
(1990) 03 PAT CK 0017

In the Patna High Court

Case No : Criminal R. No"s. 129 to 138 of 1985 (R)

Bajrang Mica Co. Pvt. Ltd. and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1)(A)

Citation : (1990) 38 BLJR 1165 : (1991) 62 FLR 395 : (1993) 3 LLJ 925

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Advocate : G.C. Bharuka and Tapan Sen and S.K. Ughal, for the Appellant;
Indrani Choudhary, JC to S.C.C.G., for the Respondent

Final Decision : Allowed

Judgement

L.P.N. Shahdeo, J.—All these ten revision applications, i.e. Criminal Revision Nos. 129 of 1985 (R), 130 of 1985 (R), 131 of 1985 (R), 132 of 1985 (R), 133 of 1985 (R), 134 of 1985 (R), 135 of 1985 (R), 136 of 1985 (R), 137 of 1985 (R), and 158 of 1985 (R) have been taken up together and disposed of together for the sake of convenience as common question of law and facts are involved in all these ten revision applications. Their substance of allegation is also similar and they can be disposed of together for the sake of convenience with consent of the parties, they have been heard together and being disposed of by this common judgment.

2. All the aforesaid revisions arise out of the common judgment of the Trial Court dated May 26, 1980 passed by Sri Rajendra Sinha, Judicial Magistrate 1st Class, who had convicted all these petitioners-accused persons for the offence u/s 14(1-A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and sentenced each of the petitioners to undergo R.I. for three months and also to pay a fine of Rs. 1,000.00 (one thousand), in default, they were further directed to undergo R.I. for one month. Feeling aggrieved all the petitioners have

preferred Criminal Appeal Nos. 183 of 1980 to 192 of 1980, which were heard and decided by the 4th Addl. Sessions Judge, Dhanbad, who dismissed all the appeals and maintained the conviction imposed against the petitioners and confirmed the sentence. Feeling aggrieved by the aforesaid judgment of the Appellate Court, all the petitioners have preferred the aforesaid criminal revision applications in this Court, which are being disposed of by a common judgment,

3. Mr. Bharuka, learned counsel appearing for all the petitioners has submitted that at first the petitioners had pleaded not guilty and the Court had ordered for production of the witnesses, but subsequently the petitioners had filed a petition on July 12, 1979 expressing their desire to plead guilty and thereafter, their statements were recorded u/s 313 of the Code of Criminal Procedure and they were held guilty and convicted and sentenced to the extent as indicated above. It was, therefore, submitted that without any evidence, the petitioners could not have been convicted as there was no circumstance appearing in evidence which could have been put to the accused-petitioners to explain or to plead guilty and, therefore, the conviction of all the petitioners are bad in law. It was also submitted that the statements made by each of the petitioners do not make out any case and, therefore, convictions are bad in law. It was also submitted that once they had not pleaded guilty, the Magistrate had no option but to conclude the trial in a regular manner, even though, they had filed such a petition. It was also submitted in this case that ultimately all the provident fund, administrative charges and return forms were deposited and submitted and, therefore, there was no ground for filing a complaint petition. The last submission in this case is that the Company was accused No. 1 and the Company has also been convicted and sentenced to imprisonment which is quite illegal.

4. Criminal Revision No. 129 of 1983 (R) to Criminal Revision No. 132 of 1985 (R) relate to non-payment of administrative charges for the months of July, August and September, 1975, October, November and December, 1975 respectively. Criminal Revision No. 133 of 1985 (R) to Criminal Revision No. 135 of 1985 (R) relate to failure to deposit provident fund contribution for October, November, and December, 1975, January, February and March 1976 and April, 1976 and also non-submission of returns respectively, Criminal Revision No. 136 of 1985 (R) to Criminal Revision No. 138 of 1985 (R) relate to for non-submission of monthly statements for different months indicated therein.

5. It is admitted position in this case that Opposite party No. 2 is the Inspector of Provident Fund, who had obtained necessary sanction from Sanctioning Authority, for prosecution, which was accorded on September 5, 1976 attached with the complaint petition and thereafter, the complaint against the petitioners on November 4, 1976, was filed, but it appears that the petitioners had complied with all objections and submitted the returns on September 11 1976, but this matter was not brought to the notice of the Sanctioning Authority when complaint was filed on November 4, 1976. It is also admitted position in this case that Employees' Provident Fund Act was made applicable to the Establishment of

the petitioners with effect from June 16, 1975.

6. It is also admitted position in this case that the substance of the accusation was read over and explained to all accused-persons u/s 251 of the Criminal Procedure Code and all the petitioners had pleaded not guilty on May 16, 1979. The Court had ordered for production of the witnesses. But it appears that on July 12, 1979 a petition was filed in the Court below stating that all the petitioners intended to plead guilty and, therefore, u/s 313 of the Code of Criminal Procedure the Magistrate proceeded to examine the accused -persons and examined them, who pleaded guilty and convicted and sentenced them.

