



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH



DATED THIS THE 22ND DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO.200662 OF 2024

(482(Cr.PC)/528(BNSS))

BETWEEN:

1. G. V. PRASAD S/O SHIVARAMKRISHANAYYA,
AGE: 54 YEARS, OCC: BUSINESS,
R/O: KRISHNAPARASAD RICE MILL INDUSTRIES,
PLOT NO.1, SHAKTI NAGAR, RAICHUR
(AS PER CHARGE SHEET),
ACTUALLY R/O PLOT NO.D-11-1, VAJARAM TIARE,
HAVALLAHALLI, YELHANKA, BENGALURU-560064.
2. BALASUBRAMANIAM S/O KRISHANAMRAJU,
AGE: 48 YEARS, OCC: PVT. SERVICE,
R/O: KRISHNAPARASAD RICE MILL INDUSTRIES,
PLOT NO.1, SHAKTI NAGAR, RAICHUR,
(AS IN CHARGE SHEET),
ACTUALLY R/O: RAGHAVENDRA COLONY,
SHAKTINAGAR, RAICHUR.

...PETITIONERS

(BY SRI. SHIVANAND PATIL, AND
SRI. VARUN PATIL., ADVOCATES)

AND:





1. THE STATE THROUGH RAICHUR RURAL P.S.,
THROUGH THE ADDL. PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
KALABURAGI BENCH, KALABURAGI-585107.

2. SANJEETKUMAR S/O RAMAKANT PASWAN,
AGE: 34 YEARS, OCC: PVT. SERVICE,
R/O: BAJITPUR, TQ. NALANDA,
DIST. HILSA, BIHAR-801302.

...RESPONDENTS

(BY SRI. JAMADAR SHAHABUDDIN, HCGP FOR R1;
NOTICE TO R-2 IS DISPENSED WITH V/O DATED 22.10.2024)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. (OLD) UNDER SECTION 528 OF BNSS ACT-2023,
PRAYING TO ALLOW THE CRIMINAL PETITION AND QUASH ALL
FURTHER PROCEEDINGS IN C.C.NO.260/2018 OF THE
RESPONDENT P.S. PENDING ON THE FILE OF IIIRD ADDL.
SENIOR CIVIL JUDGE AND JMFC-III, RAICHUR, FOR THE
OFFENCE PUNISHABLE UNDER SECTION 304-A READ WITH
SECTION 34 OF IPC, AS AGAINST THE PETITIONERS, IN THE
INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR ORDERS THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

ORAL ORDER

Since, the question involved in this case is already decided in the case of ***Ananthakumar vs. State of Karnataka***, reported in ***AIR Online 2019 KAR 565***, instant petition is taken up for final disposal.

02. It is contended by the learned counsel for petitioners that parallel proceedings, leading to parallel act in respect of the very same incident cannot go on and the culmination of the same, will result in double jeopardy. Hence, it is submitted that, petitioners have sought to quash the criminal proceedings arising out of Crime No.235/2017, registered at Raichur Rural Police Station, for the offence punishable under Section 304-A read with Section 34 of IPC.



03. The above case came to be registered against petitioners, working as owner cum occupier and the manager of one 'Krishnaprasad Rice Mill Industries', Vadlur road, Raichur, as one of the employee of the said Rice Mill by name Sujeet Paswan died due to electrocution while pumping water using a ½ H.P. electric motor.

04. In the complaint lodged by the co-worker by name Sanjeetkumar, it is alleged that the electric motor was old and the manager of the Rice Mill without taking any precaution and providing safety measures, instructed the deceased to lift water from the tank by using the said electric motor.

05. The police on completion of investigation filed charge-sheet against petitioners for the offence punishable under Section 304-A read with Section 34 of IPC, alleging that by not providing safety measures and without proper precautions, they instructed the deceased to remove water using the old ½ H.P. motor and therefore, the deceased died due to the negligence on the part of the petitioners.



06. It is not in dispute that a separate complaint under Section 200 of Cr.P.C. is filed by the State represented by the Assistant Director of Factories, Raichur Division, Raichur, against both the petitioners, namely occupier and manager of the factory, alleging violation of the provisions of the Factories Act, 1948 and Karnataka Factories Rules, 1969, wherein the said violations are made punishable under Section 92 of the Factories Act, 1948.

