
(1941) 04 PAT CK 0004
In the Patna High Court

Jharia Mines Board

APPELLANT

Vs

Kartar Ad-dharmi and Another

RESPONDENT

Date of Decision : 16-04-1941

Acts Referred:

Bihar and Orissa Mining Settlements Act, 1920 — Section 25(1)(x)
Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : AIR 1941 Patna 482

Hon'ble Judges : Chatterji, J

Bench : Division Bench

Judgement

Chatterji, J.—This is a reference u/s 438, Criminal P.C., by the Additional District Magistrate of Dhanbad recommending that the order of the trying Magistrate acquitting the accused (1) Kartar Ad-dharmi and (2) Jagar Ad-dharmi be set aside and the case remanded for retrial.

2. The accused Kartar Ad-dharmi as owner and accused Jagar Ad-dharmi as manager of a tannery and hide depot at Koiribandh within the Jharia. Mining Settlement area were prosecuted for having contravened Section 2 of Part 3 of the by laws of the Jharia Mines Board of Health framed u/s 25(1), Bihar and Orissa Mining Settlements Act (4 of 1920). The trying Magistrate acquitted the accused u/s 245, Criminal P.C. An application, then being made to the Additional District Magistrate, he has made this reference. Section 25(1)(x), Bihar and Orissa Mining; Settlements Act, authorizes the Board to make by laws consistent with the Act:

Providing for the prevention or abatement of nuisances affecting the public health committed by any persons within the limits of the Mining Settlement.

3. "Board", as defined in Section 3(b) of the Act, means "a Mines Board of Health established" under this Act". In exercise of the powers conferred by Section 25(1), Bihar and Orissa Mining Settlements Act, the Jharia Mines Board of Health framed certain by-laws which were approved by the Government of Bihar and Orissa u/s 25(2) of the same Act. Section 2 of Part 3 of these by-laws

provides "No person shall commit a nuisance, or allow a nuisance to continue, on his premises." Contravention of any of these by-laws is made punishable u/s 26(3)(b), Bihar and Orissa Mining Settlements Act. The word "nuisance" is not defined in the Bihar and Orissa Mining Settlements Act, but in Section (1)(h) of the by laws framed by the Jharia Mines Board of Health it is defined as follows:

Nuisance includes any act, omission, place or thing which in the opinion of the Medical Officer of Health is injurious to the public health.

4. The grounds on which the trying Magistrate acquitted the accused are as follows:

The definition in the by-law clearly goes beyond the wording in Section 25(1)(x) of the Act because the definition in the by-law makes the Medical Officer of Health the sole judge of "nuisance" under by-law 2, Part 3 which is punishable u/s 26(3), Mining Settlements Act. The Act itself does not appear to have contemplated such narrowing of the connotation of the words "nuisance affecting public health". If the definition in the by-law is accepted, there can be no appeal on the point if the facts alleged to have been committed amounted to a nuisance. The opinion of the Medical Officer of health may be relevant and important as being that of an expert. But it should not be definitive. As the accused have been prosecuted u/s 2, Part 3 of the by-laws which does not appear to me to be valid and as the Act itself does not punish nuisance as such, the accused are given the benefit of doubt and acquitted u/s 245, Criminal P.C.

5. It will be noticed that the definition of nuisance in Section 1(h) of the by-laws does not say that "nuisance" means any act, etc. but says nuisance includes any act, etc. The definition is thus not exhaustive. The definition is no doubt unreasonable in so far as it makes the Medical Officer of Health the sole judge of "nuisance" and leaves no option to the Court but blindly to act upon his opinion. But as the definition is not exhaustive the Court must in each case find out whether there has been any nuisance affecting the public health.

6. So far as Section 2 of Part 3 of the by-laws is concerned, the learned trying Magistrarte had no justification for holding that it is not valid. This section is quite consistent with the provisions of Section 25(1)(x), Mining Settlements Act. Though in that section of by laws the word "nuisance" only has been used, it must be understood to mean "nuisance" affecting the public health. Another reason given by the trying Magistrate is that the Mining Settlements Act itself "does not punish nuisance as such." This is obviously fallacious.

7. Section 26(3)(b) of the Act clearly makes punishable any contravention of any by-law. Any by-law framed under the Act has the same force and validity as the provisions of the Act itself. The reasons given by the learned trying Magistrate for acquitting the accused appear to be wrong. The order of acquittal must, therefore be set aside. He must decide for himself whether the acts complained of amount to nuisance affecting the public health.

8. Accordingly, I accept the reference, set aside the order of acquittal and remand the case to the trying Magistrate for disposal according to law in the light of the above observations.