

Jharkhand High Court  
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Rabindra Agarwal vs State Of Jharkhand And Another on 24 February, 2010  
In the High Court of Jharkhand at Ranchi

W.P.(Cr.) No.412 of 2009

Rabindra Agarwal.....Petitioner VERSUS

State of Jharkhand and another... Respondents CORAM: HON'BLE MR. JUSTICE R.R.RRASAD

For the Petitioner: Mr.P.A.S.Pati

For the State : Mr. Jalisur Rahman, J.C to G.P.III

7. 24.2.10. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State.

Learned counsel appearing for the petitioner submits that earlier in the writ application the informant was impleaded as respondent no.2 inadvertently as the case arising of a police case is well represented through the State of Jharkhand on whose behalf even a counter affidavit has been filed and, therefore, the petitioner thought it proper to delete the name of the informant (respondent no.2) as the informant is being well represented by the State of Jharkhand and the disposal of the case would be delayed, on account of non-service of notice upon respondent no.2 and, therefore, under this situation, prayer has been made to delete the name of respondent no.2.

In the facts and circumstances as stated above, the name of respondent no.2 is allowed to be deleted from the memo of application.

Accordingly, the prayer is allowed.

Heard learned counsel appearing for the petitioner and learned counsel appearing for the State on the merit of the case. This application has been filed for quashing of the entire criminal proceedings including the first information report of Kandra 2

P.S. case no.6 of 2009 (G.R.No.654 of 2009) registered under Sections 285, 287, 337, 338,304A of the Indian Penal Code. The facts giving rise this application are that one Anuj Kumar Yadav gave his Fardbeyan on 17.8.2009 stating therein that while he was working along with others, namely, Kumud Rai, Lakhon Kumar and Pintu Nadaf as labourers at Induction Furnace Site, a unit of M/s.Adhunik Alloys & Power Limited, power supply went off suddenly, as a result of which molten slag spilled out of bucket as a result of which they sustained burn injuries. They were immediately removed to hospital but unfortunately Kumud Rai succumbed to his injuries. Thus, it has been alleged that aforesaid occurrence took place as the Company never cared to take safety measures, though they were working at dangerous places. On the said Fardbeyan, Kandra P.S. case no.6 of 2009 was registered under Sections 285, 287, 337, 338,304A of the Indian Penal Code. The said prosecution has been challenged in this writ application.

Learned counsel appearing for the petitioner submits that the entire allegation made in the first information report falls within the ambit of the provision as contained in Section 92 of the Factories Act and, therefore, if any prosecution on account of negligence on the part of the Management of the said factory lies that lies under the Factories Act which is a special legislation and as such, provision of the said Act would prevail over the provision of the general law.

It was pointed out that when similar question arose before this Court for consideration in a case of Binod Kumar Das and another vs. State of Jharkhand and another [2008(1) JCR 601 (Jhr)], this Court taking into consideration the provision as contained in Section 4 of the Code of Criminal Procedure did hold 3

that prosecution under the general law on the allegation which falls within the province of the special legislation is not permissible. Similar is the case here as the allegation, upon which first information report was lodged certainly falls within the ambit of Section 92 of the Factories Act and hence, any prosecution under the general law that is to say under the Indian Penal Code would be quite bad.

A counter affidavit has been filed on behalf of the State stating therein that due to negligence on the part of the Management for not adopting safety measure, the occurrence took place and as such, the petitioner is being rightly prosecuted. Having heard learned counsel appearing for the parties, there does not appear to be any doubt that the allegations upon which first information report was lodged, come well within the ambit of the provision as enshrined under Section 92 of the Factories Act and as such, any prosecution under the general law in view of Section 4 of the Code of Criminal Procedure is not permissible which proposition of law has already been laid down in a case of Binod Kumar Das and another vs. State of Jharkhand and another (supra).

Accordingly, the first information report of Kandra P.S. case no.6 of 2009 (G.R.No.654 of 2009) registered under Sections 285, 287, 337, 338,304A of the Indian Penal Code is hereby quashed. In the result, this application is allowed. ( R.R.Prasad, J.)

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