



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 792 of 2026

(In the matter of an application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 482 of Criminal Procedure Code, 1973).

G.R. Arun Kumar *Petitioner (s)*

-versus-

Asst. Director of Factories & Boilers, Opp. Party (s)
Kalahandi Zone i/c, Bhawanipatna

Advocates appeared in the case through Hybrid Mode:

For Petitioner (s) : *Mr. Manoj Kumar Mishra, Sr. Adv.*
along with Mr. Tanmay Mishra, Adv.

For Opp. Party (s) : *Mr. Tej Kumar, ASC.*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-24.06.2026

DATE OF JUDGMENT:-14.07.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner, G.R. Arun Kumar, has approached this Court seeking to quash the criminal proceeding in 2(C) C.C. No. 11 of 2019 pending before the learned J.M.F.C., Lanjigarh, arising out of a complaint instituted by the Assistant Director of Factories & Boilers, alleging a violation of Rule 62-D of the Orissa Factory Rules, 1950.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- (i) On 16.04.2019, at about 3:40 P.M., an industrial accident occurred on the 1st Floor of Digestion Train-1, near Steam Heater No. 026-HX-1007, within the premises of M/s Vedanta Limited at Lanjigarh wherein Shri Jasu Prasad, a contract worker engaged through M/s Indfab Projects Private Limited, sustained a fracture to his right leg in the course of maintenance work. It is this incident that ultimately gave rise to the present prosecution.
- (ii) At the relevant time, Shri Jasu Prasad, along with Shri Surendra Yadav and two other workers, had been assigned the descaling of the Steam Heater, which entailed the loosening of a total of 46 flange studs that secured the bottom dome of the Steam Heater. This bottom dome, which weighed approximately 4.5 tonnes, was supported only by chain pulley blocks and slings.
- (iii) Of the 46 flange studs, 38 studs were loosened using a pneumatic wrench, whereas the remaining 8 studs having come under severe strain on account of the weight of the dome, were manually loosened with a 7 kg hammer and a 75 mm slogging spanner.
- (iv) While loosening the third of the remaining 8 studs, the hammer slipped over the slogging spanner and struck the lower portion of the right leg of Shri Jasu Prasad, causing a fracture of his right leg. He was administered first aid, thereafter he was shifted to Vedanta Hospital, Lanjigarh and then to Sparsh Nursing Home, Sambalpur where he was discharged on 19.04.2019.



- (v) The Incident Investigation Report examined the circumstances surrounding the accident and identified measures that ought to have been adopted to avoid such an occurrence. It recommended the use of a suitable hydraulic scissor lift to adequately support the bottom dome during its removal to prevent the flange studs from being subjected to undue strain on account of the heavy load of the bottom dome. It further recommended the use of a hydraulic impact wrench for loosening and tightening the flange studs instead of manual hammer-and-spanner operations, besides emphasizing that all body parts should be kept clear of the hammer swing path and that necessary precautions should be exercised while hammering on the ring spanner to avoid injuries to the leg.
- (vi) Following the accident, the Assistant Director of Factories & Boilers, Kalahandi Zone, Bhawanipatna, instituted Complaint Case No. 2(C) C.C. No. 11 of 2019 against the Petitioner before the learned J.M.F.C., Lanjigarh, under Section 105 of the Factories Act, 1948 read with Rule 13 of the Orissa Factories Rules, 1950, alleging violation of Rule 62-D of the said Rules. By order dated 08.07.2019, the learned S.D.J.M., Bhawanipatna took cognizance of the offence under Section 92 of the Factories Act, 1948.
- (vii) The co-accused Shri Sanjeev Kumar, who had been appointed as Factory Manager for the Lanjigarh unit had approached this Court earlier, challenging the criminal proceeding initiated



against him. By order dated 24.04.2023, the proceeding was quashed, primarily on the ground that the Company had not been arraigned as an accused.

