(2004) 11 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : 561-A Cr.P.C. No. 103 of 2003

Andre Pothoun APPELLANT

Vs

State RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Jammu and Kashmir Motor Transport Workers Rules, 1972 — Rule 39
Motor Transport Workers Act, 1961 — Section 2, 24(1)
Motor Vehicles Act, 1988 — Section 2(8)

Citation : (2005) 1 JKJ 263

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : C.M. Koul, for the Appellant; Anil Sethi, Addl.AG, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gupta, J.—This is a petition u/s 561-A Cr.P.C. seeking to quash the complaint entitled State v. A. Pathuon, General Manager, M/s

Complex, pending in the Court of Sub Judge, Judicial Magistrate, Ist Class, Kishtwar, and the proceedings taken thereon, in alleging that in view of

the definition provided in Section 2(g) of the Motor Transport Workers Act, 1961 (hereinafter for short 'the Act""), the Act does not find

application to the petitioner and the proceedings are resulted in abuse of the process of the Court.

2. The facts relevant for the disposal of this petition, put tersely, are that M/s Complex is carrying out its working at the site of Dulhasti Hydro-

Electric Project, Kishtwar, in accordance with rules and regulations. That the petitioner is maintaining the record at the relevant registers in M/s

Complex, strictly in accordance with rules and regulations in respect of its working either at its Head Office or base Office at Kishtwar or at its

working site at Dulhasti. That a complaint has been filed against the petitioner by the respondent-State through Labour Officer/Labour Inspector of

Shops and Establishments, in alleging that on 05-05-2003 during his inspection of the above establishment, it was found that the petitioner-accused

has failed to provide uniform to drivers and other staff, which act is in contravention of Section 24(1) of the Act. It was further stated that the

accused-petitioner has also failed to submit annual return in the office so far, which is required to be filed by Ist February in Format-VIII, which

also amounts to infraction of Rule 39 of the J&K Motor Transport Workers Rules, 1972 (hereinafter for short as ""the Rules, 1972""), framed under

the Act. On the complaint filed by the Labour Inspector, cognizance has been taken by the trial Court and issued process against the petitioner u/s

24(1) of the Act and Rule 39of the Rules, 1972, framed under the Act.

3. Mr. C.M. Koul, learned counsel appearing for the petitioner, submitted at the threshold that the Act does not apply to the establishment of the

petitioner in view of the definition provided u/s 2(g) of the said Act. His further submission is that M/s Complex is a Company, which deals entirely

in setting up of Powerhouse at Dulhasti Hydro-Electric Project, Kishtwar and is not a Motor Transport Undertaking engaged in carrying

passengers or goods or both by road for hire or reward, as contemplated u/s 2(g) of the Act. When the Act is not applicable, the petitioner,

therefore, cannot be said to have violated the provisions of Section 24(1) and Rule 39 of the Act and, thus, cognizance taken by the Trial Court

and process issued against the accused-petitioner is abuse of the process of the Court, and requires to be quashed.

4. Whereas Mr. Anil Sethi, learned Additional Advocate General appearing for the respondent-State, however, submitted that notwithstanding that

the accused-petitioner is a private carrier and using its staff vehicles to carry its employees, it squarely falls within the ambit of the Act. His further

contention is that the establishment is a Motor Transport Undertaking, as is clear from the context, and, therefore, it carries passengers to the site

from the base camp, which includes a private carrier. That the accused-petitioner, amongst its other activities, also maintains transport vehicles for

the carriage of its own goods and is, thus, a private carrier, as defined in Section

2(8) of the Motor Vehicles Act. The petitioner, according to Mr.

Sethi, is, thus, a Motor Transport Undertaking within the meaning of Section 2(g) of the Act, so far as its activities as a private carrier are

concerned, and is required to provide uniform to its Drivers and other staff, u/s 24(1) of the Act, in addition, to file annual return in Format VIII by

Ist of February, as required under Rule 39 of the Act.

5. A short question that arises for consideration is whether the staff vehicles of the Company falling within the definition of a private carrier, fall

within the purview of the Act and further whether the drivers of the staff motor cars owned and used by the accused-petitioner unconnected with

its activities as a private carrier are 'motor transport workers' within the meaning of the Act.

6. The establishment, undoubtedly, has private vehicles, viz., staff cars, jeeps, etc. It carries on other business activities also, but it is not a private

carrier for all intents and purposes. 'Private Carrier' is a 'Motor Transport Undertaking' u/s 2(g) only by an extended meaning given to those words

defined by that sub-section and that extended meaning is not necessarily to be substituted for those words whenever they occur in the Act. As

such, the establishment, M/s Complex, cannot be said to be a Motor Transport Undertaking in relation to its activities of the staff vehicles. The

Company is required to give its declaration only for its goods vehicles used for its private carrier activities, but not of its staff cars, jeeps, etc.,

which are not connected with that activity. It further follows that since the establishment, M/s Complex, is only an undertaking as a private carrier,

drivers of its staff cars etc. cannot fall within the clause, and is clearly borne out by the legislative intentions.

7. In the above view of the matter, I am of the opinion that the drivers of the staff vehicles of the petitioner unconnected with the activities as a

private carrier cannot be termed as 'Motor Transport Workers' within the meaning, even inclusive Clause (h) of Section 2, of the Act, and the

petitioner is neither required to provide any uniform to its drivers and other staff nor file any annual return under the Act.

8. In the facts and circumstances of the case, the establishment, M/s Complex, cannot be said to be a ""Motor Transport Undertaking"", engaged in

carrying passengers or goods both by road for hire or reward, within the meaning of the Act. Since the Act is not applicable to the establishment of

the accused-petitioner, taking cognizance on the complaint filed by the Labour Inspector and issuing process by the Trial Court against the

accused, has amounted to abuse of the process of the Court and deserves to be quashed, and is accordingly quashed in allowing the petition.

9. Disposed of.

