Before Vinod S.Bhardwaj, J.

DHANPREET SINGH AND ANR — *Petitioner*

versus

STATE OF PUNJAB—*Respondents*

CRM-M No.54097 of 2019

June 02, 2022

Code of Criminal Procedure, 1973—S.482— Indian Penal Code, 1860—Ss. 304-A, 337, 338— Allegations in FIR - non-petitioner — Sole proprietor and owner of factory. His sons — Petitioners engaged in manufacturing of floor of railway coaches on contract basis - 70-75 labourers employed—Allegations - tenure of machines and bedding press in factory matured, but not replaced— Safety of labourers endangered—On day of occurrence– nut-bolt studs broke —No testimony of expert witness -machinery outdated or sub-standard having outlived its life; to determine exact cause of accident. Criminal liability cannot be fastened against accused merely on account of incident—. Culpable liability arises – as result of rashness or negligence of accused, not automatically. Being aware of operations of firm does not make Petitioners responsible and accountable for affairs of firm - cannot be called to undergo rigors of trial— Charge under Section 304-A IPC wrongly framed. Revisional Court also did not properly appreciate evidence available on record and its admissibility in law along with necessary ingredients required for prosecuting person for commission of offence— Charge and Order of Revisional Court set aside— Petition allowed— Petitioners discharged.

Held, that there is no testimony of any expert established that the machinery deployed for use at the premises was outdated or was sub-standard having outlived its life. Moreover, there is no testimony of any witness or expert to determine the exact cause resulting in the accident and as to whether it was on account of defect of the machinery or attributable to any acts committed by the workmen deployed on the machinery. Besides, even as per the documents appended along with the final report, there is no such opinion. A criminal liability cannot be fastened against an accused merely on account of an incident. Culpable liability arises on account of the said incident having occurred as a result of rashness or negligence on the part of an accused. Unless existence of said circumstances is established against the petitioners on

the strength of the document forming part of the investigation, a criminal liability cannot be attracted automatically.

(Para 31)

Further held, that in addition to the above, it also has to be established by the prosecution that the person being charged of commission of the offence was the actual person responsible to exercise that mandatory application of due care and caution and that the incident in question had taken place on account of the failure on the part of such person to implement care. There can be no presumption in law that merely because the petitioners happen to be sons of the owner of the sole proprietorship, hence they were also incharge of the operations of the sole proprietorship firm. Being aware of the operations of a firm does not make them responsible and accountable for the affairs of the said firm. They cannot ordinarily be called upon to undergo rigors of protracted criminal trial only on the strength of their awareness and despite absence of any evidence to establish their responsibility.

(Para 32)

Sumit Kalyan , Advocate, for Gursimran Singh, Advocate,
for the Petitioners.

Amarjit Kaur Khurana, DAG Punjab.

VINOD S. BHARDWAJ. J.

(1) The present petition has been filed under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the order dated 16.07.2019 (Annexure P-2), passed by Sub-Divisional Judicial Magistrate, Sultanpur Lodhi, whereby, charge has been framed against the petitioners in case FIR No.310 dated 19.11.2018 under Sections 304-A, 337 and 338 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') Police Station Sultanpur Lodhi, District Kapurthala along with judgment dated 08.11.2019 (Annexure P-9) passed by the Court of Additional Sessions Judge, Kapurthala, dismissing the revision petition filed by the petitioners against the said order framing charge.

(2) The brief factual matrix as is necessary to appreciate the controversy involved in the present case is as under:-

(2.1) The FIR in question had been registered on the allegations that Parshotam Singh (non-petitioner) is the sole proprietor and owner

of Sidhu Industrial Corporation situated in Village Dhudiawal Baba Deep Singh Nagar, Near R.C.F. Hussainpur. His sons Dhanpreet Singh and Dilpreet Singh (petitioners- herein) are engaged in manufacturing of the floor of the railway coaches on contract basis with RCF Kapurthala. For the said purposes Parshotam Singh and his son Dhanpreet Singh have set up Bedding Press Plasma Soap, EOT Crane No.2, EOT Crane No.1 in their factory and employed 70-75 labourers. It was stated that the tenure of the machines and bedding press installed in the factory had already matured, but despite being aware of the same, machinery was not replaced, thus endangering safety of the labourers. It was also alleged that instead of appointing skilled workers in the factory, they are getting the work executed from un-skilled labourers by paying less to those who do not possess any sort of experience.

(2.2) On the day of occurrence, the nut-bolt studs broke, due to which the heavy press weighing 4 quintal fell down injuring 3 workers. Parshotam Singh-owner of the factory got the workers admitted in Government Hospital, Kapurthala where Kewal Singh and Balbir Singh died as a result of injuries sustained by them. Accordingly, a case was registered against the owner of the factory Parshotam Singh (non-petitioner) son of Nagina Singh and his sons Dhanpreet Singh and Dilpreet Singh (petitioners herein).

(2.3) Upon conclusion of investigation, final report under Section 173 CrPC (Annexure P-1) was filed before the Court. Part of the bedding machine, bedding plate of the length of 10 feet and 3 feet width with thickness of 3.5 inches weighing about 20 quintals along with two holding bolts about 4 inch thickness and holding and clumping bolts were taken into possession.