(viii) The Petitioner, who was serving as the Whole-Time Director of the Company and stationed at New Delhi, has been arraigned as the Occupier of the factory within the meaning of Section 2(n) of the Factories Act, 1948. Although the day-to-day operations of the unit stood entrusted to the Factory Manager, the Petitioner alone continues to face prosecution. It is in these circumstances that the Petitioner seeks the same relief, contending that a director occupying such a position cannot be subjected to criminal liability when the Company itself has not been made a party to the prosecution.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The learned counsel for the Petitioner respectfully and earnestly made the following submissions in support of his contentions:
 - (i) The co-accused, Shri Sanjeev Kumar, had approached this Court in CRLMC No. 375 of 2020 which has already been quashed by this Court by order dated 24.04.2023. The Petitioner submits that the allegations levelled against him arise out of the very same incident and rest on a factual and legal position identical to those of the co-accused. The principles of consistency and parity, therefore, warrant the extension of the same relief to the petitioner.



- (ii) The Company, M/s Vedanta Limited itself has not been arraigned as an accused in the complaint. Reliance is placed on *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.*¹, *Sharad Kumar Sanghi v. Sangita Rane*,² and *Gourav Kumar Hota vs Ajay Kumar Barik*³ to contend that the prosecution of a director or manager, without impleading the company, is legally unsustainable.
- (iii) The accident occurred solely on account of the negligence of the injured workman, when the hammer slipped from his hand during the maintenance work. The workman was discharged after three days of treatment and suffered neither disability nor injury.
- (iv) The management of M/s Vedanta Limited promptly reported the accident to the statutory authorities i.e., the Deputy Director of Factories and Boilers (Safety) and complied with the reporting obligations under Rules 97 and 103 of the Orissa Factories Rules, 1950. The essential ingredient of deliberate breach of safety norms by the petitioner is wholly absent and the opposite party has failed to identify any systemic or structural defect in the safety arrangements of the factory attributable to the Petitioner.
- (v) At the relevant time the Petitioner was a Whole-Time Director, stationed at New Delhi, removed from the day-to-day operations of the factory. He had duly appointed a Factory

¹ (2012) 5 SCC 661

² (2015) 12 SCC 78

³ CRLREV No. 542 of 2014



Manager for the Lanjigarh unit, entrusted him with direct control and supervision of daily operations and safety measures as contemplated under Sections 7A and 7B of the Factories Act, 1948. The petitioner was neither present at the site nor involved in the maintenance work during which the accident occurred.

- (vi) The continuance of the prosecution against the Petitioner alone, particularly after the quashing of the proceeding against the co-accused, amounts to arbitrary discrimination and an abuse of the process of the Court. Subjecting the Petitioner to a criminal trial despite his lack of direct involvement in the incident would cause him irreparable loss, harassment and prejudice.
- (vii) On these grounds, the Petitioner prays that the complaint be quashed in exercise of the inherent jurisdiction of this Court.

III. SUBMISSIONS ON BEHALF OF THE STATE:

- 4. The learned counsel for the State earnestly made the following submissions in support of his contentions:
 - (i) The present CRLMC is devoid of merit, as the complaint petition and the materials gathered during the statutory investigation disclose a *prima facie* contravention of Rule 62-D of the Odisha Factories Rules, 1950, thereby justifying the continuation of the criminal proceeding.
 - (ii) As revealed by the statutory investigation, the accident was the consequence of an unsafe method adopted for carrying out the maintenance work, namely that the 4.5-tonne bottom dome of the Steam Heater had not been adequately supported with



lifting equipment of sufficient capacity, resulting in excessive strain on the remaining flange studs. The Incident Investigation Report, accordingly, recommended the use of a hydraulic scissor lift and a hydraulic impact wrench in place of manual hammer and spanner.

- (iii) Under Section 2(n) of the Factories Act, 1948, the occupier is the person having ultimate control over the affairs of the factory. The Petitioner, being the Whole-Time Director, is the occupier within the meaning of Section 2(n) of the Act and cannot evade the statutory responsibilities so attached merely because the day-to-day management had been entrusted to the Factory Manager.
- (iv) The Petitioner's contention founded upon the non-impleadment of the Company is wholly misconceived. Section 92 of the Factories Act specifically contemplates the liability of both the occupier and the manager for contraventions of the Act and the Rules, and the present prosecution has been instituted in conformity with that statutory framework.
- (v) The reliance placed by the Petitioner upon *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.*⁴ and *Sharad Kumar Sanghi v. Sangita Rane*⁵ is misplaced and has no application to the facts of the present case. The said decisions pertain to proceedings under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code respectively.

