
(1955) 12 CAL CK 0020
In the Calcutta High Court
Case No : Criminal Revision No. 811 of 1955

B.N. Mehrotra and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 15-12-1955

Acts Referred:

Boilers Act, 1923 — Section 2, 23, 6
General Clauses Act, 1897 — Section 3(42)

Citation : AIR 1956 Cal 137 : (1956) CriLJ 529 : 60 CWN 305

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : A.K. Dutta and Dilip K. Dutta, for the Appellant; J.C. Sinha, for the Respondent

Judgement

Debabrata Mookerjee, J.—This Rule was issued to show cause why certain proceedings pending against these petitioners u/s 6(c) read with Section 23, Indian Boilers Act should not be quashed or why such other or further orders should not be made as to this Court might seem fit and proper.

2. The proceedings are pending in the Court of a Magistrate, First Class, Barrackpore, against these four petitioners who are the directors of Messrs. Bharat Woollen Mills Ltd., Mill No. 2 at 4, Nillganj Road, Belgharia, 24 Parganas.

3. It appears that on 22-3-1954 the Chief Inspector of Boilers, West Bengal, wrote a letter of complaint asking for prosecution of the directors of Messrs. Bharat Woollen Mills Ltd., a public limited company registered under the Indian Companies Act.

The letter alleged that as a result of inspection of Mill No. 2 at 4, Nillganj Road on 24-12-1953 it was discovered that a particular boiler located In the mill was actually steaming without a certificate having been taken out for it authorising the use of the boiler. In these circumstances a prayer was made that a prosecution might be started against the petitioners for infringement of the

provisions of the Indian Boilers Act.

4. On receiving the complaint, the letter was forwarded by the District Magistrate to the Sub-Divisional Officer, Barrackpore, for disposal, according to law; and the latter made an order on 9-4-1954 in which it was stated that he had taken cognizance of the offence u/s 23, Indian Boilers Act against the petitioners and summoned them to take their trial. The petitioners then moved this Court and obtained the present Rule.

5. Section 6, Indian Boilers Act contains several clauses of which Clause (c) alone is material to the present case. That section says that "save as otherwise expressly provided in this Act, no-owner of a boiler shall use the boiler or permit it to be used unless a certificate or provisional order authorising the use of the boiler is for the time being in force under this Act".

Section 23 of the Act punishes illegal use of boilers and provides that a contravention by any owner of the boiler in the shape of its use without a certificate or provisional order will be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence.

Section 2(d) of the Act defines "owner" as including any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof. The word "owner" has, therefore, received a special meaning, under the definition which I have just read. It would include a person actually using a boiler or even an agent of the owner as much as any person who is using a boiler obtained on hire or on loan.

6. Mr. Dutt has contended that the present prosecution against these four petitioners who are said to be the directors of the company cannot be maintained in law. It is argued that a company registered under the Indian Companies Act is a person and that being so the person affected by the contravention would be the company itself.

The Indian General Clauses Act (Act 10 of 1897) which is applicable to this case defines "person" in Section 3(42), The word includes any company or association or body of individuals whether incorporated or not. I think there is considerable substance in this contention. It is indeed difficult to see what led the prosecuting authorities to prefer a complaint charging these petitioners described as directors with having committed offence u/s 23 read with Section 6(c) Indian Boilers Act.

Surely a director or all the directors do not constitute the company. The company is a legal entity which can very well be prosecuted if it is alleged that it is guilty of acts which make it punishable under the provisions of a penal statute.

7. Mr. Sinha has argued on behalf of the State that in view of the special significance attached to the word "owner" as defined in the Indian Boilers Act, the directors can be prosecuted for contravention of the provisions of Section

6(c) of the Act. As far as I can see the definition of the word "owner" does not assist this contention. The word "owner", as has already been seen, includes any person using a boiler of which he is the agent of the owner.

There is no allegation that these petitioners were using the boiler in question as agents of the owner. Nor is it said that they were using the boiler which was hired or obtained on loan from the owner thereof. The specific and particular definition of the word "owner" in the Indian Boilers Act cannot possibly be pressed into service in the present case for the purpose of bringing within its mischief the directors of the company. The definition merely enables prosecution of a person actually using a boiler as an agent of the owner. It also applies to the case of a person who uses a boiler on hire or obtained on loan from its real owner. I do not find any allegation against these petitioners that they were actually using them in the sense that they had their mind directed to the use of the boiler on the day in question. No question in this case arises of these petitioners having hired or obtained on loan the boiler from the real owner. The pertinent question seems to be who was actually using the boiler on the day in question.

Could it be said that since these four petitioners happened to be the directors of the company whose presence and participation in the actual use of the boiler are not even remotely suggested the present prosecution can be permitted to proceed against these petitioners? I think there can be no difficulty in answering the question in a firm negative.

In order that these petitioners can be said to be the owners within the special meaning of the word as used in the Act, there must be something said or suggested which will connect them with the actual use of the boiler. There is no such allegation or suggestion made against these petitioners.

8. Mr. Dutt has drawn my attention to a decision of this Court in the case of *Anath Bandhu Vs. Corporation of Calcutta*, (A). Chunder J. held in that case that in the case of limited company there was no question of there being a proprietor, and amongst other things it was held that a company could very well be proceeded against and made liable for offence which did not entail the infliction of imprisonment as a part of the punishment.

This decision is of assistance in the present case since it is to be observed that Section 23 which is the punishing section prescribes only fine as punishment that can be inflicted under that section for contravention of the provisions of Section 6(c) of the Act. That being so there can be no difficulty whatever in prosecuting the company. The company is indeed a person within the meaning of the Indian General Clauses Act which applies to the present case.

If the allegations are to be believed it was the Company itself which was using the boiler in question, and that being so, the prosecution should be directed against the company and not against the directors.

9. In a case such as this it is Indeed desirable that the company itself should be prosecuted rather than its promoters or directors unless it could be shown that the person who is being actually prosecuted be he a director or a secretary or otherwise connected with the company, has actually contravened the provisions of the law.

If for instance the directors of a company are prosecuted as directors and are ultimately convicted & sentenced to pay a fine, the fine has to be in such case realised in accordance with the provisions of Section 386, Criminal P. C. Supposing upon conviction the director is found entitled to nothing by way of remuneration from the company and that there are no assets of the company in which he is entitled as director to participate then, I imagine, it would be arguable that the fine in such case cannot be realised.

If distress is issued and directed against the property belonging to the director in his private capacity which has nothing to do with his position as director of the company, the penalty, it may be said, will go unrealised in such case inasmuch as his personal and private property cannot be seized in execution of the process issued and taken u/s 386 and other relevant sections of the Code of Criminal Procedure.

This Indeed is a reason for holding that the real offender in every case should be prosecuted. According to the allegations it is quite clear that it is the company which was in fact steaming the boiler without having a current certificate on the date of the alleged occurrence.

10. In these circumstances the Rule must be made absolute and the proceedings pending in the Court of the Magistrate at Barrackpore against these petitioners must be quashed. It is left to the authorities concerned to consider if they should prosecute the company, namely, Messrs. Bharat Woollen Mills Ltd, for the alleged offence u/s 23 read with Section 6(c), Indian Boilers Act.

11. The petitioners are directed to be discharged from the bail bonds.