(2.4) The petitioners appeared before the Court and eventually vide order dated 16.07.2019, charge against the petitioners along with Parshotam Singh (non petitioner) was framed for offence under Section 304-A IPC, which reads thus:-

> "That on 19.11.2018 at about 11:00 am in the area of Dudianwal, you all accused were running Sidhu industrial Corporation for making ground of boxes which were delivered to railway coach factory Kapurthala and to Riabraley and the machines and bedding press installed in the factory were already in expiry date and by using expiry bedding press in your factory, you all accused committed rash and negligent act, due to Kewal Singh and Balbir Singh

> were died and your this act of using expiry bedding machine falls within the preview of causing death of both the afore said persons not amounting to culpable homicide and as such, you all thereby committed an offence punishable under section 304 A IPC and within the cognizance of this Court, And, I hereby direct that you be tried by this Court."

(2.5) Aggrieved of the said order a revision petition was filed by the accused, wherein it was specifically urged out that the petitioners Dilpreet Singh and Dhanpreet Singh are neither the owners nor partners of the said factory and it was a sole proprietorship firm, which is owned by their father Parshotam Singh. The relevant extract of the report in support thereof was also referred to. It was also pointed out that at the time of the incident, the foreman, who is a skilled worker, was carrying out the operations and that the deceased was a labourer assisting the foreman/technician. It is also pointed out that the machine was not old and had been purchased on 28.03.2013. The sale letter was also appended along with the challan. Hence, it was merely a 5 year old machine. There was nothing on record to suggest that the machine had outlived its life. The said documents were also appended along with the revision petition to reflect the status of the factory as that of a sole proprietorship.

(2.6) It was also pointed out that documents of incorporation of the sole proprietorship firm as well as also the GST registration etc of the factories showed they were independent sole proprietorship units and that there was no evidence on record to substantiate that the petitioners had any concern with the operation and affairs of the said unit. It was thus contended that there was nothing to substantiate a prima facie case against the petitioners herein.

(2.7) That the Revisional Court however dismissed the revision petition so preferred by the petitioners after observing that as per the investigation conducted by the investigating agency, the firm was being run by Parshotam Singh along with his sons, the petitioners herein. He submitted that as per the report of the investigating agency he was assisted by his sons to run the firm. It was also observed that as per the concluded report of the investigating agency the machinery in question was outdated and had already out lived its life. It was further observed that the defence plea raised that Dhanpreet Singh and Dilpreet Singh were not the owners/partners of the said units is a debatable issue that has to be considered during trial and the stage of framing of the charge was not the appropriate stage to absolve the petitioners of their criminal

liability on the said ground alone. Hence, the present revision petition.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

(3) The counsel appearing for the petitioners submitted that insofar as petitioner-Dhanpreet Singh is concerned, he has a separate proprietorship firm by the name of Manjit Techno Fab, which is situated in Industrial Area II, Khor Rae Bareli, Uttar Pradesh. The registration certificate under the GST was appended as Annexure P-5. He further submits that petitioner-Dilpreet Singh runs a separate sole proprietorship firm by the name of Nagina Engineering Works having its separate GST registration. The said proprietorship of petitioner-Dilpreet Singh is situated in Village Dhudhianwal, Sultanpur Road, Kapurthala itself. The registration certificate under the GST has been appended as Annexure P-6. Insofar as Sidhu Industrial Corporation is concerned (proprietorship where the incident occurred), the same is in the ownership of Parshotam Singh and registration certificate is appended with the petition as Annexure P-7.

(4) Learned counsel appearing on behalf of the petitioners has vehemently argued that the petitioners are not employed in the factory Sidhu Industrial Corporation and have their own sole proprietorship. Despite completion of investigation by the Police, there is no evidence collected by them to reflect as to how and under what manner the petitioners were responsible for the affairs of the sole proprietorship owned, managed and operated by their father. It is also argued that there is no document to substantiate that the equipment installed at the premises was old and had outlived its life. It is contended that the accident in question could very well happen as a result of the workers not having distributed the load properly and that as a fault of the labourer/workmen themselves, the equipment may have been damaged. He has further argued that there is no report by any technical person to substantiate about the fitness of the structure and that in the absence of any such corroborative material, it cannot be perceived that the machine had to be replaced for having outlived its life or being outdated.

(5) Another argument raised by the petitioners is to the effect that the offence in question would be governed by a special statute, *viz.* The Factories Act, 1948, as the field is occupied by a special statute and as such proceedings under the general provisions of Indian Penal Code could not have been instituted. He has drawn attention to Section 92 and 93 of the Factories Act 1948. The same are reproduced as under:-

Section 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 [1][two years] or with fine which may extend to [2][one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [3][one thousand rupees] for each day on which the contravention is so continued: 4[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 [5][twenty-five thousand rupees] in the case of an accident causing death, and [6][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.]

Section 93. Liability of owner of premises in certain circumstances.--

(1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions

of sub- section (1).

(3) Where is any premises, independent or self-containted, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of--

(i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;

(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;

(iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;

(iv) precautions in case of fire;

(v) maintenance of hoists and lifts; and

(vi) maintenance of any other common facilities provided in the premises.

(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub- section (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories: Provided that the owner shall be responsible also for complying with the requirements relating to the provision and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.

(7) Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of--

(i) Chapter III, except sections 14 and 15;

(ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36: Provided that in respect of the provisions of sections 21, 24 and 32 the owner's liability shall be only in so far as such provisions relate to things under his control:

Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him;

(iii)section 42.

(8) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub- section (7).

(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.]

(6) By placing reliance on the same, it is also argued that the liability under the Factories Act, 1948 has to be fastened upon the occupier and manager of the factory and as the petitioners do not fall under either of the said category, they cannot be prosecuted. He further points out that the liability of owner has also been prescribed under Section 93 of the Factories Act 1948 under a specific set of circumstances.