7. The procedure for regular trial of a summon case is provided under Chapter XX of the Code of Criminal Procedure. The Chapter shows that first of all when the accused appears or is brought before the Magistrate, the substance of the accusation is to be explained to him and then he shall be asked as to whether he pleads guilty or has any defence to make out. In case, he pleads guilty, he can be convicted but in case he does not plead guilty, the Magistrate will proceed to examine the witnesses and on taking such evidence, as provided u/s 273 of the Code of Criminal Procedure if he finds him guilty, he shall convict him and if he finds him not guilty, he shall record an order of acquittal. Therefore, in the whole of this Chapter only one stage has been prescribed for the accused either to plead his guilt or not to plead his guilt as provided u/s 251 Cr. P.C. No stage has been prescribed under this Chapter that the accused at any stage of trial, can again plead guilty and he can be convicted. Therefore, the procedure adopted in this case by the trial court is against the express provisions made under this Chapter.

8. It is the admitted position in this case that at first stage when the particulars of the offence were explained to the accused, they did not plead their guilt but at the subsequent stage, they had filed a petition intimating to plead their guilt. Such a stage for filing a petition to plead guilty after they had pleaded not guilty, is not laid down under this Chapter. Therefore, the procedure adopted by the learned Magistrate appears to be wholly illegal and not in accordance with the procedure prescribed for the trial of the summons cases under Chapter XX of the Cr. P.C. Therefore, the learned Magistrate in the facts and circumstances, as discussed above, had only one alternative to examine the witnesses and then to find the accused guilty or not guilty on the basis of the evidence so recorded by him. Admittedly the learned Magistrate had not adopted that procedure laid down under law and, therefore, the conviction of these petitioners in all the ten cases, appears to be not in accordance with law and, hence, cannot be sustained.

9. It is true that u/s 313 of Cr.P.C. the accused can be examined at any stage of the enquiry or trial but the condition precedent prescribed u/s 313, Cr. P.C. is that the accused can be examined to explain the circumstances appearing against him. The Magistrate had examined all the petitioners u/s 313, Cr.P.C.

10. In this case admittedly, not a single witness was examined in any of the

case, i.e. Criminal Revision No. 129 of 1985 (R) to Criminal Revision No. 132 of 1985 (R) except Criminal Revision Nos. 133 of 1985 (R). Therefore, there was no occasion for examining the accused in course of the trial as no circumstance or evidence had appeared against any of the accused involved in all these four cases referred to above to explain or to admit their guilt in view of the fact that no evidence was appearing against them. Therefore, the conviction of the petitioners, without any evidence, in respect of the aforesaid cases, appears to be erroneous and cannot sustain in law.

11. The other point which crops upon in absence of any evidence is that as to whether the Magistrate had any jurisdiction to examine the accused without any evidence. The answer is in the negative. The Magistrate cannot examine the accused nor any such jurisdiction has been conferred upon him u/s 313, Cr. P.C. to examine any person without any evidence. The Magistrate can examine any person in any enquiry or trial at any stage only when some evidence has been adduced against him implicating him to the charge levelled. In absence of any iota of evidence, in my view, the Magistrate had no jurisdiction nor he was authorised under law, u/s 313 of the Cr. P.C. to examine any person who can offer to plead guilt without any evidence although, he had denied it at the appropriate stage prescribed under the law. Therefore, the conviction of the accused, without any evidence, on the basis of their statement recorded u/s 313, Cr. P.C. appears to be not only erroneous but also without jurisdiction.

12. In the other case i.e. Criminal Revision No. 133 of 1985 to Criminal Revision No. 135 of 1985 (R), three witnesses appear to have been examined. P.W. 1 appears to have proved certain documents and stated that the case was filed for non-submission of the returns within the prescribed time. Ultimately, he admitted in paragraph 9 of his cross-examination that he had no personal knowledge about this case. P.W. 2 simply proved the signature on the complaint petition. He also admitted in his cross-examination that he had no knowledge about it. P.W. 3 is the Inspector of Provident Fund, who stated that he had made enquiry and, thereafter he had filed the complaint, as the administrative charges, returns and provident funds were not deposited in time. The evidence of other two witnesses is not very relevant as they have said nothing against any of the accused. The evidence of P.W. 3 also does not specify or indicate that all or any of the accused were responsible for day to day affairs of the company and as such, they were liable. In the absence of such nature of evidence, there cannot be any conviction of any of the accused persons in all the aforesaid cases.

13. In this case it is the admitted position that petitioner No. 1 in all the cases, is the Company. The other petitioners are the Directors of the Company. Therefore, it was fundamental requirement to sustain a conviction that the prosecution must adduce clear, specific and cogent evidence to show that as to who was responsible for the conduct of the business of the company or responsible for day to day affairs of the company. In the absence of such evidence, the conviction of any of the petitioners is bad in law.

