements laid down in sub-rule (8) are fulfilled :

Provided further that when it is impracticable to carry out thorough external examination of any pressure vessel or plant every six months as required by clause (a) or if owing to its construction and use a pressure vessel or plant can not be hydrostatically tested as required in sub-rule (b) of this clause through external examination of the pressure vessel or plant shall be carried out atleast once in every two years, and atleast once in every four years a thorough systematic non-destructive test like ultrasonic test for metal thickness or other defects of all parts the failure of which might leads to eventual repture of the pressure vessel or plant shall be carried out.

(d) the hydrostatic test pressure to be carried out for the purposes of this rule shall be 1.25 times the design pressure or 1.50 times the maximum permissible working pressure vessel whichever is

less.”

8. Further the petitioner is also convicted for violation of Section 109 of the Act of 1948 read with Rule 114 of the Rules of 1962. For the sake of brevity, Section 109 of the Act of 1948 and Rule 114 of the Rules of 1962 are reproduced herein under :-

“S. 109. Service of notices.- The State Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

R.114. Information required by the Inspector. - (1)

The occupier, owner or manager of a factory shall furnish any information that a Inspector may require for the purpose of satisfying himself whether any provision of the Act has been complied with or whether any order of an Inspector has been duly carried out. Any demand by an Inspector for any such information, if made during the course of an inspection, shall be complied with forthwith if the information is available in the factory, or if made in writing, shall be complied with within seven days of receipt thereof.

(2) The occupier or manager of every factory shall report to the Inspector any intended closure. [Information as to the particulars and quantify of stored chemicals and action taken or proposed to be taken to ensure safety from those chemicals shall also be furnished alongwith the report of intended closure] of the factory or any section or department thereof, immediately it is decided to do so, intimating the reason for the closure, the number of workers on the registers on the date of the report, the number of

workers likely to be affected by the closure, and the probable period of the closure. An intimation should also be sent to the Inspector as soon as the factory, or the section or department of the factory, as the case may be, starts working again.]”

9. The present petition is to quash the proceeding which are pending under Section 287, 337, 304(A) read with Section 34 of IPC which are reproduced hereinunder :-

“S. 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.

S. 337. Causing hurt by act endangering life or personal safety of others. -

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

S. 304(A). 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.

S.34. - Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

10. Comparison of both the sections and their field of operation are completely distinct. Article 20(2) of the Constitution of India protects a person that no person shall be prosecuted or punished for the same offence more than once. The reading of the said offence and their field of operation would show that the Factories Act and Rules which are made for maintenance of a factory imposing duty on the person who are the occupant or in management so that accidents are avoided, predominantly, it is for the safety of the workers whereas the provisions of the IPC operate on different field. It is against any act which is prohibited by the statute, if it is done it would be offence against the society. This Court in the case of ***Firoz Alam vs. State of C.G.***² dealt with the similar situation and held that the present petitioner though convicted under the Factories Act, 1948 may try under the offence punishable under the IPC. The relevant part of the said case is reproduced herein below :-

”8. The provision of [Article 20 \(2\)](#) of the Constitution

2 2009 (2) C.G.L.J. 310

of India is based on the well known maxim *nemo debet his vexari, (si constant curiae quod sit) pro una et eadem causa* means no one ought to be vexed twice if it appears to the Court that it is for one and the same cause. [Article 20 \(2\)](#) of the Constitution of India expressly provides that:

"No, one shall be prosecuted and punished for the same offence more than once."

9. [Section 300 \(1\) of the Code](#) saves the person from double jeopardy for the same offence or on the same facts, but a person may be tried and convicted or acquitted twice for distinct offences. As has been held by the Apex Court in the matter of [The State of Bombay v. S.L. Apte](#) and another offence under [Section 409](#) of the I.P.C. and offence under [Section 105](#) of the Insurance Act of same facts are not one and the same and they are distinct offences, two trials are not barred. While dealing with the same question, the Apex Court has held in the case of [Mohinder Singh v. State of Punjab](#) that offence punishable under [Sections 399 & 402](#) of the I.P.C. and Section 3 of the TADA Act is distinct from offence punishable under [Section 25](#) of the Arms Act & Section 5 of the TADA Act. While dealing with the same question in the case of [V.K. Agarwal v. Vasantraj Bhagwanji Bhatia](#) and others, the Apex Court has held that offence under [Sections 111 & 135](#) of the Customs Act, 1962 is distinct from offence under Section 85 of the Gold (Control) Act, 1968.

10. In the instant case, offence under [Section 7A \(2\) \(c\)](#) of the [Factories Act](#), 1948 read with Rule 73 of the Chhattisgarh Factory Rules, 1962 and [Sections 88, 92](#) of the Factories Act, 1948 read with Rules 108 (1)

& 108 (4) of the Chhattisgarh Factory Rules, 1962 are mainly related to taking necessary steps for safety of the persons employed in the factory with a view to save them from any casualty and offence of causing death by doing any rash & negligent act punishable under [Section 304A](#) of the I.P.C. is distinct from offence under [Section 92](#) of the Factories Act, 1948. A person may be tried for offence punishable under [Section 92](#) of the Factories Act, 1948 as well as under [Section 304A](#) of the I.P.C. separately and both the offences are not one and the same or not based on same facts. The Court below has rightly rejected the application for discharge of the applicant and it has not committed any illegality or infirmity in the order impugned.”

11. Complying with the aforesaid analogy and provisions, the arguments advanced by the learned counsel cannot be appreciated in the facts of the case. Since the very operation of the statute it is on the different forum and the object of the statute and the promulgation of the object is for the different reasons and the same cannot be amalgamated as it will defeat the social cause. Otherwise, the provisions if are read in juxtapose it will make each other porous which is under intent of the legislature. Under the circumstances, the petition has no merit.

12. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)
JUDGE

HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB : Hon'ble Shri Justice Goutam Bhaduri)

W.P. (Cr.) No. 202 of 2017**Petitioner**

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Versus**Respondents**

State of Chhattisgarh

(Head-note)**(English)**

A Person may be tried for distinct offences under the Factories Act, 1948 and of I.P.C. of same incident.

(हिन्दी)

एक ही घटना के सम्बन्ध में किसी व्यक्ति को कारखाना अधिनियम, 1948 और भारतीय दण्ड संहिता के तहत सुभिन्न अपराधों के लिये विचारण किया जा सकता है।