(7) While propagating the said argument, he further summits that 'Occupier' has been defined under Section 2(n) of the Factories Act, 1984 and the petitioners do not fall under the said categories. In support of his contention, he has made a reference to the judgement of the Hon'ble Supreme Court in the matter of ***Kurban Hussein Mohamedalli Rangawalla*** *versus* ***State of Maharashtra***[1]**.** He has further made a reference to the judgment of the High Court of Karnataka passed in the matter of ***Mr. Ananthakumar & Ors*** *versus*

[1] AIR 1965 (SC) 1616

State of Karnataka & Ors[2] to contend that the accidental death of a worker in a factory would not empower the Police to register a criminal case for offence punishable under Section 304-A IPC. A reference was also made to the judgment of ***Gnanaprakasam & Ors*** *versus* ***State Represented by Assistant Superintendent of Police, Kovilpatti Sub Division, Thoothukudi District & Ors***[3]**,** to buttress the said argument.

ARGUMENTS OF RESPONDENT-STATE:

(8) A perusal of the written statement filed by respondent-State would show that the respondent have submitted in the said reply reproduced hereinbelow:-

> 3.That it is respectfully submitted that brief facts of the case as per the version of FIR are that on 19.11.2018 Special Naka bandi was done at Gate no.3, RCF when special information was received that Sidhu Industrial Corporation is situated in Village Dhudianwal Baba Deep Singh Nagar, Near RCF Hussainpur and its owner is Parshottam Singh s/o Nagina Singh and his sons Dhanpreet Singh and Dilpreet Singh (Petitioners no.1 and 2) manufacturer floors of railway Coaches on contract basis with Railway Coach Factory and send the same to Railway Coach Factory, Kapurthala and Rae Barelli. That to prepare all these Parshottam Singh and his son Dhanpreet Singh have set up machines i.e. Bedding press Plasma Soap, EOT Crane number 2, EOT Crane number 1 etc. at present about 70-75 labourers work in this factory. That the tenure of the machines and the bedding press is installed in this factory has matured and these are too old. Parshottam Singh and his sons are well aware about it that any time any incident can occur and loss can be caused to the life of the labour. That even then they are not paying attention towards the safety of the labour and instead of employing skilled workers they have employed non-skilled labor on low wages who do not possess any sort of experience. The persons working on bedding machines in Sidhu International Corporation are 1) Kewal Singh (now deceased) 2) Balvir Singh (now deceased) 3) Swaran Singh. At about 11:00 am bedding machine (power press) which had 4 inches bolts for moving

[2] 2019 CrLJ 3825
[3] 2015 (13) RCR (Crl) 451

up and down the 4 quintal heavy press and on both sides 3/3 or 4/4 base nut bolt studs were installed which broke including the plates and about 4 quintal heavy press fell on the said three persons. Kewal Singh (now deceased) sustained injury on his head his and Balbir Singh (now deceased) on his chest. Swaran Singh sustained serious injuries on his leg. Thereafter, the Owners/accused with the help of other workers got Kewal Singh (now deceased) and Balvir Singh (now deceased)admitted to Government Hospital Kapurthala where they died. Then a ruqa was written against the owner Parshottam Singh and his sons Dhanpreet Singh and Dilpreet Singh (petitioner No.1 and 2) who were looking after the machines of the factory and accounts, and sent to the Police Station for registration of present FIR.

5. That it is respectfully submitted that the Impugned Order dated 16.07.2019 passed by the Ld. Trial Court for framing the charge against the petitioners and their father/co-accused Parshottam Singh and the Impugned order dated 08.11.2019 whereby revision petition is dismissed, have been passed by Ld. Trial Court rightly.

6. That it is respectfully submitted that the present petitioners were looking after and supervising the work and machines of Sidhu Industrial Corporation along with their father Parshottam Singh, and thus, have been rightly named as accused. The petitioners were aware about the conditions of the machines and the power press which were outdated and expired, which ultimately proved fatal. The negligence of the petitioners is subject matter of trial and shall be established before the Ld. Trial Court.

Reply on merits

6. That the contents of Para No.6 of the petition are matter of record pertaining to the details of the GST returns. However, it does not preclude the petitioners from their being in charge of the machinery and accounts at the factory which is owned by their father. The petitioners were working with outdated machinery and the same was in need of replacement / repair. The petitioners were looking after the work and affairs of the Sidhu Industrial Corporation. This fact has been duly corroborated by the injured Swaran

Singh and other witness working as labourer. The story that the petitioners were neither owners nor partners of the concern Sidhu Industrial Corporation is concocted and an after thought. Further it is submitted that the role of the petitioners shall be verified / decided by the Ld. Trial Court. The documents attached as Annexure P-5 and P6 have no relevancy with the registration of the case. It is pertinent to mention here that as per annexure P-8 Postal E-mail address pertains to Dilpreet Singh petitioner No.2.

7. That the contents of Para No.7 of the petition are matter of record pertaining to the GST document. However, the same is not relevant with the commission of crime as both the petitioners have been named in the FIR correctly. They were managing the work at Sidhu Industrial Corporation and used to visit the factory daily to supervise the work.

