
(1969) 08 PAT CK 0021

In the Patna High Court

Case No : Criminal Revision No's. 1470, 1471, 1472 and 1473 of 1968

Banwarilal Agarwal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-08-1969

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1898 (CrPC) — Section 403
Mines Act, 1952 — Section 76, 79

Citation : AIR 1970 Patna 377 : (1970) CriLJ 1510

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : Nageshwar Prasad and Sushil Kumar Muzumdar, for the Appellant;
Brajeshwar Prasad Sinha and Keshari Kishore Saran, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—The petitioner is one of the two directors of the Central Bhowra Coal Company (Private) Limited, a private company which owns a coal mine known as the Central Bhowra Colliery. He has filed these applications for quashing his prosecution in four cases which are pending against him since 1958.

2. It appears that in February 1958, the Chief Inspector of Mines filed four complaints alleging contravention of the provisions of certain sections of the Mines Act, 1952, read with certain rules and regulations of the Mines Rules, 1955, and the Coal Mines Regulations, 1957, whereby both the directors of the company were rendered liable for prosecution by reason of the provisions of Section 76 of the Act, as it then stood, and provided inter alia that:

""..... Where the owner of a mine is a private company, any one of the shareholders thereof, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable... ." On 23-6-1958, the accused persons filed a petition before the Sub-divisional Magistrate that the prosecution was bad since under the law, in the case of a limited company, only one director

could be prosecuted, and in support of it they relied upon a decision of this Court reported in *Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others*, wherein it was held that Section 76 contemplated the prosecution of only one out of the several partners, directors, or share-holders of the firm or the company, as the case might be, and, therefore, the prosecutor had to choose one of such persons for being prosecuted, and it was not open to it to prosecute the entire body of the partners, directors or share-holders of the firm or the company owning the mine. Faced with the aforesaid decision of this Court, the prosecutor intimated to the Court that it proposed to proceed against the petitioner only. Thereupon, on the 29th January, 1959, the Sub-divisional Magistrate recorded an order of discharge in favour of the other director, Shri Parneshwar Agarwalla. Thereafter, on the 8th April, 1959, the petitioner challenged the legality of his trial on the ground that the prosecution of only one of the directors of the company violated the rule of equality before the law enshrined in Article 14 of the Constitution of India. But this contention was rejected by the trial Court on 23-3-1960. The petitioner, however, moved the Superior Courts and ultimately the matter reached the Supreme Court in *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, which on the 10th February, 1961, set aside the decision of this Court in *Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others*, and held that the words "any one" in Section 76 should be interpreted as "every one", and that u/s 76, every one of the share-holders of a private company owning the mine and every one of the directors of a public company owning the mine was liable for prosecution and no question of violation of Article 14, therefore, arises.

3. After the aforesaid decision of the Supreme Court, the petitioner took the stand in the trial Court that his prosecution alone was not maintainable in view of the interpretation of Section 76 just referred to. But the trial Court by its order dated the 11th December; 1963, negated this plea of the petitioner. The petitioner then moved the Sessions Judge, and being unsuccessful there also, he came up to this Court in Criminal Revn. No. 476 of 1964 (Pat). That criminal revision was dismissed by a learned Single Judge of this Court on 5-5-1964 with the following observation)-

"In view of that decision *Banwarilal Agarwalla Vs. The State of Bihar and Others*, it will be necessary for the authorities incharge of the prosecution to consider whether they would prosecute all the directors of the company viz. the Central Bhowrah Coal Co. (Private) Ltd. So far as the petitioner is concerned, there is no reason at present to quash the prosecution."

4. When the matter went back to the trial Court, the petitioner put forward a grievance there that the prosecution had not complied with the aforesaid direction of this Court, in as much as, it had not chosen to proceed against the other director, Shri Parmeshwar Agarwalla. By its order dated 23rd August, 1966, the trial Court rejected the plea of the petitioner, holding that the observation of this Court dated 5th May, 1964 was only in the nature of a direction to the

prosecutor to consider the desirability of prosecution on both the directors and that there was no indication in that order that the non-prosecution of the other director rendered the prosecution of the petitioner alone as illegal. Against the said decision of the trial Court, the petitioner moved the Session's Judge for a reference to this Court u/s 438, Code of Criminal Procedure, but by the impugned order the learned Sessions Judge declined to make a reference. This petitioner has, accordingly, come up to this Court in revision.

