



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 1963 /2010

Shri Subir Bose

...Appellant

Versus

Inspector of Factories,
represented by S. M. Paranjpe & Anr.

...Respondents

J U D G M E N T

INDU MALHOTRA, J.

1. The appellant – Mr. Subir Bose, was the Managing Director of M/s. Berger Paints India Ltd. (the ‘Company’ for short) and resident of Kolkatta at the time of the offence..
2. On April 28, 2006 at about 11:20 hours fire had broken out at the factory premises of the company located at IDC Kundaim, Goa. There was no causality except that one Shri Tulsidas Dutta Palkar – a worker, had sustained minor injuries and was taken to hospital and discharged after treatment on the same day.

3. On 28th June, 2006, Inspector of Factories, Altinho, Panaji, Goa filed a private complaint in discharge of official duties under Section 92 of the Factories Act, 1948 ("Factories Act" for short) against the appellant – Managing Director of the Company, as the occupier, and Shri S.M. Lahiri – the Manager of the Company. The allegations were that the company had been using the factory premises situated at Kundaim Industrial Estate, Kundaim, Goa without proper licence/permission which was in contravention of Goa Factories Rules, 1945. It was also alleged that the accused has failed to take adequate measures to prevent explosion or ignition of inflammable substances as required under Sections 37 and 38 of the Factories Act.
4. Having heard learned counsel for the appellant, who was the Managing Director, we were not inclined to interfere with the impugned order, which has affirmed the order taking cognizance for an offence under Section 92 of the Factories Act as, *prima facie*, it does appear that the factory premises situated at Kundaim Industrial Estate, Kundaim, Goa was functioning without a licence/permission. The contention of the appellant that the factory premises was in the process of closure of its and operations would be a factual assertion made by the defence. This would require to

be proved and established. However, on the question whether adequate measures were taken to prevent explosion or ignition of inflammable substance is concerned, learned counsel for the appellant has referred to, with some merit, the closure report filed by the Police in FIR No. 110 of 2006 under Sections 285 and 336 of the IPC registered against Shri S.M. Lahiri – Factory Manager, Shri Jayanta Bhattacharya – the Production Manager, Shri Bikas Pukait – the Shift-in-Charge, and Shri Tulsidas Datta Palkar – the worker. Interestingly, Shri Tulsidas Datta Palkar was the person who had sustained minor injuries and was taken to hospital and discharged on the same day after administering first aid. The closure report was filed stating that it was an unfit case for filing of charge sheet as criminal charges were not made out. The report was based on the opinion of the Additional Public Prosecutor and was accepted by the Judicial Magistrate (First Class), Ponda, who is also the Magistrate who has taken cognizance of the offence under Section 92 of the Factories Act. The complaint refers to violation of Sections 37 and 38 of the Factories Act, *albeit* without giving specific particulars and details. Hence, to this extent, the complaint is vague and does not disclose a specific violation.

5. The learned counsel for the appellant, on instructions, has stated that the appellant would plead guilty and bring the litigation to a quietus by paying the maximum amount of fine that can be imposed. The prayer made was that punishment of imprisonment may not be imposed as the appellant is now more than 70 years of age, and at that time the company had six factories and more than eighty depots all over India. The appellant was at the relevant time a permanent resident of Kolkatta. Relegating the appellant to the trial Court would not serve any purpose and cause delay.
6. We are, in the peculiar facts of the present case, inclined to accept the prayer noticing the fact that in the present case Shri Tulsidas Datta Palkar – the worker, who was himself, as per the FIR, one of the accused, had suffered minor injuries and was discharged from the hospital on the same day. The occurrence relates to the year 2006, the present appellant is now over 70 years of age, and the trial itself would take years before it is decided. In these circumstances, in the interests of justice, we accept the appellant's prayer to accept his confession of guilt, and, accordingly, convict him under Section 92 of the Factories Act with Fine of Rs.1,00,000/- which should be deposited with the trial Court within four weeks from the date of this Judgment. On failure to deposit

the Fine, the appellant would undergo simple imprisonment for a period of eight weeks.

7. The order and directions given hereinabove would dispose of the criminal proceedings against the appellant in Criminal Case No. 9/LAB/2006/B pending before the Judicial Magistrate (First Class 'B'), Ponda, Goa. As this order is passed in the peculiar facts and circumstances of this case, it is not to be treated as a precedent.

The interim Order dated 17.07.2009 passed by this Court stands vacated.

The appeal is disposed of in the aforesaid terms.

.....**J.**
(INDU MALHOTRA)

.....**J.**
(SANJIV KHANNA)

New Delhi
September 24, 2019.