(9) Ms. Amarjit Kaur Khurana, DAG Punjab has argued that the investigation of the case reflected that the petitioners were aware about the condition of the machine and power press and that they were out dated. It is further stated in the response filed by the State that the role of the petitioners shall be verified and decided by the trial Court and the same cannot be looked into at the stage of framing of charge. It is also submitted that the provisions of the Factories Act, 1948 would not be applicable to the facts of the instant case as the allegations are in the nature of rashness and negligence on the part of the petitioners in not updating the machinery, which resulted in occurrence of the incident. She, however, did not dispute the factum of the separate registration of the proprietorship concerns of the petitioners as well as the fact that GST registration reflects that Sidhu Industrial Corporation (where the incident in question had occurred) was a sole proprietorship owned and registered in the name of Parshotam Singh (non-petitioner). She also could not refer to any material on the basis whereof it could be ascertained that equipment/machinery was subjected to any examination by any expert and that any report has been obtained by the prosecution to prove that the machinery in question was outdated and had outlived its life.

DISCUSSION:

(10) I have considered the submissions advanced by the counsel for the respective parties.

(11) The submission of the petitioners that the incident in

question would be governed by the Factories Act 1948, which is a special statute and would not fall under the Indian Penal Code, does not inspire much strength. Reference was made by the counsel for the petitioners to the statement of objects and reasons of the Factories Act, 1948 which read as thus:-

STATEMENT OF OBJECTS AND REASONS

The existing law relating to the regulation of labor employed in factories in India is embodied in the Factories Act, 1934. Experience of the working of the Act has revealed a number of defects and weaknesses which hamper effective administration. Although the Act has been amended in certain respects in a piecemeal fashion whenever some particular aspect of labor safety or welfare assumed urgent importance, the general framework has remained unchanged. The provisions for the safety, health and welfare of workers are generally found to be inadequate and unsatisfactory and even such protection as is provided does not extend to the large mass of workers employed in work places not covered by the Act. In view of the large and growing industrial activities in the country, a radical overhauling of the Factories law is essentially called for and cannot be delayed.

The proposed legislation differs materially from the existing law in several respects. Some of the important features are herein mentioned. Under the definition of **"Factory" in the Act of 1934, several undertakings are excluded from its scope but it is essential that important basic provisions relating to health, working hours, holidays, lighting and ventilation, should be extended to all workplaces in view of the unsatisfactory state of affairs now prevailing in unregulated factories.** Further, the present distinction between seasonal and perennial factories which has little justification has been done away with. The minimum age of employment for children has been raised from 12 to 13 and their working hours reduced from 5 to 4-1/2 with powers to Provincial Governments to prescribe even a higher minimum age for employment in hazardous undertakings.

The present Act is very general in character and leaves too much to the rule making powers of the Provincial Governments. While some of them do have rules of varying

> stringency, the position on the whole is not quite satisfactory. This defect is sought to be remedied by laying down clearly **in the Bill itself the minimum requirements-regarding health (cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting and control of glare, etc.) general welfare of workers (washing facilities, first-aid, canteens, shelter rooms, creches etc.) amplified where necessary, by rules and regulations to be prescribed by Provincial Governments.**
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> Further, the present Act leaves important and complex points to the discretion of inspectors placing heavy responsibility on them. In view of the specialized, and hazardous nature of the processes employed in the factories it is too much to expect Inspectors to possess an expert knowledge of all these matters. The detailed provisions contained in the Bill will go a long way in lightening their burden.
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> Some difficulties experienced in the administration of the Act, specially relating to hours of employment, holidays with pay, etc., have been met by making the provisions more definite and clearer. The penalty clauses have also been simplified. An important provision has also been made in the Bill empowering Provincial Governments to require that every factory should be registered and should take a licence for working to be renewed at periodical intervals. Provincial Governments are further being empowered to require that before a new factory is constructed or any extensions are made to an existing one, the plans, designs and specifications of the proposed construction should receive their prior approval.

(12) Perusal of the same shows that the aforesaid provisions are largely with regard to the working conditions and for protection of the workers in relation to hazards as a result of working conditions in violation of the regulations framed by the Government. The said Act does not prohibit operation of any other statute. The allegations levelled at the stage of registration of the FIR are not in the nature that the petitioners did not prescribe to the safety precautions mandated by the Chief Inspector of Factories, but are to the effect that machinery so installed had outlived its life. It is also alleged that even though the said aspect was duly brought to the notice of the management, however, the

management chose not to take corrective measures thus risking the lives of the workers. The counsel for the petitioners has failed to point out any provision of law that merely because an offence also happens to be in violation of a special statute, the offence punishable under the Indian Penal Code would not get attracted, despite, the necessary ingredients being satisfied. As a matter of fact, Section 119 of the Factories Act has been given an overriding effect with anything inconsistent contained in the Contract Labour (Regulation and Abolition) Act 1970 or any other law for the time being in force. Learned counsel has failed to point out as to how the provisions of Section 304-A IPC would be inconsistent with the provisions contained under the Factories Act, 1948. The provision of the Factories Act, 1948 are not in substitution of any other Act but are supplemental to the same. It does not override the Indian Penal Code or laws other than those specified above.