14. In this connection learned counsel for the petitioners has relied upon a ruling reported in Sham Sunder and Others Vs. State of Haryana, , which was a case under the Essential Commodities Act in which it was held that if the offence is committed by a firm, it must be specifically stated that who was responsible for carrying on the business during the relevant period or time or who was incharge of the business during that period. In the absence of any such evidence or proof, no partner can be convicted as some of the partners may be sleeping partners and some of them may be ladies and also minors who were admitted for the benefit of the partnership firm and they may not know anything about the business of the firm.

15. In these cases also, there is no evidence as to who was responsible for carrying on the Business of the company and in the absence of any such specific evidence, the principles laid down in the aforesaid case of the Supreme Court is also attracted in these cases and, therefore, the conviction of the petitioners in all the aforesaid cases, must be held to be bad in law.

16. It will also be better to examine as to in what manner the accused have confessed. It appears that the accused was asked whether he was Director of the Company, he said "yes" and, therefore, he was put to non-submission of the returns and administrative charges and he said "yes". Thereafter, he was asked if he had defence to make out, he stated that the forms were not supplied and, therefore, he could not file it and, thereafter, he was asked whether he had accepted his guilt, he said "yes".

17. This shows that the acceptance of the guilt was not unqualified one. He had offered explanation that because the forms were not supplied in time, therefore, he could not file the returns and deposit the requisite amount of administrative charges and the provident funds. This plea of guilt, therefore, recorded by the accused is not a total acceptance of allegation.

18. It will appear that the petitioners had written several letters for supply of the forms which all are annexures in this case, which are admitted and not disputed by the prosecution. They are Annexures-1, 2 and 3. The defence was also that because the forms were not supplied in time, they could not file the return and perform their part.

19. In this circumstance, it can be concluded that the petitioners had no mens rea to intentionally commit offence but they had under certain circumstances, not filed the returns and deposited the amount in time for want of forms which was admittedly, ultimately supplied to them and, thereafter, they had deposited. In a criminal trial no conviction can be based without any mens rea. These cases are one of the instances where the offence attributed against the Directors of the Company appears to be without any mens rea.

20. In this connection it may be noted that the petitioners had also deposited requisite amount and had also filed the returns but this fact was not brought to the notice of the Sanctioning Authority and the case was filed, as discussed

above. If this matter would have been brought to the notice of the Sanctioning Authority, I think that the case could not have been filed because such technicalities sometimes are ignored by the department and there is some departmental instruction for the same.

21. It is admitted position in this case that the complainant had not brought to the notice of the sanctioning authority before filing the case on November 4, 1976, that the petitioners had complied with all the requirements, had paid the administrative charges, deposited the provident funds and filed returns. If these matters were brought to the notice of the sanctioning authority, I think the sanctioning authority could not have permitted to file such criminal cases for this type of technical nature of offence, although, the sanctioning authority had sanctioned, but post sanction facts were not brought to his notice before filing the case and therefore, the sanctioning authority was deprived of to review the post development facts on the question of sanction in the light of new circumstance that had come or development that had taken place before the institution of the case. A duty and responsibility were cast upon the complainant to bring all these matters to the notice of the sanctioning authority, who could have modified the sanction or would have rescinded it or reapplied his mind to the new development and those facts having been not brought to his notice, must be considered as a vital lacuna leading to non-reappraisal of judicial mind of the sanctioning authority and, therefore, the sanction, which was once accorded, must be invalid in view of the subsequent development.

22. It is the admitted position in this case that petitioner No. 1 is the company. It is also the admitted position that petitioner No. 1 has also been convicted and sentenced to undergo three months R.I. and also to pay a fine just like other accused. The company cannot be physically sentenced to undergo R.I. It is the juristic person, no doubt, but such sentence of imprisonment, which is incapable of execution, cannot be imposed.

23. In this connection the learned counsel for the petitioners has relied upon a ruling reported in Income Tax cases to show the principle that in no case when a company is an accused, it cannot be convicted to any substantive sentence of imprisonment. Similar view was expressed in 1980 Income Tax Reports, Volume-126 page 804 and Income Tax Reports, 1983, Vol. 144, page 495. Therefore, a company cannot be sentenced to any imprisonment to serve out any sentence and this sentence is incapable of execution.

24. In this view of the matter the order of conviction in respect of petitioner No. 1 is held to be bad in law. The order of conviction in respect of other petitioners also must be held to be bad in law as they have not been attributed or specified as to what part they had played in connection with the affairs of the company, as discussed above. There is no direct evidence to fix up the responsibility on any of the petitioners that they were incharge of the affairs of the company and as such, responsibility for the day to day affairs of administration was directly on them. In absence of any such evidence, the conviction of all or any of the

petitioners must be held to be bad in law.

25. In the result, for the reasons stated above, all the revision applications are allowed. The order of conviction and sentence recorded against the petitioners, in all the cases, are hereby set aside.