IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 639 OF 2019

Ajeet Vikram Bahadur Singh
Age-40, Occ- Service
Currently residing at-
A/204, Golden Rays, Raheja Vihar
Chandivali, Powai, Mumbai-72 .....Applicant

Vs.

The State of Maharashtra
(Talbid Police Station, Satara) .....Respondent

Mr. Sujit B. Shelar, for the Applicant.
Smt. Anamika Malhotra, APP for Respondent-State.

CORAM : M. S. KARNIK AND
DR. NEELA GOKHALE, JJ.
DATE : 21st NOVEMBER 2024.

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

1) Rule. Rule made returnable forthwith. With consent of the parties, the Application is finally heard.

2) The Applicant seeks to quash the FIR No. 100 of 2018 dated 3rd November 2018 registered with Talbid Police Station, Satara for the offences punishable under Section 285, 287, 337 and 338 of the Indian Penal Code, 1860 ('IPC').

3) The Applicant is the manager of one of the plant/unit of

M/s. Pidilite Industries Ltd., located at Plot No.D-5, MIDC, Taswade, Talbid, Tal: Karad, Dist: Satara. The Respondent No.2 ('First Informant') was working as a helper in the aforesaid plant of Pidilite company. The company is engaged in the manufacture of adhesive PVC tapes.

4) It is the submission of the First Informant as discerned from the FIR that on 26th October 2018 while he was working in the unit, there was a short blaze of fire thrown from the machine on which the First Informant was working. According to him, this was on account of combustion of gas produced in the closed SRP system leading to overheating and in turn leading to the fire. It is his claim that he suffered burns on his face and hands because of the fire and he was required to be hospitalized. He has thus complained that the Applicant was responsible for negligence in maintaining the machinery in the unit leading to the said mishap. Thus, the FIR was registered.

5) Mr. Sujeet Shelar learned counsel appears for the Applicant and Ms. Anamika Malhotra, learned APP represents the State.

6) Mr. Shelar has brought to our attention that the Deputy

Director of Industrial Safety and Health and the Inspector of Factories also filed two separate criminal complaints bearing numbers 244 of 2019 and 245 of 2019 under Section 92 of the Factories Act, 1948 ('Factories Act') before the Court of the Chief Judicial Magistrate ('CJM'), Satara regarding the same incident. The Applicant pleaded guilty in the said complaint, pursuant to which the CJM, Satara by its order dated 14th February 2019 convicted him under Section 92 of the Factories Act, 1948 and sentenced him to pay Rs.30,000/-, out of which Rs.12,500/- was directed to be paid to each injured victim. Accordingly, the Applicant has deposited the fine amount. The CJM has specifically recorded that the First Informant herein has recovered from his injuries and resumed duties thereafter. He thus submits that having been convicted under the special statute, i.e., the Act, continuing the proceeding under the IPC amounts to double jeopardy and thus, is an abuse of the process of law.

7) Mr. Shelar further submits that the issue relating to two parallel proceedings, one under special statute and the other under the general statute, both on the basis of same facts and for the same offence, is no longer *res-integra*. It is settled position of law that once the person has prosecuted and convicted under the special statute, he

cannot be tried again for the same offence under the IPC. He placed reliance upon the following judgments:

1) ***T.P. Gopalakrishnan v. State of Kerala***[1]

2) ***Kola Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr.***[2]

3) ***Mallikarjun K. s/o Thirukappa & Ors. v. State of Karnataka***[3]

8) Mr. Shelar thus urged the Court to quash the FIR impugned herein by allowing the Application.

9) Ms. Malhotra opposed the application. It is submitted by her that the applicant can be tried for the offence under the IPC as the ingredients of the offence under the Special Statute are different. It is therefore her submission that as the applicant can be tried for the offence under IPC and hence, the application may be dismissed.

10) We have heard both the parties and perused the record with their assistance.

11) Admittedly, the Applicant pleaded guilty to the offences as alleged against him under the provisions of the Factories Act. The CJM by his order dated 14th February 2019 convicted him and sentenced

1 (2022) 14 S.C.R. 478
2 2011 (15) SCC 498
3 In Cri. WP No.201008 of 2014 dtd. 5.4.2016 of Karnataka High Court.

him to pay fine in default to suffer simple imprisonment for two months. Part of the fine was paid to the First Informant and the other injured worker.

