

(2015) 03 JH CK 0101
In the Jharkhand High Court
Case No : Criminal M.P. No. 1658 of 2007

A. Chakravorty and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(g), 2(g)(iii), 23, 24, 25
Mines Act, 1952 — Section 17

Citation : (2015) 145 FLR 952 : (2015) LLR 831

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : P.P.N. Roy, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. P.P.N. Roy, learned Senior Counsel for the petitioners and Mr. Ashok Kumar Singh, learned Counsel for O.P. No. 2. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with C/2 Case No. 185 of 2002, corresponding to T.R. No. 1107 of 2006 including the order dated 16.1.2002 passed by learned Chief Judicial Magistrate, Jamshedpur, whereby and whereunder cognizance has been taken for the offence punishable under section 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970 (The Act for short).

2. A complaint was lodged by the opposite party No. 2 in his capacity as the Assistant Labour Commissioner (C), Chaibasa and Inspector appointed under section 28 of the Act to the effect that the accused persons were executing contract work of erection of electrical equipments of Lafarge Cement, Jamshedpur and are the persons responsible for maintenance of registers/ records and observance of various other provisions of the Act and the rules framed therein. It has been alleged that on inspection made in the establishment of the accused persons, several discrepancies were found, which were not in

conformity with the Rules and as such the complaint case was instituted for the offence punishable under sections 23/24 of the Act.

3. On receipt of the prosecution report, the learned Chief Judicial Magistrate, Jamshedpur was pleased to take cognizance on 16.1.2002 in C/2 Case No. 185 of 2002 for the offences punishable under section 23/24 of the Act.

4. It has been submitted by the learned Senior Counsel for the petitioners that the petitioner No. 1 at the relevant point of time was the Chief Manager of Siemens Ltd., whereas the petitioner No. 2 was the Director of Siemens Ltd. and both were holding the office in Kolkatta in the State of West Bengal. It has further been submitted that section 25 of the Act having not been complied with and the allegation that the petitioners were incharge of and responsible for day-to-day affairs of the company, were not preceded by an inquiry and as such no offence under sections 23 and 24 of the Act is maintainable as against the petitioners. In this context, he has referred to the judgment in the case of Indian Iron and Steel Company Limited and Another Vs. The State of Bihar and Another and in the case of Armin Bruck @ Amin Bruck v. State of Jharkhand and another in Cr.M.P. No. 813 of 2010.

5. Learned Counsel for the opposite party No. 2, on the other hand, has submitted that it has been specifically mentioned at paragraph 23 of the complaint petition that the petitioners were the persons responsible for maintenance of registers/records and observance of various other provisions of the Act and Rules and in such circumstances, learned Counsel for O.P. No. 2 asserts that the petitioners were responsible being incharge of day to day affairs of the company and in such circumstance, the cognizance was rightly taken by the learned Chief Judicial Magistrate, Jamshedpur and no interference is warranted in the order taking cognizance.

6. After hearing the learned Counsel for the parties and after going through the records, I find that at paragraph 3 of the complaint petition, a vague statement has been made by the complainant- opposite party No. 2 to the effect that the petitioners were the persons responsible for maintenance of registers/records and observance of various other provisions of the Act and Rules made therein at the said establishment. This statement appears to have been made solely with the purpose that the petitioners can be held responsible for committing the offence punishable under section 23/24 of the Act. There is nothing in the complaint petition, which would reveal the fact that infact prior inquiry was conducted to establish the fact as to whether the petitioners were the persons responsible and incharge of day-to-day affairs of the company. Learned Senior Counsel for the petitioners has harped upon section 25 of the Act, which reads as under:--

"25. Offences by companies.--(1) If the person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to, the company for the conduct of its business at the time of

commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purpose of this section--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm means a partner in the firm."

7. In this context, reference may be made to the case of Indian Iron and Steel Company Ltd. and another v. The State of Bihar and another (supra), in which it was held as follows:--

"16. So far as the submission urged on behalf of petitioner No. 2 is concerned, that appears to have force section 2(g) of the Act defines the principal employer as follows:

"2. Definitions:--

(g) "Principal employer" means,--

(i) In relation to any office or department of the Government or local authority, that head of that office or department or such other officer as the Government or other local authority, as the case may be, may specify in this behalf.

(ii) In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

(iii) In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named.

(iv) In any other establishment, any person responsible for the supervision and control of the establishment."

Section 25 of the Act provides that if the person committing an offence under the

Act is a company, the company as well as every person-in-charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be proceeded against and punished accordingly. From the complaint lodged by the Labour Enforcement Officer it appears that petitioner No. 2 has been made an accused only because he happened to be the Chief Executive of the Colliery in question, and is also the principal employer as per section 2(g)(iii) of the Act. While we do not express any view on the question as to whether petitioner No. 2 should be prosecuted in the instant case, we do feel that before a prosecution is launched against an officer or a company, it must be preceded by some enquiry on the question as to whether the person sought to be prosecuted had some role to play in the employment of contract labour in contravention of the Notification. Mere mechanical reproduction of the words of the statute and the naming of an accused also in a mechanical manner without making some enquiry into the matter must not be encouraged, because that may have the effect of harassing an innocent officer while exonerating one who ought to have been prosecuted. There is nothing in the complaint disclosing on what basis it is alleged that petitioner No. 2 had engaged the contract labour for removal of overburden. The Act seeks to punish those who are responsible for the commission of an offence, and we cannot lose sight of the fact that the existence of mens rea is not excluded either by any express provision of the Act or by necessary implication. It was submitted on behalf of the petitioners that the Company in question had appointed a Manager as statutorily required under section 17 of the Mines Act."

8. The effect of section 25 of the Act and the pronouncement made by this Court would go to show that complaint has to be preceded by an inquiry in order to establish the fact that the accused persons/petitioners have some role to play in the day to day affairs of the company, meaning thereby he is liable to be prosecuted for the offence punishable under section 23/24 of the Act. This having not been done and only a vague statement has been made in the complaint the same cannot be enough to prosecute the petitioners for the alleged offence. Accordingly, there being merit in this application, the same is allowed and the entire criminal proceedings in connection with C/2 Case No. 185 of 2002, corresponding to T.R. No. 1107 of 2006 including the order dated 16.1.2002 passed by learned Chief Judicial Magistrate, Jamshedpur, whereby and whereunder cognizance has been taken for the offence punishable under section 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970, is hereby quashed.