

(2014) 07 JH CK 0029
In the Jharkhand High Court
Case No : Cr. M.P. No. 2945 of 2013

Arvind Kumar Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Constitution of India, 1950 — Article 12
Criminal Procedure Code, 1973 (CrPC) — Section 197
Mines Act, 1952 — Section 72A, 72C(1)(a), 72C(1)(c), 79, 79(ii-a)
Penal Code, 1860 (IPC) — Section 21

Citation : (2014) 4 AJR 665

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Sameer Sauravh, Advocate for the Appellant; P.K. Choudhary, A.P.P. and Prabhash Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the opposite parties.

2. The petitioners are aggrieved by order dated 23.12.2011 passed by Ms. Richa Srsivavata, learned Judicial Magistrate 1st Class, Dhanbad, in C.M.A. Case No. 193 of 2011, whereby cognizance has been taken against the petitioners for the offences under Sections 72A, 72C(1)(a) and 72C(1)(c) of the Mines Act. The petitioners have also prayed for quashing the entire criminal proceeding against the petitioners in this case.

3. The facts of the case lie in a narrow compass. Petitioner Arvind Kumar Sinha, was working as Manager, petitioner Narayan Prasad was working as Safety Officer, petitioner Bikash Kumar Sinha was working as Assistant Manager, petitioner Manoj Kumar Sah was working as Overman and petitioner Sanjay Kumar Mahto was working as Mining Sardar, in Patherdih Colliery of M/s. BCCL, wherein in the night shift of 23.7.2011 at about 2.00 A.M., a mass of shaly

sandstone roof measuring 3.8m x 1.70m x 0.20m thick, parted from the roof and fell down from a height of 3.9m, on a group of four loaders loading the blasted coal, inflicting serious injuries to them, in which, one of them succumbed to his injuries after a little while, the second loader died in the way to hospital, the third loader suffered injuries, while fourth loader escaped unhurt.

4. Enquiry was held by the O.P. No. 2, being the Dy. Director of Mines Safety, wherein it was found that there were violations of various regulations of the Coal Mines Regulation, 1957 and other statutory provisions and accordingly, the complaint was lodged against these petitioners being the Manager, Safety Officer and other officials of the Mines. On the basis of the written complaint and on the basis of the materials available on record, the learned Magistrate took cognizance for the offences under the Mines Act, as aforesaid, against the petitioners, which has been impugned in this petition.

5. Learned counsel for the petitioners has taken the sole point for challenging the impugned order, as also for quashing the entire criminal proceeding against the petitioners, submitting that Section 79 of the Mines Act mandates that no cognizance for any offence under the Mines Act shall be taken unless the complaint is made within three months of the date on which the sanction for prosecution is received by the Chief Inspector, in a case in which the accused is or was a public servant and the previous sanction of the Central Government or the State Government or of any other authority is necessary, for taking cognizance of the offence under any law for the time in force. It is submitted that admittedly the petitioners are in the service and on the pay roll of a Government Company as defined in the Companies Act, and accordingly, the petitioners are public servants within the meaning of sub clause (b) of twelfth description within Section 21 of the Indian Penal Code. It is accordingly, submitted that the petitioners being the public servants, no cognizance could be taken against the petitioners in absence of the previous sanction from the appropriate Government. In this connection, learned counsel has placed reliance upon a decision of the Ranchi Bench of the then Patna High Court in the case of Triloki Nath Raina Vs. State of Bihar, wherein it has been laid down as follows:-

13. As found above, the petitioner is a public servant, who was appointed by the President of India. The petitioner is being prosecuted not in the individual capacity but he is being prosecuted in official capacity for not doing his official duty in relation to the Act or Rule. The undertaking or company owned by the Central Government or such Corporation is deemed to be the State within the meaning of Article 12 of the Constitution of India and, therefore, the activities of the Corporation must be in connection with the affairs of that State. That section has given a protection to such a person, who is the public servant who is only removable from his service by the Central Government, if he had committed any offence in discharge or purported discharge of his official duties, the sanction of the Central Government is a necessary requirement.

(Emphasis supplied).

Placing reliance on this decision, learned counsel has submitted that the prosecution of the petitioners without obtaining the sanction of the appropriate Government is absolutely illegal and accordingly, the impugned order taking cognizance and the entire criminal proceeding against the petitioners, are fit to be quashed.

6. Learned counsel for the opposite parties, on the other hand, has submitted that the petitioners being the Managers and other officials of the Pathardih Colliery of the BCCL, are not on the pay roll either of the State or the Central Government and they are not paid their salary from the Government Exchequer. It is submitted that no sanction is required for prosecution of the petitioners u/s 197 of the Cr.P.C., and accordingly, Section 79 of the Mines Act is not at all attracted in favour of the petitioners. In the counter affidavit filed on behalf of the opposite parties, it is specifically stated as follows:-

3. That the prayers made in instant petition is totally devoid of any merit both in law as well as on facts and is fit to be dismissed. The law point raised in this petition is not applicable in the case of petitioner since they are not public servant, within the meaning of Sec. 21 of Indian Penal Code and they do not deserve any protection u/s 197 of Code of Criminal Procedure. That the petitioners are not employees of either State Govt. or Central Govt. and their salaries are not being paid from the consolidated fund of Government rather their salaries are being paid from the profits earned by concerned company.