(13) The argument of the petitioners that the prosecution of the petitioners could at best only be carried out under the Factories Act, 1948 is concerned, the same is found to be without any force also for the reason that Section 26 of the General Clauses Act deals with provisions when an offence is punishable in 2 or more enactments. The same is reproduced as under:-

> 26. Provision as to offences punishable under two or more enactments. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

(14) Perusal of the same would show that where an offence is punishable under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments. The Hon'ble Supreme Court in the matter of ***The State of Maharashtra & Anr*** *versus* ***Sayyed Hassan Sayyad Subhan & Ors,*** in Criminal Appeal No.1195 of 2018 decided on 20.09.2018 held as under:-

> 7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of

> facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. 2 The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:
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> "Provisions as to offences punishable under two or more enactments – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."
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> 8. In Hat Singh's case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

(15) Furthermore, in the judgement dated 18.12.2019 passed in Criminal Appeal No.1920 of 2019 titled *as* ***Kanwar Pal Singh*** *versus* ***State of Uttar Pradesh & Another,*** the Hon'ble Supreme Court held as under:-

> 6. This Court in Sanjay (supra) has cited several decisions wherein the challenge to the prosecution on the ground that there can be no multiplicity of offences under different enactments was resolved and answered by relying upon Section 26 of the General Clauses Act, which we would like to reproduce for the sake of convenience:
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> "26. Provision as to offences punishable under two or more enactments.— Where an act or omission constitutes an

offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

Section 26 of the General Clauses Act permits prosecution for 'different offences' but bars prosecution and punishment twice for the 'same offence' under two or more enactments. The expression 'same offence' has been interpreted by this Court in numerous decisions viz., Maqbool Hussain v. State of Bombay with reference to the provisions of the Sea Customs Act and the Foreign Exchange Regulation Act, 1947; Om Parkash Gupta v. State of U.P. and State of Madhya Pradesh v. Veereshwar Rao Agnihotri with reference to Section 409 of the IPC and Section 5(2) of the Prevention of Corruption Act; T.S. Baliah v. ITO with reference to Section 52 of the Income Tax Act, 1922 and Section 177 of the IPC; Collector of Customs v. Vasantraj Bhagwanji Bhatia, with reference to the provisions of the Customs Act 1962 and the provisions of the Gold (Control) Act, 1968; State of Bihar v. Murad Ali Khan with reference to the provisions of Sections 447, 429 and 379 of the IPC and provisions of the Wildlife (Protection) Act, 1972; Avtar Singh v. State of Punjab with reference to Section 39 of the Electricity Act, 1910 and the provisions of theft under the IPC; and Institute of Chartered Accountants of India v. Vimal Kumar Surana with reference to the provisions of the Chartered Accountants Act, 1949 and offences under Sections 419, 468,471 and 472 of the IPC. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the Mines Regulation Act and the offence under Section 379 of the IPC, it was observed in Sanjay (supra):

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens

riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein.

In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take AIR 1965 SC 666 (2011) 1 SCC 534 cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. *However, there may be a situation where a person without* any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of

> mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure." (emphasis supplied)

(16) Hence, in view of the authoritative pronouncements of the Hon'ble Supreme Court in the matters noticed-above, as well as in the light of the provisions enshrined under Section 26 of the General Clauses Act, the prosecution of the petitioners for offences punishable under Indian Penal Code cannot be held bad and liable to be set aside merely because such an offence is also punishable under the Factories Act, 1948. The same would only be a fact to be noticed at the time of punishment. Moreover, it is not a case where the Magistrate had taken cognizance of the alleged contravention for being punishable under Section 92 of the Factories Act, 1948 and had not issued summons to the petitioners to face prosecution for violation of the Factories Act, 1948. In the absence of the petitioners being prosecuted or being tried under the Factories Act 1948, it cannot be contended by the petitioners that as the offence in question is also punishable under a separate statute, hence they must necessarily be prosecuted under the same statute only and cannot be prosecuted under any other statute despite the ingredients of the offence being made out.

(17) The same now leads this court to examine the applicability of Section 304-A of the IPC against the petitioners and as to whether the necessary ingredients for commission of the offence are applicable

insofar as the status of the petitioners is concerned. For appreciating the same the cardinal philosophy for attracting the said penal provision needs to be understood.

"*Actus non facit reum nisi mens sit rea*", a Latin expression when loosely translated would mean "an act does not render a man guilty of a crime unless his mind is equally guilty". The expression lays the foundation of administration of criminal justice in India. The maxim recognizes two necessary elements in crime – a physical element and a mental element. A man may not be found guilty unless, in addition to an overt act that the law forbids or a default in doing some act which the law enjoins, he had a guilty mind – *viz.*, the *mens rea*. The true state of *mens rea* may however vary in statutory offences as stated in Halsbury; "*A statutory crime may or may not contain an express definition of state of mind. A statute may require specific intention, malice, knowledge, willfulness or recklessness*".

In order to constitute an offence under Section 304-A IPC, the rashness or negligence alleged must be such as to be described as criminal. A mere carelessness is not sufficient for conviction. While 'rashness' amounts to doing of an act with an awareness of the consequences that follow coupled with a hope that they do not; 'negligence', is a breach of duty imposed by law. In order to establish criminal liability, the facts must be such that the negligence of the accused went beyond a mere matter of comprehension and showed disregard for life and safety of others (*Russell on Crimes: 1960 Edition*). The prosecution must prove that the rash and negligent act of the accused was proximate cause that resulted in death, even though it may not be an immediate cause. 'Criminal negligence' would move a step higher where the act must involve gross and culpable neglect to exercise that reasonable care and precaution as was required to guard a person or individual against any injury. A mere occurrence of an accident does not necessarily attract criminal liability when occurrence of such an event cannot be attributed to be a direct or inevitable consequence of the act of the person accused.

(18) In order to attract Section 304-A in IPC the following essential ingredients have to be satisfied:-

i. That the accused caused the death of any person;

ii. That such death was caused by the accused doing any rash act or;

iii. That such death was caused by the accused doing any

negligent act and;

iv. Such a death did not amount to culpable homicide.

