

(2004) 09 JH CK 0046
In the Jharkhand High Court
Case No : Criminal M.P. 396 of 2003

Dr. Miss Sudha Jhingon

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Minimum Wages Act, 1948 — Section 2, 22

Citation : (2004) 3 BLJR 1856 : (2005) CriLJ 62 : (2005) 1 LLJ 903 : 2005
LabLJ 1 903 : (2005) 104 FLR 503

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : A.K. Srivastava and Rupresh Raj, for the Appellant; APP and A.B. Mahato, for the OP No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482, of the Code of Criminal Procedure has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 31.7.2002 passed in C/2 case No. 48 of 2002, as contained in Annexure-6.

2. The prosecution case in brief is that complainant-Labour Superintendent-cum-Inspector under Minimum Wages Act, 1948. Chaibasa after taking sanction u/s 22(b) of the Minimum Wages Act, 1948 filed a complaint before the learned Chief Judicial Magistrate, Seraikella alleging therein that when he and his associates went on 5.7.2001 to the firm named as M/s Gangotri Nursing Home and Research Centre for inspection, he met one Abhijit Dasgupta, receptionist of the firm and in course of inspection, he found that the petitioner's firm has committed several irregularities and violated provisions of Minimum Wages Act and Rules framed thereunder. Definitions are,--

(A) The employee had been given less Wages than fixed by the Government under Minimum Wages Act, 1948.

(B) Wages Register had not been kept in Form-X and on demand for inspection, register was not produced.

(C) The Muster Roll had not been kept in Form-V and on demand for inspection, it was not produced.

(D) Wage slip had not been issued in Form-XI and on demand it was not produced for inspection.

(E) The employer did not produce identity card and service card.

3. After inspection, the complainant gave notice to the accused by letter No. 367 dated 16.7.2002 to produce the relevant documents, but the employer's representative Sri Mohit Jhingon did not produce relevant register, although he met the complainant on that date.

4. Learned counsel appearing for the petitioner submitted that allegation against the petitioner is false and frivolous and petitioner is in no way connected with the firm and the management of the firm. It has further been stated, that the complainant OP No. 2 has nowhere in the complaint petition has stated that as to how this petitioner has violated the various provisions of Minimum Wages Act, 1948 and the Rules framed thereunder. There is no allegation that the petitioner is an employer and he employed the person. It is further submitted that the petitioner has been mechanically added as accused No. 2 in the complaint case. It has been further submitted that without specifying her involvement as employer, it cannot be said to be complete compliance of Sub-section "e" of Section 2 of Minimum Wages Act, which defines the definition of employer. It is further submitted that name of this petitioner does not find place in the firm register under Bihar Shop and Establishment Act, 1955 and cognizance cannot be taken against the petitioner unless the petitioner is described as employer. Besides several other grounds taken on behalf of the petitioner, it has been stated that petitioner is nowhere concerned with the firm.

5. On the other hand, counter-affidavit as well as show-cause on behalf of the OP No. 2-complainant has been filed. From perusal of show-cause, it appears that complainant was not present at the time of inspection and he does not know the petitioner, nor he had ever met her. It further appears that Mohit Jhingon of the firm appeared before the complainant and placed deed, etc., on the basis of which it is said that the petitioner has no concern with the Nursing Home. But on perusal of the counter-affidavit, it appears that a plea has been taken that this application is not maintainable as the petitioner was given ample opportunity to clarify her position, but she did not deny that she was not employer and, therefore, the case was filed. It further appears that name of this petitioner was disclosed by the employee working there as she is the owner of the firm.

6. On perusal of the entire record and after going through the annexure, it will appear that the petitioner is not concerned with the firm in any way and, therefore, she is not employer as per definition of employer given in definition

Chapter of Minimum Wages Act, 1948 and she is nowhere liable for any lapses as she is not employer. Further, though validity of some documents has expired, but in those documents it was nowhere mentioned that she is employer and those documents have not been renewed and when complainant himself admits that he was not present at the time of inspection and he does not know the petitioner, then no case is made out against the petitioner.

7. In that view of the matter, this application is allowed and the entire criminal proceeding as well as order of cognizance dated 31.7.2002 is hereby set aside.