
(1977) 09 PAT CK 0007
In the Patna High Court

Joint Director of Mines Safety

APPELLANT

Vs

Harsukhari M. Doshi

RESPONDENT

Date of Decision : 29-09-1977

Acts Referred:

Mines Act, 1952 — Section 17, 22, 23, 69, 72B

Citation : (1978) CriLJ 1068

Hon'ble Judges : Medini Prasad Singh, J

Bench : Single Bench

Judgement

Medini Prasad Singh, J.—This is an appeal by the Joint Director of Mines Safety against the acquittal of H. M. Doshi who was an Agent of the New Chas Nala Colliery in the District of Dhanbad. On the 20th of Nov. 1967 the Deputy Director of Mines Safety inspected the colliery and found various violation of the directions and orders passed by the authorities concerned. The appellant was convicted and sentenced by the Munsif Magistrate, First Class, Dhanbad under various sections of the Mines Act, 1952 - (briefly "the Act") as follows:

Sections 69/17; Sentence : A fine of Rs. 500/- in default one month simple imprisonment for having failed to appoint a qualified Manager in contravention of the provisions of Section 17 of the Act.

Sections 72B/22(3); Sentence : Seven days imprisonment and a fine of Rs. 1000/- in default one month simple imprisonment for having continued to work in mines in contravention of an order (Ext. 1) dated the 31st April, 1966 issued u/s 22(3) of the Act. by H. B. Ghosh, Deputy Chief Inspector of Mines prohibiting employment of persons in quarries Nos. 2 and 3, unless the danger was removed.

Section 73; Sentence : A fine of Rs. 500/- in default to 15 days simple imprisonment for not employing a surveyor.

2. The defence of the appellant was that there was a Manager in the colliery that the order issued u/s 22(3) of the Act was not served on the management and that the persons had been employed in quarry No. 3 to remove the danger. So

far as the appointment of surveyor is concerned, the appellant admitted that there was no surveyor.

3. On appeal the appellant was acquitted of the charges under Sections 72B and 69 of the Act but his conviction u/s 73 of the Act was maintained. The Joint Director of Mines Safety, namely, the complainant has appealed against the said acquittal. There appears to be no appeal by the respondent against his conviction u/s 73 of the Act and this Court is not now concerned with that,

4. I will first deal with the acquittal of the respondent u/s 72B read with Sub-section (3) of Section 23 of the Act. The lower appellate court has dealt with this aspect of the case in paras 5 to 10 and it has given several reasons for acquittal. Its first reason is that the order (Ext. 1) issued u/s 22(1) of the Act was not issued either by the Chief Inspector or by any Inspector authorised as contemplated by the provision of Section 22(3) of the Act. That provision runs as under:

If the Chief Inspector, or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

On a perusal of the aforesaid provisions it is quite clear that the order in writing is to be passed either by the Chief Inspector or an Inspector authorised by him but in the present case the order was passed by the Deputy Chief Inspector. The prosecution has not been able to prove any proper authorisation.

5. Mr. Ram Nandan Sahai Sinha, learned Counsel for the petitioner, drew my attention to an authorisation (Ext. 10) which has been typed at page 40 of the paper book. That authorisation is u/s 75 of the Act, authorising all the Deputy Chief Inspectors of Mines and all the Regional Inspectors of Mines to institute prosecutions. That is not an authorisation u/s 22(3) of the Act. I am, therefore, of the opinion that the Deputy Chief Inspector was not properly authorised to pass the order (Ext. 1). Another reason given by the learned Additional Sessions Judge of Dhanbad is that Exhibit T was not served upon the Management. The appellant has rightly contended that the Management had knowledge of the order (Ext. 1). I am, therefore, of the opinion that this is not a sound reason. The third reason given by the lower appellate court is that the five persons had been employed by the Management for not running the colliery but for the purpose of removing the danger. At this place I would like to refer to the last portion of the order (Ext. 1) which runs thus:

...This order, however, does not preclude you from employing such number of persons whose employment may be necessary for removing the danger...

Learned Counsel for the appellant has contended that it was for the Chief Inspector of Mines or the Deputy Chief Inspector of Mines to determine as to who had to be employed by the Management for removing the danger and that it was not for the Management to choose persons to be employed therein. Having regard to the language used in the order (Ext. I), I am not inclined to accept this contention as valid. The order aforesaid clearly says that the Management was not precluded from employing such number of persons whose employment was necessary for removing the danger. In the circumstances, I am of the opinion that the Management was not guilty when it employed five persons for the purpose of removing the danger.

6. For the above reasons I think that the lower appellate court was reasonably justified in coming to the conclusion he did on this point. The acquittal of the respondent of the charge u/s 72B, therefore, was justified.

7. I will now deal with the order of acquittal of the offence u/s 69 of the Act. The learned Additional Sessions Judge has dealt with this question in para II of his judgment. It appears from the records of the case that previously one Sri B. N. Mukherjee was the Manager of the colliery. There is nothing to show that he was a qualified Manager. The period for which he had been appointed Manager to manage the work of the mines had expired. Thereafter the period was not extended. The permit which had been granted to him for managing the work of the mines had not been extended. Under these circumstances, it must be held that there was no qualified Manager appointed by the Management. It also appears from the judgment of the lower appellate court that admittedly there was no separate Manager appointed as per direction of the Chief Inspector of Mines. In the circumstances, it must be held that the Management had failed to appoint a Manager and did not comply with the direction of the Chief Inspector of Mines. u/s 17 of the Act every mine must be under qualified Manager and that Manager shall have control, management and supervision over the mines. Section 69 of the Act provides the penalty if no such Manager is appointed. It says thus:

Whoever in contravention of the provisions of Section 17, fails to appoint a manager shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand and five hundred rupees, or with both.

8. In view of the clear provision of Section 69 of the Act read with Section 17 of the Act, it must be held that the respondent committed offence under that section. The lower appellate court, in my opinion, committed illegality in holding that no offence u/s 69 of the Act was committed. Accordingly, I would set aside the acquittal of the respondent H. M. Doshi u/s 69 of the Act. I would convict him of the offence u/s 69 read with Section 17 of the Act and would impose on him a sentence of fine of Rs. 100/- in default to undergo simple imprisonment for one month.

9. In the result the acquittal of the respondent H. M. Doshi u/s 72B read with Section 22(3) of the Act is maintained. His acquittal u/s 69 read with Section 17 of the Act is set aside and he is convicted under that section and sentenced to pay a fine of Rs. 100/- (Rupees one hundred) in default to undergo one month simple imprisonment as aforesaid, The appeal is thus partly allowed.