12) While determining the issue, it is necessary to expound the provisions of law. Section 92 of the Factories Act, 1948 reads as thus:

> "**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 manager 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 of more than one bone or joint) of any phalanges of the hand or foot."*

13) The aforesaid provision contemplates 'any contravention of any provisions of the Act'. Chapter IV and IV-A of the Factories Act, 1948 deals with provisions relating to safety and hazardous processes. Section 92 encompasses within its purview contravention of any of the provisions of Chapter IV of the Factories Act. Thus, the Applicant has

already suffered a conviction under Section 92 of the Factories Act for negligence to maintain the machinery on account of which the First Informant and another worker suffered injuries.

14) The FIR impugned herein is in respect of offences punishable under Sections 285, 287, 337 and 338 of the IPC. Sections 285 and 287 are offences relating to negligent conduct with respect to fire and/or combustible matter and machinery. Sections 337 and 338 deal with hurt/grievous hurt caused by endangering personal safety of another. It is thus clear that the Applicant has already suffered prosecution and conviction for the same act involving ingredients of the same offences. In our view, since the Applicant has already been prosecuted and punished for the same offences, in the same set of facts, prosecuting him again under the IPC shall amount to double jeopardy.

15) Part III of the Constitution of India deals with Fundamental Rights. Articles 20 to 22 deal with personal liberty of citizens and others. Article 20(2) expressly provides that no person shall be prosecuted or punished for the same offence, more than once. Article 20(2) of the Constitution of India reads as under:

> "*20. Protection in respect of conviction for offences.—*
> *(1) xxx xxx xxx*

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) xxx xxx xxx"

16) The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of the Cr.PC. It would also be useful to discuss on the import of Section 300 of the Cr.PC. The said provision has been extracted hereinunder for ready reference:

> ***"Section 300 CrPC- Person once convicted or acquitted not to be tried for same offence**.-(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under subsection (2) thereof.*
>
> *(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under subsection (1) of section 220.*
>
> *(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.*
>
> *(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.*

> *(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.*
>
> *(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.*
>
> *Explanation. —The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."*

17) A bare perusal of both the above provisions indicate that Article 20 of the Constitution of India and Section 300 of the Cr.P.C use the term 'same offence'. The term 'same offence' in simple language means where the offences are not distinct, and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India has no application although the offences may have some overlapping features. The crucial requirement of Article 20 is that the offence is the same and identical in all respects.

18) As discussed above, the Applicant was prosecuted and convicted, *albeit* having pleaded guilty, for the offences under the Factories Act the ingredients of which are same and identical to the ingredients of the offences for which he is sought to be prosecuted under the Penal Code. Thus, his prosecution on the same set of facts

relatable to the same incident is untenable and is not legally sustainable.

19) We have sought guidance from the decision of the Supreme Court of India and given a thoughtful consideration to those of other High Courts which have been relied upon by the Applicant. The ratio of the decisions referred to above supports our view that so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation unless they fall under the exceptions categorized under sub sections (2) to (5) of Section 300 of the Cr.P.C. Admittedly, the factual position in the present case does not fall within the scope and ambit of the exceptions culled out in the sub clauses (2) to (5) of Section 300 Cr.P.C.

20) The Karnataka High Court in ***Mallikarjun*** (*supra)*, relying upon a previous decision of the Jharkhand High Court reported in 2007 LLR 886 has gone to the extent of holding that once the criminal complaint has been lodged by the Factory Inspector, the police even

lose their jurisdiction to investigate the same matter and file a separate chargesheet arising out of the same incident.

21) It is relevant to note here that continuing the present proceeding will result in prosecution of the Applicant again by another Magistrate, having already been tried by the Chief Judicial Magistrate for the offences under the Factories Act. This is completely against all the settled norms of criminal jurisprudence and an abuse of the process of law. Even on this count, the second prosecution shall all but fail.

22) The upshot of the above discussion is that the prosecution of the Applicant pursuant to the FIR impugned herein is in contravention of his fundamental right under Article 20(2) of the Constitution of India and Section 300 of the Cr.P.C. We thus, have no hesitation in quashing and setting aside the FIR impugned herein.

23) Accordingly, FIR No. 100 of 2018 dated 3rd November 2018 registered with Talbid Police Station, Satara is quashed and set aside.

24) Rule is thus made absolute in the above terms.

(DR. NEELA GOKHALE, J.) **(M. S. KARNIK, J.)**