

2024 LLR 1234
KARNATAKA HIGH COURT
Hon'ble Mrs. M.G. Uma, J.
Crl.P. No. 2666/2021,
Dt/- 23-9-2024

Mr. Krishna Bhat & Ors.

v.

The State by Kunigal Police Station & Anr.

FACTORIES ACT, 1948 – Vicarious liability – Respondent No. 2 filed an FIR before the Police Station stating that he was working with a machine used with acid, two other employees were rotating the machine having acid tank – Accused Nos. 6 and 7 were supervising the machine and suddenly, the pipe attached to the acid tank came out and the acid sprinkled on the body of the informant resulting in sustaining burn injuries and he was taken to the hospital – The FIR was filed against accused Nos. 1 to 7 contending that they were the supervisors responsible for the mishap as they have not provided any safety measures in the factory – Chargesheet was filed and Magistrate took cognizance of the offences – The accused are seeking quashing of the FIR – Held, it was not made clear as to how accused Nos. 1 to 7 were responsible for working of the factory or at least take the safety measures to arrest any accident that could have avoided – they cannot be held vicariously liable for any of the penal provisions in the absence of any responsibility alleged – In the present case, there is no reference to the occupier of the company as required to be notified under the Factories Act – The company is not an accused nor its Directors – When there is no specific allegations against any of these petitioners as to how are responsible for management or taking measures for the safety of workmen, the petitioners cannot be held vicariously liable – Criminal petition is allowed – Criminal case against the petitioners is quashed. Paras 9 to 14

For Petitioners: Mr. Prashanth B.K., Advocate.

For Respondent No. 1: Mrs. K.P. Yashodha, HCGP

For Respondent No. 2: Mr. Y.D. Shivashankara, Advocate.

IMPORTANT POINTS

- In the absence of any specific responsibility alleged, nor stating that any of the supervisors are responsible for taking necessary steps and measures for the safety of the employees or the workmen working in the factory, they cannot be held vicariously liable for any of the penal provisions.
- When there is no reference to the occupier of the company as required to be notified under the Factories Act and the company is not an accused nor its Directors, the criminal case against the factory's supervisors would be quashed.
- For fastening the criminal liability, there is no presumption that even the Director and knew about the transaction.
- In the case of a Company which owns a factory it is only one of the Directors of a Company who can be notified as the occupier of the factory for the purpose of the act and the company cannot nominate any other employee to be the occupier of the factory.
- If the company fails to nominate one of the directors as the occupier of the factory, the Inspector of factories shall be at liberty to proceed against any

one of the Directors of the Company treating as deemed occupiers of the factory for the purpose of prosecution.

- **When there is no specific allegations against any of the supervisors as to how are responsible for management or taking measures for the safety of workmen, they cannot be held vicariously liable.**

ORDER (Oral)

M.G. Uma, J.–1. Petitioners being accused Nos. 1 to 7 in CC No. 998/2018 on the file of the learned Prl.Civil Judge and JMFC, Kunigal, registered for the offences punishable under sections 337, 285, 287 read with section 34 of Indian Penal Code (for short 'IPC') are seeking to quash the criminal proceedings initiated against them in the interest of justice.

2. Brief facts of the case are that, respondent No. 2 as informant filed the first information with Kunigal police station stating that he was working as helper in M/s. Sutures India Private Limited factory situated at Anchepalya, Kunigal. On 03-07-2017 at 4.00 pm when the informant was working with a machine used with acid, two other employees were rotating the machine having acid tank. Accused Nos. 6 and 7 were supervising the machine and suddenly, the pipe attached to the acid tank came out and the acid sprinkled on the body of the informant resulting in sustaining burn injuries. Immediately, he was taken to the hospital. After treatment, he came out and filed the first information against accused Nos. 1 to 7 contending that they were the supervisors responsible for the mishap as they have not provided any safety measures in the factory. The FIR in Cr. No. 409/2017 came to be registered and the investigation was undertaken. After investigation, the charge sheet came to be filed against accused Nos. 1 to 7 for the above said offences. It is stated that accused Nos. 6 and 7, who are supervising the machinery in question and all the other accused are responsible for the offence in question. The learned Magistrate took cognizance of the offences and CC No. 998/2018 came to be registered. Accused Nos. 1 to 7 being the petitioners are seeking quashing of the criminal proceedings initiated against them.

3. Heard Sri. Prashanth B.K., learned counsel for the petitioners and Smt. K.P. Yashodha, learned HCGP for respondent No. 1-State. Learned counsel for respondent No. 2 is absent. Hence, his argument is taken as nil. Perused the materials on record.

4. Learned counsel for the petitioners contended that the petitioners are only the employees in the factory. When they were not in any manner responsible for either management or affairs of the factory in question. There is absolutely, no allegations against any of these petitioners as to how they are responsible under the Factories Act. He has drawn the attention of the Court to section 2(n) of the Factories Act, which defines the word 'occupier' of the factory who is a person who has ultimate control over the affairs of the factory and he will be responsible for any of the mishap that occurs in the factory premises.

