

(2002) 03 JH CK 0093

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 3545 of 2001

A.K. Sen Gupta @ Alok Kumar Sen Gupta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-03-2002

Acts Referred:

Mines Act, 1956 — Section 72, 72C

Penal Code, 1860 (IPC) — Section 299, 304, 34

Citation : (2002) AIR Jhar HCR 445 : (2002) 3 RecCriR 572 : (2002) Crimes 3 376 : (2002) JCR 2 512 : (2002) JLJR 3 472 : (2002) CriLJ 2272

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Anil Kr. Sinha and P. Chatterjee, for the Appellant; M. Chourashia, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—This application u/s 482, Cr PC has been filed for quashing the FIR of Jharia (Tisra) P.S. Case No. 49/2001 pending in the Court of Chief Judicial Magistrate, Dhanbad, and all the proceedings therein, besides any order that the Court deems fit and proper.

2. On 2.2.2001, the Officer-in-charge, Lodna Out-post, received information that water-logging in Seam No. 7 of Bagdig Colliery started taking place and the officers and workmen were trapped inside the Mine. He registered a Sanha No. 28 dated 2.2.2001 and he along with the Sub-Inspector and policeman went to the colliery. There he heard from the assembled angry persons that the Officers have put the lives of workmen in danger. There were fractional activities for the rescue work. He also came to know that in the Bagdigi Colliery No. 7 Seam had broken and water was entering in the Mine very fast and barring 30-35 persons rest of the persons came out of the Mine safely. After sometime, Halim Mian, Haugage Khalashi, Bhojram Bilaspuri, Md. Jalil, Fitter, came out of the Mine and they also stated the same story and narrated about the water sippage. They had

also informed the Manager, Assistant Colliery Manager that 30 more person were trapped inside the Mine due to heavy rush of water. On 5.2.2001, Drivers recovered the dead-body of Cable man Pritam Singh and the rescue operation was still continuing. The Of-ficer-in-charge received further information that due to excess cutting of coal, water sip-page has increased and that information was given to the Agent A.K. Sengupta, General Manager Sri Shrivastava, Area Safety Manager A.K. Gupta, Safety Officer of Bagdigi Colliery, Mining Sardar, Overman and others persons. In spite of that no safety arrangements were made and deliberately continued the coal mining. The officers of M/s. B.C.C.L. and officers of Director General Mines Safety were blamed for the death of the workmen. On the basis of the aforesaid information, the Officer-in-Charge instituted the FIR against the General Manager, Safety Officer, Agent, Assistant Manager, Mining Sardar, Overman and Officer responsible for safety of Bagdigi Colliery u/s 304/34, IPC read with Section 72(C) of the Mines Act, 1956 as also Regulations 127/128 of the Mines Regulation, 1961, vide Annexure-1.

3. Though in the FIR the aforesaid petitioner A.K. Sengupta has been described as the Agent of the said Colliery but in the petition A.K. Sengupta has not disclosed his identity as the Agent, rather he has stated in that column that he resides at Agent's Bunglow.

4. The petitioner's case is that though the Officer-in-Charge has filed the case, the petitioner has been falsely implicated. There was a big hierarchy from lower level upto the level of the Agent in the Bagdigi Colliery and the Open Cast Projects and the agent of Bagdigi Colliery has a number of officials working under him. The Agent of Bagdigi Colliery had to maintain the liason with the Area and the Colliery and he has also to maintain industrial relations with the operating unions at unit level, arrange to procure materials for safety and production as is requisitioned by the Manager from time to time, to look into financial management, inventory control and he had also to deal with different technical matters with DGMS. It is the further cast" of the petitioner that the B.C.C.L. is the owner of the Bagdigi Colliery and the mining operations in the said colliery have been exclusively done as per the provisions of the Mines Act and the Coal Mines Regulations, 1957 and the Colliery Officials of the said colliery had been performing their duties in accordance with law and said Colliery was under the charge of the Agent under whom a number of personnel of different disciplines including the Mining Personnels used to work. On the fateful day, the Colliery was under the charge of Manager, Asstt. Colliery Manager, including the Overman and Mining Sardars, Short Firer etc. for underground mining operations. A.K. Upadhaya and P.R. Singh were the Manager and Asstt. Colliery Manager respectively in the said Colliery and the entire mining operations were done on the basis of the Survey Plans of the Colliery. There was no mining operation at the third level and the production had already been stopped from third level from the Bagdigi Colliery since long and there has been no sippage at all of the coal barrier in the abnormal manner in 7 Seam of Bagdigi Colliery, rather there has been the normal sippage in the underground operation and there has been no