(19) In order to establish negligence under criminal law, the following grounds have to be established by the prosecution as per the law laid down by the Hon'ble Supreme Court in the matter of ***Malay Kumar Ganguly*** *versus* ***Sukumar Mukherjee & others***[4]

i. The existence of Duty;

ii. A breach of Duty causing death;

iii. A breach of Duty must be characterized as gross negligence.

(20) While rashness is acting in the hope that no mischievous consequences will ensue although there is awareness of the likelihood of such consequences, negligence is acting without the awareness that harmful or mischievous consequences will follow but in circumstances which show that had the accused exercised the caution incumbent upon him he would have had the awareness of the consequences of his act. Even the word negligence has not been defined in the Act, however, the idea of the degree of negligence that would make the act criminal can be had if the words and the phrase used in Section 279 IPC are referred to. In the context of the case in hand, negligence would be generally understood as a conduct that falls below the standard established for the protection of others against unreasonable risk of harm. The standard of conduct would ordinarily be measured by what a reasonable man of ordinary prudence would do under the circumstances. Such standard of negligence must be rated in terms of the circumstances of each case. An accused must undertake some conscious rash and negligent act entailing death of a victim before prosecution under Section 304-A IPC can be lodged. The marked distinction between the said acts needs to be finally understood. In the case of a rash act, the criminality lies in running the risk of doing such a act with restlessness or indifference as to the consequences while criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused to have adopted.

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[4] 2009 (9) SCC 221

(21) Section 304-A IPC has been explained by the Hon'ble Supreme Court in the matter of ***Mahadev Prasad Kaushik*** *versus* ***State of U.P. & Another,*** bearing Criminal Appeal No.1625 of 2008 decided on 17.10.2008. The relevant paragraphs of the same are extracted as under:-

> **304A. Causing death by negligence** 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.
>
> 28. The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without '**intention**' or **'knowledge'.** The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are **rash** or **negligent** and are directly the cause of death of another person.
>
> 29. There is thus distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.
>
> 30. In Empress v. Idu Beg, (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by various Courts including this

> Court; "Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted".
>
> 31. Though the term 'negligence' has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.

(22) Furthermore, the Hon'ble Supreme Court in the matter of ***Ambalal D. Bhatt*** *versus* ***State of Gujarat***[5]**,** held as under:-

> "It appears to us that in a prosecution for an offence under Section 304A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of the death. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules would itself have been an answer and we would have then examined to what extent additional evidence of his acquittal would have to be allowed, but since that is not the criteria, we have to determine whether the appellant's act in giving only one batch number to all the four lots manufactured on 12-11-62 in preparing batch No. 211105 was the cause of deaths and whether those deaths were a direct consequence of the appellants' act, that is, whether the appellant's act is the direct result of a rash and negligent act and that act was the

[5] AIR 1972 SC 1150

> proximate and efficient cause without the intervention of another's negligence. As observed by Sir Lawrence Jenkins in Emperor v. Omkar Rampratap (1902) 4 Bom LR 679 the act causing the deaths "must be the cause causans; It is not enough that it may have been the causa sine qua non". This view has been adopted by this Court in several decisions. In Kurban Hussein Moham-medali Rangwala v. State of Maharashtra , the accused who had manufactured wet paints without a licence was acquitted of the charge under Section 304A because it was held that the mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of froth out of the barrels. In Suieman Rahiman Mulani v. State of Maharashtra the accused who was driving a car only with a learner's licence without a trainer by his side, had injured a person. It was held that that by itself was not sufficient to warrant a conviction under Section 304A. It would be different if it can be established as in the case of Bhalchandra v. State of Maharashtra that deaths and injuries caused by the contravention of a prohibition in respect of the substances which are highly dangerous as in the case of explosives in a cracker factory which are considered to be of a highly hazardous and dangerous nature having sensitive composition where even friction or percussion could cause an explosion, that contravention would be the causa causans."

(23) From a perusal of the aforesaid judgment, it is established that for the purpose of holding a person responsible for the offence, the consequences and act must have an immediate proximity. Thus, it would be imperative on the prosecution to establish that the consequence in question was a direct result of an act of rashness or negligence committed by the person charged of the said offence.

(24) This would now call upon this Court to examine as to whether the petitioners are persons in-charge of the affairs of the

factory, where the accident in question occurred and whether the petitioners can be prosecuted for the same or not.

(25) The specific case of the petitioners is that they have their own proprietorship firm and that they are neither the employees nor manager or partners in the factory where the occurrence took place. The said aspect is not denied by any cogent material available on record, wherefrom, it could have been ascertained that the petitioners were in any manner in-charge of the operations of the aforesaid proprietorship as well. The State has chosen only to make an averment in its reply that insofar as the role and responsibility of the petitioners is concerned, the petitioners were looking after and supervising the work and machinery of Sidhu Industrial Corporation and that the petitioners were aware about the conditions of the machines and power press. There is no reference to any material on the basis whereof such awareness can be ascertained. In addition thereto, it has also not been pointed out as to the involvement of the petitioners and their capacity in the industrial establishment. A person cannot be held liable for each and every criminal act that may have occurred on any premises that are held by the family. A person can be held accountable only for the accidents that take place on his premises and where his participation and role is fully established as an occupier or manager.

