

Jharkhand High Court
Jharkhand High Court
Ejaj Ahmad vs Unknown on 3 September, 2009
IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 911 2007

Ejaj Ahmad Petitioner Vs.

1. The State of Jharkhand
2. Binay Kumar Opposite Parties CORAM: HON'BLE MR. JUSTICE PRASHANT KUMAR

For the Petitioner: M/s. K.K. Mishra, A.K. Chaturvedi For the Sate: Mr. A.B. Mahto, APP

C.A.V. ON 17.08.2009 Delivered On 03.09.2009 7/ 03/09/2009 This is an application for quashing the order dated 21.01.2006 passed by learned Chief Judicial Magistrate, Jamshedpur in Mango P.S. Case No. 392 of 2005 corresponding to G.R. No. 2549 of 2005 whereby and whereunder the cognizance for the offence under section 285,286,337,338 and 304(A) of the I.P.C. has been taken against the petitioner and others. The petitioner further prayed for quashing of entire criminal proceeding of the aforesaid case. 2 The prosecution story in brief as per the FIR lodged by Intekhab Ahmad (Annexure-1) is that he was working in Ama Enterprises. It is further stated that in the said Ama Enterprises, Seats of vehicles manufactured by Telco, are being prepared. It is further stated that after painting the seats they were put in hot chamber and heated for 10 minutes at a temperature of 200 Centigrade. It is further alleged that on 25.11.2005 at about 11.30 a.m. after painting the seats the informant along with others put the said seats in the hot chamber for heating. It is further alleged that when the In-charge of the Hot Chamber, namely, Md. Shakeel, ignited the hot chamber it burst due to explosion. It is further alleged that in the aforesaid explosion, Sonu an employee of the factory sustained serious injuries, whereas other employee, namely, Abdul Hamid, informant (Intekhab), Makbul Alam, Md. Yamin also received injuries. It is further alleged that the said hot chamber was not properly maintained by the owner, Manager and Site In-charge of the factory, namely, Ejaj Ahmad, Abdul 2

Salam and Md. Jamil respectively. It is further alleged that the accused persons are negligent in maintaining the hot chamber, hence the accident took place.

3. It appears that on the basis of aforesaid statement of Intekhab Ahmad Mango P.S. Case No. 392 of 2005 under section 285, 286, 337 and 338 of the IPC instituted and police took up investigation. It further appears that during the investigation one of the injured died. After completing the investigation, police submitted charge sheet against the petitioner and other accused persons under section 285, 286, 337, 338 and 304 of the IPC, accordingly, vide order dated 21.01.2006, the learned CJM, Jamshedpur took cognizance of the aforesaid offences.

4. It is not out of place to mention that the aforesaid Ama Enterprises is registered under the provisions of Factories Act having its Registration No. 64232/SBM occupied by Ejaj Ahmad. It further appears that when the said accident came to the notice of Inspector of Factory, Jamshedpur, he directed the occupier/representative of the factory to give notice regarding the accident in writing. However, no such notice was given by the aforesaid M/s. Ama Enterprises. It then appears that the Inspector of Factory inspected the Factory premises on 26.11.2005, 01.12.2005, 6.12.2005 and found contravention of section 37(1)(2) of Factories Act, 1948. It further appears that on repeated demand when the written notice has not been given by M/s. Ama Enterprises, the Inspector further found contravention of section 88 of the Factories Act read with Rule 96 of Jharkhand Factory Rules. Thus a complaint filed in the court of CJM, Jamshedpur praying therein that the cognizance of offences under section 92 of the Factory Act may be taken against accused person.

5. It is submitted by learned counsel for the petitioner that if any accident took place in a factory premises then only a case under section 92 of the Factory Act is maintainable. It is submitted that for 3

the same sets of facts petitioner can not be prosecuted under section 285,286, 337, 338 and 304(A) of the IPC. It is submitted that when there is a special law for prosecuting the occupier of the factory for the accident, which took place in his factory, then the general law i.e. Indian Penal Code have no application. It is submitted that it is well settled that the special law prevails over the general law. It is further submitted that as per section 300 of Criminal Procedure Code, one person cannot be prosecuted twice for the same offence.

6. On the other hand, learned Additional P.P. submits that section 92 of the Factories Act prescribe punishment only for contravention of the provisions of Factories Act. It does not prescribe any punishment regarding the rash and negligent act of the occupier or the manager, which resulted into the accident in factory in which any worker died or received bodily injury. It is submitted that the offences mentioned in Factories Act and IPC are distinct and different. It is submitted that the principle that the special law will prevail over the general law, have no application in this case. It is further submitted that section 300 of the Code of Criminal Procedure will not apply in the instant case because the offences are different. More over up till now there is no conviction or acquittal of the accused petitioner in either of the case. Accordingly, it is submitted that there is no illegality in the impugned order which require any interference by this Court.

7. Having heard the submission, I have gone through the record of the case. Admittedly the case was instituted by the police under section 285, 286, 337 and 338 of the IPC. Thereafter the charge sheet was submitted in the said section along with section 304 (A) of the IPC and by the impugned order learned court below took cognizance of the said offences.

8. It is admitted position that the complaint was filed by the Inspector of Factories in the court of CJM, alleging therein that the M/s. Ama Enterprises had violated the provisions of section 37(1)(2) and 4

section 88 of the Factory Act read with rule 96 of Jharkhand Factories Rules punishable under section 92 of the Factory Act.

9. Section 41 of the IPC defines special law which says that

41. Special Law- " Special law is a law applicable to a particular subject"

Thus, special law is a provision of law, which is applicable to a particular and specified subject or class of subject. In other words it will apply on special class of case and have no application in general cases. It is well settled that the special law prevails over the general law. Thus the general provision should yield the specific provision. In other words where there is a specific punishment provided in special Act it takes precedents over the general punishment prescribed under the IPC, but when there is no specific punishment provided under special law then the punishment prescribed under the general law i.e. IPC comes into operation.

10. Under the aforesaid circumstance, it is necessary to see whether the offences mentioned under section 285, 286, 337 , 338 and 304(A) of the IPC are covered under section 92 of the Factories Act ? If the said act and/or omission punishable under the aforesaid sections of IPC is not punishable under section 92 of the Factories Act then the principle that general provision should yield specific provision, have no application.

11. From perusal of section 285, 286, 337, 338 & 304(A) of IPC it appears that section 285 prescribe punishment for rash and negligent act of a person, with fire or combustible matter, which endanger the human life or liable to cause any hurt or injury to any person, section 286 of the IPC prescribe punishment for a rash and negligent act of a person, with an explosive substance, which endanger human life or likely to cause hurt or injury to any other person, section 304(A) of the IPC prescribe punishment for rash and negligent act of a person, which resulted into death of any person 5

section 337 of the IPC prescribe punishment for rash and negligent act of a person, which causes hurt to any other person, section 338 of the IPC prescribe punishment for rash and negligent act of a person which causes grievous hurt to any other person. Whereas from perusal of section 92 of the Factories Act it appears that the same prescribe punishment to the occupier or manager of the factory for contravention of any of the provisions of the Factories Act or any rules made thereunder or any order in writing given thereunder. There is nothing in the Factories Act, which prescribe punishment for the rash and negligent act of occupier or manager of the factory which resulted into the death of any worker or any other person. Thus, I find that there is no specific punishment prescribed under the Factories Act (Special Law) for the rash and negligent act of the petitioner, which resulted into death or bodily injury of any person. Therefore, in my view, the general law i.e. IPC will apply.

12. The judgment delivered by their Lordships of Supreme Court in Suresh Nanda Vs. C.B.I. reported in (2008)3SCC674, on which much reliance has been placed by the petitioner, has no application in the facts of case. In the said judgment their Lordships of Supreme Court were dealing with the provisions of section 10(3) of the Passport Act read with section 104 of the Cr.P.C. Section 10(3) of the Passport Act provides that a passport can be impounded by the order of passport authority, therefore their Lordships concluded that section 104 of the Cr.P.C., which empowers a court to impound any document produced before it, have no application. In the instant case, I have already noticed that in the Factories Act there is no provision for punishment of rash and negligent act of the occupier or manager of the Factory which resulted into death or bodily injury of any employee or any other person.

13. The next contention of learned counsel for the petitioner that the petitioner cannot be prosecuted twice for the same offence 6

appears to be misconceived. Section 300 of the Cr.P.C. provides that if a person convicted or acquitted for the same offence, he can not be tried for the same offence. In the present case petitioner has not been convicted and/or acquitted in either of the case. Moreover section 300 of the Cr.P.C. will apply for the same offence. As notice above, in the instant case, the offence under section 92 of the Factories Act is different from the offences under section 285,286, 337,338 and 304(A) of the IPC. Thus, in my considered view, section 300 of the Cr.P.C. have no application in the facts and circumstances of the present case.

14. In view of the discussion made above, I find no merit in this application, the same is accordingly, dismissed. (Prashant Kumar, J.)

Jharkhand High Court, Ranchi

Dated 03/09/2009

Sharda/NAFR