5. Learned counsel also contended that neither the Managing Director nor any of the Directors of the factory are arrayed as accused to make them liable. But only employees were arrayed as accused. They are not vicariously liable for the mishap that had occurred. Under such circumstances, none of the criminal provisions could be invoked against the petitioners. He placed reliance on the decisions the Hon'ble Apex Court in *Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner (C) and others*, (2021) 4 SCT 660 (SC), to contend that unless there is specific averments in the complaint, the petitioners cannot be vicariously made liable and there cannot be any presumption that either the employees or the Directors could be fastened with criminal liability. He also placed reliance on the decision of the Hon'ble Apex Court in *Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and others*, (2021) 4 SCT 660 (SC), in support of his contention that on the basis of bald statement against the accused to have conspired with the criminal intention to commit an offence is not sufficient in the absence of any specific allegations, attributing specific role to each of the accused. He also placed reliance on the decision of the Hon'ble Apex Court in *J.K. Industries Ltd. and others v. Chief Inspector of Factories and Boilers and others*, (1996) 6 SCC 665, to contend that to make a Director of a Company liable, he should be notified as an

occupier of the factory as defined under section 2(n) of the Factories Act, 1948 and unless that is made, even the Director is not liable.

6. Learned counsel contended that co-ordinate bench of this Court in CrI.P.No. 9273/2018 as per the order dated 20-04-2022, quashed the criminal proceedings on the ground that the Company was not made a party and the criminal proceedings only against the representatives of the company, without making Company as an accused is not maintainable. Placing reliance on all these decisions, learned counsel for the petitioners contended that the petition is liable to be allowed and the criminal proceedings is liable to be quashed.

7. Per contra, learned HCGP opposing the petition submitted that the injured himself lodged the first information alleging negligence on the part of the persons, who are responsible for the affairs of the factory. After investigation, the charge sheet is filed. Even though the Investigating Officer do not refer to the names of accused Nos. 1 to 5 attributing any specific overt act or responsibility, referred to accused Nos. 6 and 7 as the supervisors of the machinery in question, where the mishap had occurred. Under such circumstances, she prays for passing appropriate orders.

8. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

“Whether the petitioners have made out any grounds to quash the criminal proceedings initiated against them?”

My answer to the above point is in 'Affirmative' for the following:

REASONS

9. The injured informant lodged the first information with the police on 25-07-2017 alleging about a mishap that had occurred in the factory premises on 03-07-2017, when he was working as a helper. It is his contention that many of the workers were working and in the meantime, the acid pipe had come out and the acid had poured on his body. As a result of which, he sustained burn injuries. He was taken to the hospital and undergone treatment. After discharged from the hospital, he filed the first information against accused Nos. 1 to 7.

10. In the first information, the informant referred to the names of accused Nos. 1 to 7 stating that they are the responsible persons in the factory. It is stated that the accused are contract supervisors. After investigation, the charge sheet came to be filed against the petitioners arraying them as accused Nos. 1 to 7. In Column No. 17, it is specifically referred to accused Nos. 6 and 7 as the supervisors of the machinery which had acid tank. It is stated that there was no safety measures taken in the factory which resulted in the mishap. Therefore, the charge sheet came to be filed against accused Nos. 1 to 7. Unfortunately, it is not made clear as to how accused Nos. 1 to 7 are responsible for working of the factory or at least take the safety measures to arrest any accident that could have avoided. In the absence of any specific responsibility alleged, nor stating that any of these petitioners are responsible for taking necessary steps and measures for the safety of the employees or the workmen working in the factory, they cannot be held vicariously liable for any of the penal provisions.

11. Learned counsel for the petitioner placed on the decision in *Dayle De'souza* (supra), wherein, the Hon'ble Apex Court considering its various early decisions held in para 39 that the primary responsibility is on the complainant to make specific averments as required under law in the complaint so as to make the accused vicariously liable. It is also held that for fastening the criminal liability, there is no presumption that even the Director and knew about the transaction. In the present case, the Director of the factory is not arranged as accused. The Hon'ble Apex Court has also noticed that there are no assertions or averments made against the accused that they are in charge of or responsible for the affairs of the company. In the absence of any specific averments to that effect the accused cannot be held responsible.

12. In *Ravindranatha Bajpe* (supra), the Hon'ble Apex Court noticed that there was no specific allegations made against the accused in the complaint except the bald statement that the accused have conspired with common intention in committing the offence. Under such

circumstances, it is held that in the absence of any specific allegations attributing specific role to each of the accused, the criminal proceedings cannot be sustained. It is noticed that the accused is a company, a juristic person. Under such circumstances, it is held that in the absence of any specific averments, the accused who are arrayed cannot be made as vicariously liable for the criminal liability.

13. The Hon'ble Apex Court in *J.K. Industries Ltd. and others* (supra), while considering the vires of section 2(n) of the Factories Act held that it is intra vires and while summing up the conclusions, the Court held that in the case of a Company, which owns a factory it is only one of the Directors of a Company who can be notified as the occupier of the factory for the purpose of the act and the company cannot nominate any other employee to be the occupier of the factory. It is also held if the company fails to nominate one of the directors as the occupier of the factory, the Inspector of factories shall be at liberty to proceed against any one of the Directors of the Company treating as deemed occupiers of the factory for the purpose of prosecution.

14. In the present case, there is no reference to the occupier of the company as required to be notified under the Factories Act. Admittedly, the company is not an accused nor its Directors. Moreover, when there is no specific allegations against any of these petitioners as to how are responsible for management or taking measures for the safety of workmen, I am of the opinion that the petitioners cannot be held vicariously liable. The criminal proceedings initiated against them is an abuse of process of law and hence, the same is liable to be quashed. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER

The criminal petition is allowed.

The criminal case registered against the petitioners – accused Nos. 1 to 7 in Crime No. 409/2017 of Kunigal Police Station, pending in CC No. 998/2018 on the file of the learned Prl.Civil Judge and JMFC, Kunigal for the offences punishable under sections 337, 285, 287 read with section 34 of IPC, is hereby quashed.

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