⁴ (2012) 5 SCC 661

⁵ (2015) 12 SCC 78



Conversely, the present case arises under the Factories Act, wherein Section 92 expressly imposes statutory liability upon the occupier and the manager.

- (vi) The Petitioner's contention that the accident can be attributed solely to the negligence of the injured workman is contrary to the statutory Incident Investigation Report, which found systemic safety failures, and adoption of outdated and hazardous processes in the maintenance work. The materials on record, therefore, clearly demonstrate a *prima facie* case against the Petitioner.
- (vii) The Opposite Parties, accordingly, pray that the present CRLMC be dismissed and the proceeding against the Petitioner be permitted to continue in accordance with law.

IV. FINDINGS OF THE COURT BELOW:

- 5. The Learned Sub-Divisional Judicial Magistrate, Bhawanipatna made the following observations:
 - (i) By order dated 08.07.2019, the learned S.D.J.M. registered the case and, upon a perusal of the case record, recorded that there existed sufficient *prima facie* material available on record to proceed against the accused persons. On that basis, cognizance of the offence under Section 92 of the Factories Act, 1948 was taken against both the Occupier and the Manager, and the matter was directed to be listed for the appearance of the accused persons.



- (ii) During the pendency of the proceeding, the co-accused filed an application under Section 205 Cr.P.C. seeking dispensation of his personal attendance, which was allowed by the learned S.D.J.M., by order dated 27.09.2019. It was noted that dispensation of personal attendance in a summons case lies within the discretion of the Magistrate, to be exercised only in rare cases where, owing to the considerable distance at which the accused resides or carries on business, or for any other sufficient reason, dispensing with such attendance would serve the interests of justice. Relying upon *TGN Kumar v. State of Kerala*,⁶ the learned S.D.J.M. observed that the while considering such an application, the Magistrate must give regard to the nature of the offence and the conduct of the person summoned.
- (iii) Taking into account that the case arose under Section 92 of the Factories Act, 1948, and that the co-accused was posted as Head, Operation & Maintenance at the Lanjigarh unit while the Company's registered office was at Mumbai, the learned Magistrate recorded that attending day-to-day proceedings would be difficult and accordingly permitted him to appear through counsel. It was subject to the conditions that he shall not dispute his identity, shall not object to evidence being recorded in his absence through counsel, that his counsel shall

⁶ 2011 (2) SCC 772



co-operate till disposal, and that he shall appear in person whenever so directed.

- (iv) Thereafter, by order dated 24.04.2023 in CRLMC No. 375 of 2020, this Court quashed the proceeding in 2(C) C.C. No. 11 of 2019 insofar as it concerned the co-accused. However, the proceeding has continued against the Petitioner alone before the learned J.M.F.C., Lanjigarh. As is evident from the order dated 16.08.2025, the learned J.M.F.C. had directed the issuance of fresh summons for the appearance of the Petitioner and listed the matter for 25.11.2025, the proceeding thus remaining pending against the Petitioner.

V. COURT'S REASONING AND ANALYSIS:

6. Heard Learned Counsel for the parties and perused the documents placed before this Court.
7. The principal contention urged on behalf of the petitioner is that the criminal proceeding is not maintainable because the Company has not been arrayed as an accused and that the petitioner, though shown as occupier, was stationed at New Delhi and had no role in the day-to-day functioning of the factory. The State, on the other hand, submits that the complaint discloses a prima facie contravention of Rule 62-D of the Odisha Factories Rules, 1950 and that Section 92 of the Factories Act, 1948 fastens statutory liability on the occupier and the manager.
8. Section 2(n) of the Factories Act defines the occupier as the person who has ultimate control over the affairs of the factory and, in the case of a company, any one of its directors is deemed to be the occupier.



Section 7A imposes on every occupier the duty to ensure, so far as is reasonably practicable, the health and safety of all workers while at work in the factory. Section 92 provides that where there is any contravention of the Act or the Rules, the occupier and manager of the factory shall each be guilty of an offence. Rule 62-D specifically mandates that no process or work shall be carried on in any factory in such a manner as to cause risk or bodily injury. Section 101 of the Act provides a specific defence where the occupier or manager seeks to identify and proceed against the actual offender.