abnormal sippage at all on the joint barrier of Jairam-pur and Bagdigi Colliery which would have drawn the special attention inside the Mine. The pumping capacity installed in 7 Seam remained the same for the last several months and there has been no change which substantiated that there was no abnormal sippage in the mining district of 7 Seam. Mining operation and coal production was being done on the 5th and 6th level on the day of the incident and no blasting at the third level and mining operation have been done as has been alleged. Therefore, the petitioner cannot be legally connected with the incident dated 2.2.2001. It is the further case of the petitioner that all necessary protection has been followed by the Mining Officials and all protections had been taken since long at the places of apprehended danger as well and the Mining Officials had never shown their reluctance or negligence on their part and for the last 14 years there has not been a single casualty in the Bagdigi Colliery. The Mining Officials were not informed by any of the Miners or Mining people working inside about the abnormal sippage. Even when the Mine was inspected by the D.G.M.S. officials on 16.11.2000 and 30.12.2000, everything was found in normal and there was no report of any sippage and the rescue operation was completed and they could recover the dead bodies of 29 persons including the dead body of the Mining Sardar and one person Salim Mian was taken out alive who categorically stated before the police and before the D.G.M.S. officials that there was no sippage and there was no wrong under the Mine. D.G.M.S. are holding enquiry and u/s 24 of the Mines Act, the Central Government is empowered to appoint Court of enquiry and in the absence of the report of enquiry the petitioner cannot be legally charged and connected with the aforesaid offence. In view of the similar instance with regard to the Gazlitang Colliery of B.C.C.L. as occurred on 26.9.1995 in which 65 persons had lost their lives but on a petition filed by the Chief General Manager and Acting Chief General Manager, the prosecution against them u/s 304/34, IPC was quashed by this Court in Cr. Misc. No. 4050/1997R and 4108/1997R on 18.11.1999. It is further stated that no parallel enquiry can be made in view of the instructions of the Central Government in cases of mining accidents and instituting cases thereof under IPC where the Inspector of Mines had commenced enquiry, in such cases no police officer should start a fresh enquiry until the enquiry in progress has been completed by the authority of D.G.M.S. and should await the reports of the Mines Inspector before filing the case in the Court of law. It is the further case of the petitioner that u/s 75 of the Mines Act, no prosecution shall be instituted against any owner/Agent or Manager or any offence under this Act except at the instance of the Chief Inspector of Mines the D.M. or of an Inspector authorised in this behalf by the Chief Inspector. The petitioner, therefore, has prayed that he has committed no offence, he cannot be prosecuted u/s 304/34, IPC and u/s 24 of the Mines Act, unless the Court of enquiry of the Central Government submits report in such prosecution case.

5. In this context, Section 72-C of the Mines Act, being apposite, is reproduced below :

"72-C. Special provision for contravention of law with dangerous results.--(1) Whoever contravenes any provision of this Act or of any regulation, Rule or bye-law or of any order made thereunder (other than an order made under Sub-section (1-A) or Sub-section (2) or Sub-section (3) of Section 2 (or under Sub-section (2) of Section (22-A) shall be punishable-

(a) if such contravention results in loss of life with imprisonment which may extend to two years or with fine which may extend to Five thousand rupees, or with both, or

(b) if such contravention results in serious bodily injury with imprisonment which may extend to one year, or with fine which may extend to three thousand rupees, or with both

(c) if such contravention otherwise causes injury, or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both;

Provided that in the absence of special and adequate reasons contrary to be recorded in writing in the judgment of the Court, such fine, in the case of a contravention referred to in Clause (a), shall not be less than three thousand rupees.

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by Sub-section (1).

(3) Any Court imposing or confirming in appeal or otherwise a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative:

Provided that if the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal."

6. A plain reading of the provisions of this section makes it clear that the offence does not lie in any loss of life or serious bodily injury, but if the offence contravenes any provision of the Act, Regulation, Rule, Bye-law or any order made thereunder, Clauses (a) and (b) provide for punishment and it has been provided that if the non-compliance results in loss of life punishment is awardable. Similarly, when this result is covered by Section 72-C with punishment which is permissible. A reading of this provision, therefore, clearly goes to show that the offence does not lie in loss of life, but the offence lies in non-compliance with the orders and directions made in this order and this provided law.

7. Police had assumed jurisdiction on the ground of loss of life and bodily injury

to persons and a number of persons might have lost life but when the loss of life, notwithstanding the number of lives is due to an accident occurring due to non-compliance of certain rules and regulations of the Act or the rules or the regulation made therein, then all the offences, notwithstanding the loss of life, will be covered by various sections of the Act and Rules and Regulations for which punishment has been prescribed u/s 72 of the Act. Mining operations are always hazardous and risky for life and serious bodily injuries to the employees and officers are always there and because of the nature of the work itself and the hazard ingrained therein, if any loss of life occurs, it does not mean that any person in fact had any intention to cause the death of the persons who lost their lives in course of operation in which they had been engaged in. Thus, necessary ingredients for an offence u/s 299, IPC and punishable u/s 304, IPC will be wanting in such cases and similarly, the recklessness and negligence will remain as the cause of the loss of lives, but for recklessness and negligence there is punishment prescribed in the law 72-C itself. In this connection, the reported decision of this Court in Cr. Misc. Nos. 4050/1997R and 4108/1997R has been referred to by the petitioner. In those cases, similar situation was there and the Court had quashed the proceedings after discussing all the aspects of the matter and agreeing with those arguments, I also find that when the law is enshrined u/s 72-C of the Mines Act itself talks not of life, but prescribes a punishment under that very section then in that circumstances for loss of life, no separate prosecution can be there. In view of this, I find merit in this application and consequently, the FIR in Jharia (Tisra) P.S. Case No. 49/2001 pending in the Court of learned Chief Judicial Magistrate. Dhanbad, is quashed, so far the petitioner is concerned. This application is allowed.