5. Mr. Nageshwar Prasad, who appears on behalf of the petitioner in all these applications, contends that the continuance of the prosecution against the petitioner alone operates as an invidious discrimination against him, inasmuch as both the directors of the company stand on the same footing and the prosecutor has no right to pick and choose without any rational basis. Learned counsel lays stress upon the decision of the Supreme Court in *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, , whereby the decision of this Court in *Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others*, was set aside and it was held that the words "any one of the directors" which have been used in Section 76 mean "every one of the directors". In my opinion, there is no force in this contention. It will be noticed that when the prosecution was originally instituted, it was launched against both the directors of the company. In other words, the prosecutor did not pick and choose at that stage. No doubt, at a subsequent stage the prosecution intimated to the Court that it proposed to proceed against the petitioner alone, and as a consequence, the other director was discharged. In view of Section 248 of the Code of Criminal Procedure, the order of discharge recorded by the Subdivisional Magistrate on the 29th January, 1959, operated as an order of acquittal in favour of Shri Parmeshwar Agarwalla. If two persons are prosecuted on the same set of facts and if one of them is, for any reason, acquitted, it cannot legitimately be maintained that the continuance of the prosecution against the other person amounts to a discrimination against him. It is true that the acquittal of Shri Parmeshwar Agarwalla was brought about at the instance of the prosecutor, which was then faced with the decision of this Court in *Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others*, . But that can be of no consequence because Shri Parmeshwar Agarwalla was acquitted under the order of the Court, and so long as that order of acquittal stands, it is difficult to maintain that both the directors of the company are similarly circumstanced. It is manifest that as from the 29th January, 1959, the petitioner does not stand on the same footing as his colleague on the board who has been acquitted. The acquittal may have been on a wrong view of the law as it then prevailed, but it is an acquittal all the same. Besides, it is not open to the petitioner to maintain that because his colleague on the board has been , wrongly acquitted, so a wrong order of acquittal should be passed in his favour also.

8. There is another reason why the plea put forward by the petitioner cannot succeed; Section 79 of the Mine"; Act debars a Court from taking cognizance of any offence under the Act unless a complaint there-of has been made within six

months of the date on which the offence is alleged to have been committed. Therefore, by the 5th May, 1964, when Criminal Revn. No. 1476 of 1904 was disposed of by this Court, the prosecution of Shri Parmeshwar Agarwalla had become time barred and as such the authorities incharge of the prosecution were not in a position to ask for a revival of the proceedings against him. On this footing also, the cases of the two directors of the company stand on different footings. The trial Court has rightly observed that the decision of this Court in Criminal Revn. No. 476 of 1964. (Pat) does not amount to a direction to the prosecutor to proceed against Shri Parmeshwar Agarwalla, nor does it hold that the non-prosecution of Shri Parmeshwar Agarwalla would render the prosecution of the petitioner as illegal. It seems to me that even if the prosecutor would have thought of taking steps for the revival of the prosecution against Parmeshwar Agarwalla, it would have been confronted with the provision of Section 403 of the Code of Criminal Procedure in view of his acquittal under the order of the Sub-divisional Magistrate dated 29th January, 1959. It is quite clear, therefore, that so far as the prosecutor is concerned, it cannot be accused of making unfair discrimination against the petitioner by not applying for the revival of the prosecution against the petitioner's colleague.

7. I should also observe that soon after the decision of this Court in Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others, , Section 76 of the Act was amended by the Mines (Amendment) Act (Act 62 of 1959), and under the amended Section 76, which came into force on the 16th January, 1960, it has been provided that in such cases, all or any of the directors of a company, which is the owner of a mine, may be prosecuted and punished under the Act for any offence for which the owner of a mine is punishable. Therefore, after the decision of this Court in Criminal Revision No. 476 of 1964 (Pat), it was open to the prosecutor to continue the prosecution against the petitioner only.

8. For the aforesaid reasons, these applications fail and are, accordingly, dismissed.