
(2010) 01 JH CK 0175
In the Jharkhand High Court

H. Dutta @ Hiramanya Dutta

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Factories Act, 1948 — Section 2, 21, 92, 93

Citation : (2010) 124 FLR 1044 : (2010) 3 LLJ 561

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed for quashing the entire criminal proceeding of complaint case, bearing C-2 case No. 4 of 2002 including the order dated 4.1.2002 passed by the Chief Judicial Magistrate, Jamshedpur whereby and whereunder cognizance of the offence was taken against the petitioner u/s 92 of the Factories Act.

2. The facts giving rise this application are that for expansion of the Jojobera cement plant, being run by M/s. Lafarge India Limited, a cement manufacturing company registered under the Factories Act in order to increase the production capacity of the cement, a contractor, namely, M/s. Petron Civil Engineering Pvt. Ltd., to which the petitioner as a Senior Manager, was assigned with the job of civil construction whereas the other contractor, namely, M/s. Hajee A.P. Bava and Company was assigned with the job of erection of plant and equipments. In that course a cement mill building was constructed by M/s. Petron Civil Engineering Pvt. Ltd., where opening measuring 6' x 3' was left on each floor, i.e. elevator floor, separator floor and bag filter floor, though those spaces were required to be fenced or covered for the purpose of safety. As the space had not been fenced or covered, one Pramod Kumar Gupta, a worker, working under the contractor, namely, M/s. Petron Civil Engineering Pvt. Ltd. when was going to Silo from the separator floor, fell down from a height of 21.5 meter and died.

3. When the matter was informed to the Inspector of Factories, Jamshedpur, Circle No. 1, he made enquiry and came to the conclusion that neither M/s. Lafarge India Limited nor the contractor took any measure for covering or fencing the open space, as a result of which Pramod Kumar Gupta, a worker fell down and died. Thereupon a complaint was filed in the court of Chief Judicial Magistrate, Jamshedpur which was registered as C-2 case No. 4 of 2002, upon which cognizance of the offence has been taken u/s 92 of the Factories Act.

4. Being aggrieved with the order taking cognizance, this writ application has been filed by the petitioner, who is a Senior Manager of M/s. Petron Civil Engineering Pvt. Ltd. for quashing the entire criminal proceeding including the order taking cognizance.

5. Learned Counsel appearing for the petitioner submitted that the petitioner is a Senior Manager of M/s. Petron Civil Engineering Pvt. Ltd. to which firm, job of extension of the building in the factory premises of M/s. Lafarge India Limited had been assigned where one worker, namely, Pramod Kumar Gupta died when he fell down from a height but for that, the petitioner cannot be held to be liable to be prosecuted as the petitioner cannot be said to be occupier in terms of Section 2(n) of the Factories Act, nor can be said to be a Manager of the factory and hence, the entire prosecution u/s 92 of the Factories Act is misconceived so far the petitioner is concerned.

6. In this respect, it was further submitted that even if the worker, who died was an employee of the petitioner's firm, who was assigned with a job under a contract by M/s. Lafarge India Limited in which premises accident took place, it is only the occupier and the manager of M/s. Lafarge India Limited would be responsible to be proceeded with the prosecution, if the safety measure required under the Act to be taken, had not been taken on account of which allegedly the accident took place. Therefore, the instant prosecution would be an abuse of process of law, so far this petitioner is concerned and hence, it is fit to be set aside.

7. A counter affidavit has been filed on behalf of the Factory Inspector wherein it has been stated that as the particular work was assigned to the contractor, namely, M/s. Petron Civil Engineering Pvt. Ltd. where on account of safety measures being not taken, the accident took place, the petitioner can be said to have had control over the work and as such, he is liable to be prosecuted u/s 92 of the Factories Act.

8. Having heard learned Counsel appearing for the parties, admitted case appears to be that M/s. Lafarge India Limited in order to expand its plant had given contract to M/s. Petron Civil Engineering Pvt. Ltd for doing civil work whereas other contractor was assigned with the job of fixation of machinery and equipments. In course of the construction of a building, one of the workers, namely, Pramod Kumar Gupta employed by the contractor's firm, namely, M/s. Petron Civil Engineering Pvt. Ltd. died after falling from a height as safety

measure had not been taken for covering or fencing the space from where the deceased fell down. In that event, the said Pramod Kumar Gupta would assume the status of worker of the factory, namely, M/s. Lafarge India Limited where the accident took place in term of Section 2(1) of the Factories Act which defines the 'worker' as follows:

2(1) "worker" means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union];

9. As the said worker, namely, Pramod Kumar Gupta in course of employment died after falling from a height from a space which had been left uncovered/unfenced though under the provision of Section 21 of the Factories Act should have been securely fenced or covered, prosecution was launched not only against the occupier and the manager of M/s. Lafarge India Limited but also against this petitioner, who is a Senior Manager of a firm, namely, M/s. Petron Civil Engineering Pvt. Ltd., who had been assigned with the job in the premises of M/s. Lafarge India Limited. But the question would be as to whether the petitioner can be prosecuted u/s 92 of the Factories Act which reads as follows:

92. General Penalty for offences - Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to (two years) or with fine which may extend to (one lakh rupees) or with both, and if the contravention is continued after conviction, with a further fine which may extend to (one thousand rupees) for each day on which the contravention is so continued.

10. The provision mentioned above clearly stipulates that for contravention of any of the provision of this Act or Rule made thereunder only the occupier and the manager of the factory shall be guilty of an offence.

11. The occupier has been defined in Section 2(n) of the Factories Act which reads as follows:

(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory. Provided that--

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

12. On going through the definition of occupier, the petitioner, who is a Senior Manager of a firm, namely, M/s. Petron Civil Engineering Pvt. Ltd. can never be said to be an occupier of the factory, i.e. M/s. Lafarge India Limited, still the petitioner is being prosecuted as, according to the statement made in the counter affidavit, the petitioner was in ultimate control of the 'work' but this assumption would not bring the petitioner within the definition of occupier as it speaks about the person, who has ultimate control over the affairs of the factory and not the work. Admittedly, the petitioner is not the person, who has ultimate control over the affairs of the cement factory. Of course, a person other than occupier of the factory can come within the definition of occupier in terms of Section 93 of the Act, if any premises or building of the factory is leased out to different occupiers for use as separate factories as in that event, the owner of the premises shall be responsible for maintenance of the common facilities and services but that is not the situation here as it is never a case of the prosecution that any building was leased out to the firm of the petitioner for running a separate factory.

13. Thus, in the facts and circumstances as stated above, the petitioner never comes within the ambit of Section 92 of the Factories Act and, therefore, any prosecution u/s 92 would be an abuse of the process of law. Hence, the entire criminal proceeding of C-2 case No. 4 of 2002, pending in the court of Sub-divisional Judicial Magistrate, Jamshedpur including the order taking cognizance is hereby quashed so far as the petitioner is concerned.

14. In the result, this application is allowed.