There is no reply to the counter affidavit filed by the opposite parties, by the petitioners.

7. Learned counsel for the opposite parties has placed reliance upon a decision of the Hon'ble Supreme Court of India in Mohd. Hadi Raja Vs. State of Bihar and Another, , wherein, it has been held that protection by way of sanction u/s 197 Cr.P.C., is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution of India on account of deep and pervasive control of the Government. Placing reliance on this decision, it is submitted by the learned counsel for the opposite parties that sanction is not at all required u/s 197 of the Cr.P.C., for the prosecution of the petitioners and section 79 of the Mines Act is of no help to the petitioners.

8. In the backdrop of submissions of both the sides, it is to be examined whether the petitioners, being the officers of the Government Company as defined under the Companies Act, are entitled to the protection u/s 197 of the Cr.P.C., and consequently u/s 79 of the Mines Act.

9. Section 197 of the Cr.P.C., reads as follows:-

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to

have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

10. Thus, from the plain reading of this Section, it is apparent that the first requirement for a public servant for getting the protection of Section 197 of the Cr.P.C., is that such public servant must not be removable from his office save by or with the sanction of the Government. In the present case, the clear stand of the opposite parties is that the petitioners are not the employees of the Government. Accordingly, no sanction of the Government is required for removing the petitioners from their office. As such, even if the petitioners are the public servants within the meaning of Section 21 of the IPC, no protection is available to them u/s 197 of the Cr.P.C. In Triloki Nath Raina's case (supra), relied upon by learned counsel for the petitioners, the petitioner in the said case was the Director Technical of the Central Coalfields Ltd., and he was appointed by the President of India and accordingly, for his removal from office, the sanction of the Central Government was necessary, but in the case of the petitioners, no such sanction is required and the decision relied upon by the learned counsel for the petitioners is not at all applicable to the facts of the case.

11. This apart, Section 79(ii-a) of the Mines Act reads as follows:-

79. Limitation of prosecutions.--No court shall take cognizance of any offence under this Act, unless complaint thereof has been made-

(ii-a) in any case in which the accused is or was a public servant and previous sanction of the Central Government or of the State Government or of any other authority is necessary for taking cognizance of the offence under any law for the time being in force, within three months of the date on which such sanction is received by the Chief Inspector, or

12. Thus a plain reading of this section also, clearly shows that protection u/s 79 of the Mines Act is available to an accused only in case, the accused is such a public servant, so as the previous sanction of the Central Government or the State Government shall be necessary for taking cognizance of the offence under any law for the time being in force. But in the present case, as the petitioners are not removable from their office save by or with the sanction of the Government, no previous sanction of either the State Government or the Central Government is required for taking cognizance of the offence, and as such, Section 79 of the Mines Act is of no help to the petitioners. This apart, in Mohd.

Hadi Raja's case (supra), the Hon'ble Apex Court has laid down the law as follows:-

22. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however, important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the government as such within the meaning of Section 197 Cr. P. C.

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24. The importance of the public undertaking should not be minimised. The Government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and a distinct legal entity, such instrumentality stands on a different footing than the government departments.

27. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a Court of law but will amount to legislation by Court.

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28. Therefore, in our considered opinion, the protection by way of sanction u/s 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government.-

(Emphasis supplied).

13. Similarly, in N.K. Sharma Vs. Abhimanyu, , the Supreme Court of India has held as follows:-

13. Admittedly the salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction u/s 197 Cr.P.C.

(Emphasis supplied).

14. As already noted above, the specific case of the opposite parties in their counter affidavit is that the petitioners are not the employees of either of the State Government or the Central Government and their salary is not being paid

by either of them. In that view of the matter, the law laid down by the Apex Court in N.K. Sharma (supra) is also fully applicable to the facts of this case.

15. In view the aforementioned discussions, it is manifestly clear that the petitioners, though are the public servants within the meaning of Section 21 of the Indian Penal Code being in service and pay roll of the Government Company as defined in the Companies Act, but in view of the fact that they are not removable from their office save by or with the sanction of the Government, they are not protected u/s 197 of the Code of Criminal Procedure. Consequently Section 79 of the Mines Act is also of no help to the petitioners.

16. Accordingly, I do not find any illegality in the impugned order dated 23.12.2011 passed by Ms. Richa Srivastava, learned Judicial Magistrate, 1st Class, Dhanbad, in C.M.A. Case No. 193 of 2011, taking cognizance against the petitioners for the offences under sections 72A, 72C(1)(a) and 72C(1)(c) of the Mines Act. Consequently, no case is made out by the petitioners for quashing the criminal proceeding against them in the said case.

17. There is no merit in this criminal miscellaneous petition and the same is accordingly, dismissed.