9. The statutory position as to the liability of the occupier is no longer res integra. In *J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers*⁷, the Supreme Court held that where a company owns or runs a factory, the company acts through its directors and one of the directors has to be notified as occupier.
10. The Court further held that Section 92 contemplates liability of the occupier and manager irrespective of who is directly responsible for the contravention, that offences under the Act are strict statutory offences and that the notified director cannot avoid liability merely because management had been entrusted to a manager or some other employee. The same decision notices Section 101 as the statutory safeguard available to the occupier or manager. The relevant excerpts are produced below:

“Section 92 contemplates a joint liability of the occupier and the manager for any offence committed irrespective, of the fact as to who is directly responsible for the offence. The fact that

⁷ (1996) 6 SCC 665



the notified/identified director is ignorant about the 'management' of the factory which has been entrusted to a manager or some other employee and is himself not responsible for the contravention cannot absolve him of his liability. The identified / notified director is held vicariously liable for the contravention of the provisions of the Act, the rules made thereunder or of any order made in writing under it for the offender company, which is the occupier of the factory.

....

It deserves a notice that under the Act, the legislature has itself taken care to dilute the rigor of Section 92 by providing an exception to the strict liability rule by laying down a third-party procedure in Section 101 of the Act"

11. The reliance placed by the petitioner on *Aneeta Hada* (supra), *Sharad Kumar Sanghi* (supra), does not advance his case. Those decisions turned on statutory regimes where the criminal liability of directors or officers was derivative of the offence of the company itself. That distinction has been explained by the Supreme Court in *S.C. Garg v. State of Uttar Pradesh*⁸, while discussing the line of cases following *Aneeta Hada* (supra). Section 92 of the Factories Act is differently worded. It directly declares that the occupier and manager shall each be guilty where there is contravention in or in respect of the factory. Hence, the non-impleadment of the company does not, by itself, furnish a legal bar to the continuance of the prosecution against the notified occupier under the Factories Act.
12. On the materials in the complaint, this Court is unable to hold that no offence is made out even if the allegations are taken at face value. The

⁸ 2025 INSC 493



prosecution case is that the maintenance work on the bottom dome of the Steam Heater was carried out by adopting an unsafe method, without adequate supporting equipment and with manual hammer and spanner operation on strained studs, resulting in bodily injury to the worker. If these allegations are accepted as they stand, a prima facie infraction of Rule 62-D is disclosed. Whether the accident occurred solely because of the negligence of the injured workman, or whether the factory had in fact taken all reasonably practicable measures, are matters of defence and evidence. They cannot be adjudicated conclusively in a proceeding for quashing.

13. The plea that the petitioner was stationed at New Delhi and not in day-to-day control of operations is likewise not a ground for quashing in view of the statutory scheme. The Act deliberately fastens responsibility on the occupier as the person in ultimate control. If the petitioner seeks to contend that some other person was the actual offender and that he had exercised due diligence, the Act itself provides the appropriate course in Section 101. That defence is for the trial court to examine on evidence.
14. Much emphasis was laid on the order dated 24.04.2023 passed in CRLMC No. 375 of 2020 in favour of the co-accused Manager. The said order undoubtedly arose out of the same complaint. Even so, the present petition has to be tested on the basis of the statutory position governing the liability of the occupier and the settled law declared by the Supreme Court. An order passed in favour of another accused does not ipso facto conclude the issue where the statute expressly



fastens liability and the complaint otherwise discloses a prima facie case.

15. For the reasons aforesaid, this Court is not persuaded to exercise its inherent jurisdiction to quash the proceeding in 2(C) C.C. No. 11 of 2019 so far as the present petitioner is concerned. The CRLMC is, accordingly, **dismissed**.
16. However, having regard to the position of the petitioner and the nature of the accusation, it is observed that if the petitioner files an application for exemption from personal appearance, the learned J.M.F.C., Lanjigarh shall consider the same in accordance with law and on its own merits. It is also open to the petitioner to avail such remedies as are permissible under Section 101 of the Factories Act before the learned trial court.
17. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 14th July, 2026/*