07. The incident took place on 06.10.2017 at about 05.00 p.m. near gauge elevator sump of the paddy cleaning section of the factory in question. In the complaint filed under Section 200 of Cr.P.C., it is averred that there was water logging in the gauge elevator sump of the paddy cleaning section of the factory and the deceased was engaged in de-watering the sump using a ½ H.P. portable motor with metallic body with pipe arrangement and electric supply through one of the



electrical points in the factory, provided with MCB rating 10 amperes. During the course of doing the job, at around 05.00 p.m., he fell near the pump used for de-watering near the elevator sump of the paddy cleaning section and died due to electric shock and deceased / worker was not using hand gloves or shoes while doing the said job.

08. It is alleged that the occupier failed to provide maintain plant & systems of work in the factory in a safe manner and without risks to health, failed to provide such information, instruction, training as are necessary to ensure the health and safety of all workers at work in the factory, failed to provide earth leakage to prevent electrocution or other hazard etc., and thereby violated Section 7-A (2) (a), 2(c) of the Factories Act, 1948 and Rules 86 (2) and 136 of the Karnataka Factories Rules, 1969, punishable under Section 92 of the Factories Act, 1948.



09. It is relevant to extract Section 92 of the Factories Act, 1948, which reads as under:-

"92. General penalty for offences,- Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manger of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued:

[Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty - five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury.



Explanation.- In this section and in Section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture or more than one bone or joint) of any phalanges of the hand or foot.).

10. In the decision noted supra, in a similar circumstance, following questions were framed:

- I. Whether initiation of prosecution under Section 304-A of IPC while prosecution for offence punishable under Section 92 of the Factories Act, is legally permissible.?
- II. Whether parallel or simultaneous prosecution is legally impermissible.?
- III. Whether the contravention of Section 29 (1) (a) (ii) and Section 32 (b) of the Factories Act, 1948 of the Factories Act punishable under Section 92 be clubbed with the offence punishable under Section 304-A of Indian Penal Code.?



11. Insofar as question No.3 raised in the above said decision, contravention are of different provisions of the Factories Act, however, the question remains as to whether the initiation of prosecution under Section 304-A of IPC is legally permissible, while prosecution for the offence punishable under Section 92 of the Factories Act, 1948, is launched and as to whether parallel or simultaneous prosecution is legally impermissible.

12. While answering the above questions, the following observations are made in the aforementioned decision, relying on other similar judgments, which hold the field; Paras No.9, 10 and 14, are relevant, which are extracted hereunder: -

"9. Referring to Section 300 of Cr.P.C. and Section 26 of the General Clauses Act and relevant decisions on the point, this Court took note of the fact that Section 92 of the Factories Act provides for punishment of imprisonment for a period upto two years for contravention of any



provisions of this Act and if such contravention has resulted in an accident causing death or serious bodily injury, minimum fine of Rs.25,000/- in addition to imprisonment. Likewise Section 304-A prescribes that 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. Considering these provisions in the light of Section 219 of Cr.P.C., it was held that the offences made punishable under Section 92 of the Act and Section 304-A of Indian Penal Code are of the same kind and are punishable with same quantum of punishment and hence, Section 26 of the General Clauses Act becomes applicable requiring the offender to be prosecuted only under one enactment and consequently, the proceedings initiated against the accused therein were quashed. The ratio laid down in the above decision has been followed by this Court in the case of M.ZAKIR AHMED (supra) and V. REVATHI (supra).



10. *I am in respectful agreement with the view taken by this Court in the above decisions. Even otherwise the scheme of the Factories Act does not permit parallel prosecutions under two different Acts against a person accused of committing offences under the Factories Act. Section 92 is the only section under the Act which makes the contravention of the provisions of the Act, punishable as criminal offence and prescribes punishment and fine.*

14. *In view of the above factual and legal position, the registration of FIR against the petitioners by respondent No.1 and consequent investigation and submission of the charge sheet paving way for the prosecution of the petitioners for the alleged offence under Section 304-A of Indian Penal Code as well as cognizance taken by the learned Magistrate and the prosecution initiated against the petitioners is held as illegal, without jurisdiction and a clear case of abuse of process of Court.”*

13. Having regard to the facts and circumstances of the case and in view of the decision noted supra, this Court is of the considered view that prosecution under



Section 304-A of IPC against the petitioners while prosecution for the offence punishable under Section 92 of the Factories Act, 1948, is initiated, is not permissible, as there cannot be a parallel or simultaneous prosecution in respect of the very same incident, in view of the punishment provided under Section 92 of the Factories Act, 1948. Accordingly, the following;

ORDER

- I. The Criminal Petition is allowed.
- II. The entire proceedings in C.C.No.260/2018, pending on the file of Court of III Additional Senior Civil Judge and JMFC-III, Raichur, are hereby quashed.

In view of disposal of the main petition, the pending I.A.No.1/2024 and I.A.No.2/2024, do not survive for consideration, hence, they are disposed of.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE