

(2003) 01 CHH CK 0012
In the Chhattisgarh High Court
Case No : Misc. Cr. Case No. 312 of 2002

Hemendra Bhai

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 16, 2, 3
Criminal Procedure Code, 1973 (CrPC) — Section 190(1)
Factories Act, 1948 — Section 67

Citation : (2003) 97 FLR 402 : (2003) 2 LLJ 645 : (2003) 2 MPHT 1 : (2003) 2 MPJR 57

Hon'ble Judges : K.H.N. Kuranga, C.J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; P.S. Koshy, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.H.N. Kuranga, C.J.—In this petition filed u/s 482 of the Code of Criminal Procedure, one of the partners of the firm, namely, M/s. Dayalal Meghji & Co. prays for quashing of the proceedings in Criminal Case No. 872 of 1999 (State of M.P. Vs. Hemendra Bhai s/o late Daya Bhai Manik) pending on the file of Judicial Magistrate First Class, Raipur.

2. Few facts necessary for the disposal of the petition are these:--

The applicant is the partner of the firm M/s. Dayalal Meghji & Co. (hereinafter referred to as "the firm"), a firm registered under the Partnership Act, 1932 having its principal place of business at Malviya Road, Raipur. The firm carries on business of manufacturing and selling of Badshahi Farmaish Bidi, popularly known as 345 Bidi since last several decades.

3. The Supreme Court while deciding Writ Petition No. 465 of 1986 (M.C. Mehta Vs. State of Tamil Nadu and others), reported in (1996) 7 SCC 756, has given

certain directions. As per the said directions of the Supreme Court in the said case, on 4-7-1997 a survey had been got conducted by the Labour Department of the State. A Surveyor named S.S. Shukla conducted the inspection of the house of one Santosh Sahu, resident of Village Datrangi, Bhatapara, District Raipur and found that Ku. Kevra, aged about 11 years was making Bidis. On being asked, she told him that the Bidis were made for the firm. Thereafter he filled up the prescribed Form No. 1 and submitted a report to the Assistant Labour Commissioner, Raipur.

4. The Assistant Labour Commissioner, Raipur issued a show-cause notice to the firm directing it to deposit Rs. 20,000/- as per the directions of the Supreme Court in the aforesaid case and further to provide education to the children engaged in the Bidi manufacturing activities in the premises of the firm. The firm challenged the said demand notice in W.P. No. 1240 of 1998 before the High Court of Judicature, Madhya Pradesh at Jabalpur and the High Court passed an order (Annexure-A) on 23-3-1998 directing the firm to appear before the officer concerned and the said officer was directed to provide opportunity of hearing to the applicant. The Court further directed that the notice of demand shall not be given effect to till the disposal of the representation made by the firm. The Court also directed the officer to consider the representation of the firm before initiating any criminal proceedings if the same had not been already initiated.

5. On 30-4-1998, a show-cause notice (Annexure-B) was issued to the firm calling upon the firm to show cause to why an amount of Rs. 20,000/- be not recovered from the firm as per the directions of the Apex Court. The firm has submitted a detailed representation on 13-5-1998 before the concerned officer as per Annexure-C.

6. The Inspector appointed under the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act") filed the charge sheet as per Annexure-D before the Chief Judicial Magistrate, Raipur, for the commission of the offence u/s 14 of the Act against the petitioner- Hemendra Bhai, showing him as the employer. The said case was subsequently transferred from the file of the C.J.M. to the Court of Judicial Magistrate First Class, Raipur and it is numbered as Cr. Case No. 872/1999. After filing of the charge-sheet, the applicant appeared before the Court. The case was adjourned for arguments on charge from day-to-day. Preliminary objections were filed on 15-1-1999 before the Court stating that the charge-sheet has been filed on the basis of the report submitted by the survey team appointed by the Collector. It does not appear from the charge-sheet that the survey team had inspected the firm of the applicant. A case u/s 14(1) of the Act is made out only if the child labourer is employed in the firm of the applicant. Without inspecting the premises of the firm, it is not possible to hold that the applicant has employed child labourer. The case relates to scheme of supplying raw material to the worker employed by the firm for making Bidis at his house where he makes Bidis at his convenience and thereafter handing over the same to the firm. If the worker employed by the firm takes the help of

anybody at his home for making Bidis, there is no supervision or control of the firm over such persons or job nor such persons can be said to be employees of the firm. In view of the Proviso to Section 3, Section 3 of the Act is not applicable to a case where the occupier of the . workshop takes the help of any member of his family. Even if the occupier of the house, which if treated as workshop, is found to have engaged any child in Bidi making, the same cannot be said to be violative of Section 3 of the Act.

7. After filing of the objections, the case is being adjourned from time to time and the applicant has filed this petition.

8. The learned Counsel for the petitioner submitted that the learned Magistrate without taking cognizance of the offence alleged against the petitioner is proceeding with the criminal proceedings initiated against the firm, and, therefore, the entire criminal proceedings initiated against the firm are vitiated and liable to be quashed. He has relied upon two decisions of the Supreme Court in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, and Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, .

9. The learned Counsel further submitted that Section 3 of the Act is not applicable to the facts of the present case. It is submitted that in view of Proviso to Section 3 of the Act, even if the house of the father of the child labourer is treated as a workshop, the firm has no ultimate control over the affairs of the said house or workshop and even if the occupier of the house is found to have engaged any child in Bidi making, the same cannot be said to be violative of the said Section. Therefore, the criminal proceedings initiated against the firm are liable to be quashed.

10. The learned Counsel further submitted that the Surveyor who visited the house of the child labourer has not collected any documentary evidence regarding age of the said child such as her birth certificate or medical certificate. Even the Inspector who has filed the complaint against the firm has also not produced any such documents. Thus they failed to prove the age of the girl and therefore, the proceedings initiated against the firm showing the applicant, as the accused is liable to be quashed on this ground alone.

11. The first contention of the learned Counsel for the applicant is that the Court below is proceeding with the criminal proceedings without taking cognizance of the offence alleged against the firm.

12. The Supreme Court in D. Lakshminarayana"s case (supra), held thus:--

"The expression "taking cognizance" by the Magistrate has not been defined in the Code. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which case is sought to be instituted and the nature of the

preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding u/s 200 and the succeeding Sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If instead of proceeding under Chapter IX he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police u/s 256(3), he cannot be said to have taken cognizance of any offence."

13. The Supreme Court in *Pepsi Foods Ltd. and Anr.* (supra), has held that :--

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. Is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

14. In the present case, it is clear from the order-sheet maintained by the learned Magistrate that he has not applied his mind to the facts of the case and the law applicable to the present case. He has not even stated that he has perused or read the charge-sheet, which has to be treated as a complaint filed by the Inspector u/s 16 of the Act. The Supreme Court has held in the aforesaid two judgments that the Magistrate has to apply his mind to the facts of the case and the law applicable to the case, which the learned Magistrate has failed to do in this case. Thus he has not taken cognizance of the offence alleged against the applicant and, therefore, the criminal proceedings initiated against the applicant is liable to be quashed.

15. The next contention raised by the learned Counsel for the petitioner is that Section 3 of the Act is not applicable to the facts and circumstances of the present case and no case u/s 3 of the Act is made out against the petitioner.

16. Section 3 of the Act provides that no child shall be employed or permitted to work in any of the occupation set forth in Part A of the Schedule or in any workshop wherein any processes set forth in Part B of the Schedule is carried on.

17. In the present case the firm has not employed the child as labourer or permitted to work in any workshop where the process of Bidi making is carried

on. In the reply to the show-cause notice issued to the firm by the Assistant Labour Commissioner, it is stated that, in the Bidi industry there are two kinds of labourers engaged in the work of Bidi making, one--workers engaged in the premises of the industry, and another-- workers who are supplied raw materials for making of Bidis who take the same to their respective houses for the purpose.

18. Further, in the submissions given in writing to the District Collector, Raipur on behalf of the firm it is stated that-

"only those persons arc given raw materials whose names have been entered in the muster rolls with an understanding that he himself is making the Bidis and not through any other person. If he does so he can be penalised for the breach of contract. If he engages his children for a help or to train them in making Bidis, for the fault of his, another person (the employer) cannot be penalised. It may be added that no sensible employer will ever try to engage the child labour when he is required to pay the same rates of wages which he is required to pay an adult worker, unlike in other trades....."

This document is found in the record of the Trial Court.

19. The learned Counsel for the petitioner submitted that the workers who arc supplied raw materials by the firm take the same to their respective houses for making Bidis. They file an application for temporary work of Bidi making stating as follows :--

This is to request you that I know Bidi making work and want to roll limited quantity of 500 to 700 bidis for some reasons. If you require making of bidis more than that, I will make bidis in excess quantities but of my own accord I want to roll 500 to 700 bidis.

The worker signs an understanding or agreement with the firm, which is to the following effect:--

As per your aforesaid request you may be allowed to work on temporary basis of rolling Bidis (for a particular period). If the conditions above arc acceptable to you then you affix your signature in the agreement and take Bidi leaves and tobacco for manufacturing Bidis.

The learned Counsel has also produced a copy of an application filed before the firm by one of the workers.

20. It is clear from this document that the workers who are supplied raw materials for making Bidis take the raw materials from the firm after giving the undertaking that they themselves would make Bidis and if they roll Bidis in their respective houses taking the assistance of their children, the firm cannot be held responsible since the firm has no control or supervision over the work of those workers who take raw material to their houses for making Bidis. It is further stated in the reply that the raw material was supplied only to those workers whose names are entered in the Register maintained by the firm. The

remuneration is also given only to them. It is not possible for the firm to have any control or supervision over the Bidi making job being done at the houses of workers according to their convenience. The firm has no knowledge or information as to whether the workers who make the Bidis at their houses take the help of any of their family members or children in the said job. If they take any such help, the firm cannot be held responsible for the same. Thus, it cannot be said that the firm is the employer of the child labourer and Section 3 of the Act has not been contravened by the firm.

21. As already stated, according to the firm the workers employed by the firm enter into an agreement with it, take raw materials for Bidi making to their respective houses with an understanding that they themselves would make Bidis and supply the same to the firm. If they take the assistance of their children at home and makes Bidis and then supply to the firm, the firm cannot be prosecuted for violation of Section 3 of the Act.

22. The Proviso to Section 3 says that nothing in this Section shall apply to any workshop wherein any process is carried out by the occupier with the aid of his family or to any school established by, or receiving assistance, or recognition from Government.

23. The word "workshop" has been defined in Section 2(x) of the Act. "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948, for the time being applies. The word "occupier" has also been defined in Section 2(vi) of the Act. "Occupier" in relation to an establishment or workshop means the person who has the ultimate control over the affairs of the establishment or workshop. Even if the house of the worker is treated as "workshop" within the meaning of the aforesaid definition, the worker who is the owner of the said house becomes the occupier. If he employs his children who are below the age of 14 years for the purpose of Bidi making in his house, for such a case Section 3 of the Act is not applicable in view of the Proviso and thus, it cannot be said that the applicant has committed an offence u/s 3 of the Act.

24. He further submitted that the Inspector who filed the charge-sheet against the firm has not produced any documents or material to show that the child labourer who was found working at the time of inspection was below 14 years of age. He has not produced any medical certificate or birth certificate regarding the age of the child. The Counsel has relied upon the judgment of Allahabad High Court in Subhash Chandra Jaiswal Vs. State of U.P., . In the said case, the Labour Enforcement Officer under the Act visited the establishment of the applicant therein and found one Ashok Prajapati aged about 11 years was employed as labourer to work in the establishment. He prepared a spot note and obtained the signature of the child labourer on it and thereafter a complaint was filed under the Act against the applicant in that case. The learned Magistrate after considering the evidence held that the applicant therein had employed a child

labourer aged 11 years and thus violated Section 3 of the Act and committed an offence punishable u/s 14 of the Act, and accordingly convicted him and sentenced to undergo R.I. for three months. The applicant therein preferred a criminal appeal before the Appellate Court but the Appellate Court dismissed the appeal. In the said case, the Court held that the Labour Enforcement Officer has stated that child labourer who was found working at the loom of the applicant therein was aged 11 years. He has not stated as on what basis he ascertained the age of the said person. The record shows that neither any documents nor any medical certificate regarding the age of the alleged child was produced. There is nothing on record to show that the applicant therein had admitted the age of the said person. The Court further held that the Appellate Court also blindly accepted the age stated by the Enforcement Officer, which was not on the basis of any document or medical certificate. As such there was no proper ascertainment of the age of the alleged child and in the absence of such evidence it cannot be said that he was a child as defined in Section 2(ii) of the Act. In the absence of such evidence, the applicant therein could not be convicted and the Court allowed the revision filed by the applicant, quashed the conviction and sentence passed against the applicant therein and acquitted him of the offence.

25. It is contended on behalf of the petitioner that there is no documentary evidence to show that the girl was below the age of 14 years. The statement of the Surveyor was recorded by the Assistant Labour Commissioner in which he has stated that he went to the village on the order of the Sub Divisional Officer, Bhatapara and collected information about labourers engaged in Bidi manufacturing. He found Ku. Kevra daughter of Santosh Sahu, aged about 11 years making Bidis. He made enquiries from the girl and filled up the relevant proforma. The girl stated that she makes Bidis for the Company of Dayal Meghji. In cross-examination he stated that he had conducted survey of the establishment of the employer, i.e., the firm but visited the house of Santosh Sahu, father of the girl. The girl stated that she makes Bidis for Rs. 400/- per month. It is clear from the statement of the Surveyor that he visited the house of Santosh Sahu and not the premises of the firm. The girl was working in the house of Santosh Sahu, i.e., her father and she was not working in the premises of the firm. The Surveyor has not stated in his statement that he ascertained the age of the girl from any other person. He himself has stated that he found the girl aged about 11 years working in the house of Santosh Sahu. The Surveyor who visited the house of the Santosh Sahu has not collected any documents like birth certificate or medical certificate of the girl to show that she was aged below 14 years. "Child" has been defined in Section 2(ii) of the Act according to which "child" means a person who has not completed his fourteenth year of age. In this case, there is no documentary evidence to show that the girl was below 14 years of age. In the circumstances, as held by the Allahabad High Court in the case of Subhash Chandra Jaiswal (*supra*), the criminal proceedings initiated against the firm without ascertaining the age of the girl is liable to be quashed.

26. In the result, the petition stands allowed. The criminal proceedings initiated

against the applicant vide Criminal Case No. 872 of 1999 pending on the file of Judicial Magistrate, First Class, Raipur, are hereby quashed.