(26) A perusal of the order passed by the Revisional Court shows that the aspect has been dealt with in the following manner:-

> Having heard to their rival contentions and have gone through the file, it is not in dispute that the said deceased Kewal Singh and Balbir Singh scummed to the injuries at the spot and that Swaran Singh received grievous and simple injuries at his person while working in the said industry Sidhu Industrial Corporation, though under some technicians / foreman etc.. It is also not in dispute that the said industry was being run under the name and style of Sidhu Industrial Corporation by the main accused Parshotam Singh and the registration certificate of GST Form is now reflecting that the said Sidhu Industrial Corporation is a proprietorship concern of Parshotam Singh (accused). However, the investigation proceedings as culminated by the investigation agency are reflecting that the said industry was being run by said Parshotam Singh along with his sons Dhanpreet Singh and Dilpreet Singh. The said industry may not be proprietorship concern of the

> said Parshotam Singh, but the report of investigation agency as culminated under section 173 Cr.P.C. is reflecting that he was assisted by his sons also i.e. Dhanpreet Singh and Dilpreet Singh to run that industry. Moreover, the investigation agency has also concluded that the machines of that industry, which proved fatal to the said deceased and injured were outdated machines and they already lived their life and of the expired dated machines. To use that machines by said accused persons, through that labourers, reflects their negligent act, which obviously warrants the offence punishable under section 304-A of the Indian Penal Code apart from sections 337, 338 of the Indian Penal Code. So far the defence plea of the accused persons qua Dhanpreet Singh and Dilpreet Singh not to be owners / partners of said industry is a debatable issue which has to be considered on culmination of the proceedings of the trial and this is not the stage to absolve their criminal liability on the sole ground that they were not owners/ partners of said industry, especially by the reasons that undisputedly, they both are sons of said Parshotam Singh. Otherwise, the learned trial court has found rightly considered not only the report under section 173 Cr.P.C., rather considered the memos / documents appended with the said report and all that are found sufficient to make out prima-facie of that allegations of challened offence, but the learned trial court has not framed the charge under section 337 of the Indian Penal Code as that will be covered by the charge framed under section 338 of the Indian Penal Code. So, the findings of learned trial court to pass the impugned order and of framing the charge vide impugned order are not warranting any interference finding no illegality therein vide present revision petition, so, the impugned order is hereby affirmed.

(27) It is evident that despite noticing that Sidhu Industrial Corporation is a proprietorship firm, however, the Revisional Court failed to refer to any material collected by the investigating agency on the basis whereof the petitioners could be stated to be in-charge of the affairs of the said proprietorship as well. Contrary to the documentary evidence placed on record, Additional Sessions Judge, Kapurthala, held that insofar as the plea regarding whether the petitioners are owners/partners of the firm is concerned, the same is a debatable issue. The aforesaid finding is contrary to the documents placed on record.

Once the established case of the prosecution is that the Sidhu Industrial Corporation was a sole proprietorship firm, there is no occasion of the petitioners being partners therein. Besides, the final report does not make a reference to any material or documentary evidence that would reflect that the industrial activity in the establishment was supervised or controlled by the petitioners. The responsibility of a person has to be real and actual and not by an inference. A person cannot be held responsible for affairs of a company merely because he/she happens to be in close relations or proximity or family of the owner. To attract a penal offence of being rash or negligent, it must necessarily require that the person being in-charge of the offence was expected to adhere to a standard of caution. If there is no statutory obligation or requirement fastened with an accused to comply with the standard of caution, such person cannot be prosecuted for default thereof. The proximity of a person to the principal accused being member of the family and by carrying similar operations through no independent establishment would not render them liable for the lapses/offences that may stand committed in the factory premises of their father.

(28) The submission of the State that the role and responsibility of the petitioners is to be seen at the stage of trial despite absence of any material to show their responsibility in the premises in question cannot be perpetuated and protected in a manner that would be onerous and amount to procrastination. The petitioners cannot be forced to undergo a criminal trial despite the absence of material establishing their involvement in the operations of the factory. Even though the law holds that at the stage of framing of a charge, only a *prima facie* case is required to be made out and that the material to be relied in defence cannot be the basis of setting aside a charge framed against an accused. However, the Hon'ble Supreme Court held in the matter of ***Rukmini Narvekar*** *versus* ***Vijaya Satardekar,*** Criminal Appeal Nos.1576-1577 of 2008 decided on 03.10.2008 that even though at the stage of framing of a charge, a Court cannot consider defence material, however, in some cases the Court is justified in looking into material produced by the defence at the time of framing of the charge if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. The relevant extract of the same is reproduced herein below:-

> “28. We have carefully perused the decision of this Court in the State of Orissa vs. Debendra Nath Padhi (supra). Though the observations in paragraph 16 of the said decision seems

to support the view canvassed by Shri Rohatgi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court under Section 482 of Cr.P.C and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case (supra). Thus we have to reconcile paragraphs 16 and 23 of the decision in State of Orissa vs. Debendra Nath Padhi (supra). We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University, Sirsa & Anr. JT 2008(8) SC 621. As observed by this Court in Bharat Petroleum Corporation Ltd. & Anr. vs. N.R. Vairamani & Anr AIR 2004 SC 4778, observations of Courts are neither to be read as Euclid's formula nor as provisions of the statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

(29) In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted."

(30) The Hon'ble Supreme Court in a recent judgment of ***Mahendra KC*** *versus* ***State of Karnataka***[6] held that examination of a question of fact is also permissible when no offence is disclosed by the final report. In the instant case, however, the submission of the petitioners is not based upon any defence version that is yet to be established rather the same is supported from the documents that are already part of the challan and are referred to by the prosecution. Absence of evidence cannot be substituted by a mere suspicion.

