

(1997) 12 PAT CK 0031

In the Patna High Court

Case No : Criminal Miscellaneous No. 7575 of 1992

Bidya Sagar Chaudhary @ V.S. Chaudhary

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Metalliferous Mines Regulations, 1961 — Regulation 172, 181, 39(1)(A)
Mines Act, 1952 — Section 76

Citation : (1998) 1 PLJR 589

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Y.V. Giri and Manu Shankar Mishra, for the Appellant; Ram Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—All these three applications arise out of the same order and as such heard together and are being disposed of by this common order/judgment. The Petitioners in all these three applications are the partners of the partnership firm namely M/s Kumar G.C. Pandey and company, who have challenged the order dated 6.1.1992, whereby the learned Magistrate took cognizance of an offence punishable u/s 720(1)(a) of the Mines Act, 1952 for violation of Regulation 39(1)(A)(i) as well as 172 of the Regulation namely Metalliferous Mines Regulations 1961.

2. The prosecution case according to the complaint petition briefly stated is that the Khaprajola, Pipal Jori Rajbanda Stone Mines belongs to M/s Kumar G.C. Pandey and company which was inspected on 17.7.1991, 18.7.1991 and 19.7.1991 by one Sri A. Kumar, Deputy Director Mines in connection with an enquiry to fatal accident to Chauki Marandi, a truck driver employed in the Mines. It is alleged that the Petitioners failed to maintain the gradients of haul road not steeper than 1 in 10 and to provide a strong parapet wall or embankment at least 1 M. high by the side of road which was at a height of 5.7

M. from lower bench as required by D.G.M.S. Circular No. 11 of 1973 and thereby omitted to ensure safety of Trucks plying on the haul road and their drivers in contravention of Regulation 181 of Metalliferous Mines Regulation, 1961. On the basis of the aforesaid allegation, a complaint petition was filed by Deputy Director, Mines, a copy of which is made Annexure-2 to this application.

3. Mr. Giri learned Counsel for the Petitioners has challenged the order mainly on the ground that one H.K. Chaudhary has been notified to be the Managing Agent of the company in question in terms of Section 76 of the Mines Act, and accordingly it is submitted that the said H.K. Choudhary is alone responsible for violation of the regulation as aforesaid and the Petitioners, who are the partners of the firm in question cannot be held guilty for violation of the provisions of the aforesaid regulation. In order to appreciate the argument of the learned Counsel, it is relevant to quote Section 76 of the Mines Act, which reads as follows:

76. Determination of owner in certain cases. Where the owner of a mine is a firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a company, all, or any of the directors thereof or where the owner of a mine is a Government or any local authority, all or any of the officers or persons authorised by such Government or local authority, as the case, may be, to manage the affairs of the mine, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable.

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated:

- (a) in the case of a firm, any of its partners or managers,
- (b) in the case of association, any of its members or managers,
- (c) in the case of company, any of its directors or managers,

who is resident, in each case in any place to which this Act extends and who is in each case either in fact in charge of the management of, or holds the largest number of shares in such firm, association or company, to assume the responsibility of the owner of the mine for the purposes of this Act, such partner, member, director or manager, as the case may be, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid be deemed to be the owner of the mine for the purpose of this Act, unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member, director or manager, as the case may be, is received by the Chief Inspector.

4. Admittedly the said Sri H.K. Choudhary was nominated to be the Managing Agent of the firm, in question, in terms of Section 76 of the Mines Act as it appears from Annexure-6 to this application. It is submitted the said Sri H.K. Chaudhary, in the capacity of a Managing Agent, filing the returns of the firm in question regularly before the authority concerned. In support of his contention,

he has relied upon a decision in the case of S.C. Choudhary and Ors. v. The State of Bihar (1977 B.B.C.J. 327), wherein dealing with somewhat similar provisions under the Bihar Sugarcane (Regulation of Supply and Purchase) 4th Ordinance 1975 (since it has become an Act), the learned Judge has held that the persons, who are managing the affairs of the firm can be held responsible for violation of any provisions of the said regulation. Learned Counsel for the State has not disputed the submissions made by Mr. Girl, on the contrary submits that the person who has been nominated in terms of Section 76 of the Mines Act can alone be held responsible for such violation of the regulation. Accordingly, I am of the view that in this case the person who has been nominated to manage the affairs of the firm can only be held liable for such violation, the prosecution of these Petitioners is not permissible in law. Accordingly the order taking cognizance dated 6.1.1992 so far Petitioners are concerned is hereby quashed, accordingly these applications are allowed.