(31) There is no material pointed out by the prosecution showing the involvement of the petitioners in running the affairs of Sidhu Industrial Corporation nor any such material was referred to during the course of arguments. Even the order passed by the Additional Sessions Judge, Kapurthala does not refer to any *prima facie* evidence against the petitioners while dismissing the revision petition and merely observes that the prosecution in its report under Section 173 CrPC established the same. The report under Section 173 CrPC, appended as Annexure P-1 with the instant petition, is also not indicative of the evidence establishing involvement of the petitioners.

(32) It is further evident from perusal of the final report that the following witnesses and the nature of their testimony has been relied upon by the prosecution to prove its case.

Sr. No.	Name and Address of the witness	Type of witness
1.	ASI Lakhvir Singh No.186/KPT Incharge Police Post Bhulana Police Station Sultanpur Lodhi District Kapurthala	Complainant
2.	Swaran Singh S/o Gopal Singh R/o Talwandi Chowdharia Police Station Talwandi Chowdharia District Kapurthala	Injured and eye witness
3.	Prem Singh S/o Gurdial Singh, Caste Jatt R/o Gadhra Police Station Nakodar District Jalandhar	Witness (father of deceased Balbir)
4.	Ravinder Singh, Sarpanch S/o Sukhdev Singh, Caste Jatt, R/o Gadhra PS Nakodar District Jalandhar	Witness (relative of deceased Balbir)

[6] (2022) 2 SCC 129

5.	Harinder Singh S/o Sohan Singh, Caste Tarkhaan, R/o Bhullar Bet PP Dhilwa PS Sultanpur Lodhi District Kapurthala	Witness (brother of deceased Kewal Singh)
6.	Baljinder Singh S/o Jagir Singh Caste Tarkhaan R/o Thakar Nagar Gali No.1, Aujla Fatak PS City Kapurthala District Kapurthala	Witness (relative of Kewal Singh deceased)
7.	SI Mandeep Kaur 24/JRT PS Sultanpur Lodhi	Regarding recording of FIR
8.	HC Balbir Singh 1351/KPT PP Bhulana	Witness of memo
9.	HC Ramesh Kumar 580/ KPT PP Bhulana PS Sultanpur Lodhi	Witness of memo
10.	HC Dhyan Singh 529/ KPT PP Bhulana PS Sultanpur Lodhi	Witness Postmortem
11.	C.1 Malkeet Singh 1604/ KPT PP Bhulana PS Sultanpur Lodhi	Witness Postmortem
12.	Dr. Prem Kumar M.O. Civil Hospital Kapurthala	Conducted postmortem
13.	SI/SHO Sarabjit Singh 258/ KPT PS Sultanpur Lodhi	Preparation of challan

Perusal of the same shows that there is no testimony of any expert established that the machinery deployed for use at the premises was outdated or was sub-standard having outlived its life. Moreover, there is no testimony of any witness or expert to determine the exact cause resulting in the accident and as to whether it was on account of defect of the machinery or attributable to any acts committed by the workmen deployed on the machinery. Besides, even as per the documents appended along with the final report, there is no such opinion. A criminal liability cannot be fastened against an accused merely on account of an incident. Culpable liability arises on account of the said incident having occurred as a result of rashness or negligence on the part of an accused. Unless existence of said circumstances is established against the petitioners on the strength of the document forming part of the investigation, a criminal liability cannot be attracted automatically.

(33) In addition to the above, it also has to be established by the prosecution that the person being charged of commission of the offence was the actual person responsible to exercise that mandatory application of due care and caution and that the incident in question had taken place on account of the failure on the part of such person to implement care. There can be no presumption in law that merely because the petitioners happen to be sons of the owner of the sole proprietorship, hence they were also incharge of the operations of the sole proprietorship firm. Being aware of the operations of a firm does not make them responsible and accountable for the affairs of the said firm. They cannot ordinarily be called upon to undergo rigors of protracted criminal trial only on the strength of their awareness and despite absence of any evidence to establish their responsibility.

CONCLUSION:

(34) In view of the circumstances noticed above and in light of the precedent judgements of the Hon'ble Supreme Court, it is apparent that the Revisional Court has failed to appreciate the submissions advanced by the petitioners and has chosen to not address the admissibility of the evidence available along with the final report and has rather proceeded on a presumption that all such aspects shall be examined at the stage of trial. Forcing a person to undergo criminal prosecution without noticing as to whether any criminal case is made out against a person on the strength of the material and evidence collected by the prosecution itself is a perpetuation of injustice. A Court of law cannot refuse to examine the existence of *prima facie* evidence and as to whether such evidence would support the continuation of proceedings against the petitioner or not on a pretext that such issue is to be examined at the stage of trial. A plea of defence cannot be looked into by the Revisional Court especially when such plea is sought to be established by any other evidence or document which is yet to be proved in accordance with law. The said aspect however does not apply to the evidence collected by the Investigating Agency and sought to be relied upon by the agency for proving its case against an accused.

(35) In this view of the matter, I find that the Revisional Court has not properly appreciated the evidence available on record and its admissibility in law along with necessary ingredients required for prosecuting a person for commission of the offence in question. Resultantly, the present petition is allowed and the judgement dated 08.11.2019 (Annexure P-9) passed by Additional Sessions Judge,

Kapurthala and the order dated 16.07.2019 (Annexure P-2) passed by the Sub- Divisional Judicial Magistrate, Sultanpur Lodhi framing charge against the petitioners under Section 304-A IPC are set aside qua the petitioners and the petitioners are discharged.

Shubreet Kaur