
(2010) 07 JH CK 0034

In the Jharkhand High Court

Case No : Criminal M.P. No. 742 of 2005

Kamala Construction Company and Others

APPELLANT

Vs

The State of Jharkhand and Assistant Labour Commissioner

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 23, 24
Criminal Procedure Code, 1973 (CrPC) — Section 482, 82, 83

Citation : (2011) 128 FLR 868 : (2011) 3 LLJ 650 : (2011) LLR 424

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. Petitioners in this application, filed u/s 482 of the Cr.P.C., have prayed for quashing the order dated 8.5.2003 passed by the Chief Judicial Magistrate, Ranchi in Case No. CIII-47 of 2003 whereby, cognizance for the offences under Sections 23/24 of the Contract Labour (Regulation and Abolition) Act, was taken against the petitioners.

3. From the facts as stated, it appears that on 11.02.2003, the opposite party No. 2, Assistant Labour Commissioner had visited the works site of the petitioner No. 1 namely, M/s Kamala Construction Company and had found a number of irregularities which amounted to violation of not only the provisions of the Contract Labour (Regulation and Abolition) Act, but also the Rules framed thereunder. After pointing out the defects to the person in-charge of the establishment, the Assistant Labour Commissioner issued a notice directing the person in-charge of the establishment as also the other persons associated with the Management of the Firm / Establishment to appear and explain as to why a proceeding should not be initiated against them for violation of the provisions of the Contract Labour (Regulation and Abolition) Act and the Rules framed thereunder.

It appears that when no response was received from the noticee, and on the

allegation that the defects which was pointed out, had not been removed, a complaint by way of prosecution report was lodged by the Assistant Labour Commissioner before the court below and on the basis of the complaint / prosecution report, cognizance for the aforementioned offences, was taken against the petitioners.

4. Assailing the impugned order of cognizance, learned Counsel for the petitioners would plead several grounds including the ground that the proceeding ought not to have been initiated against the several persons including those who are not concerned with day to day affairs and Management of the establishment of the petitioner No. 1 company. The initiation of the proceeding against the petitioner Nos. 4 and 6 on the mere basis that they happen to be the partners of the Firm, is illegal since there is no specific allegation that these two ladies are actively involved in any manner with the Management and affairs of the works of the petitioner No. 1 company. Learned Counsel adds that even as per the complaint / prosecution report, the accused No. 7 was the only person who was found present by the Assistant Labour Commissioner at the works site and even according to the complaint, he was the person in-charge of the works site at the relevant time. The allegation against the petitioner No. 7 namely, Ashok Kumar Choudhary is that he had refused to receive the notice served upon him by the complainant.

Learned Counsel adds further that the learned court below has seriously erred in law by issuing warrants of arrest, both bailable and non-bailable and even processes under Sections 82 and 83 Cr.P.C., without receiving the service report of the summons which was purportedly issued against the petitioners. To support this contention, learned Counsel invites attention to the copy of the order sheet of the learned court below.

Learned Counsel submits further that the petitioners were neither served with any notice whatsoever by the complainant, nor served with any summon at any point of time, if at all issued by the court below. The fact that no prior notice was served upon the petitioners by the complainant, would be apparent even from the admission made in the complaint / prosecution report which would indicate that the purported notices were sent through a peon who returned the same unserved with an endorsement "that the petitioner No. 7 had refused to accept the same". Learned Counsel argues further that apparently thereafter, the complainant did not chose any other method to ensure that the notices are served upon the petitioners before initiating prosecution against them.

5. Counsel for the State is present and made submissions in support of the impugned order of cognizance.

From the counter-affidavit filed on behalf of the State Government, it appears that after conducting inspection on 11.02.2003, notices were issued to the petitioners on 18.2.2003 through office peon, but the same was refused to be accepted by / or on behalf of the petitioners. It is on the basis of the defects

which the complainant had detected in course of inspection, that he had found reason to believe that the establishment had violated the provisions of the Contract Labour (Regulation and Abolition) Act and the Rules framed thereunder. In this view of the matter, the order of cognizance of the offences does not suffer from any infirmity or illegality since it has been apparently taken on the basis of the statements contained in the prosecution report. However, other aspects of the argument advanced by the learned Counsel for the petitioner, cannot be ignored.

6. From perusal of the copy of the order sheet of the trial court records, it does appear that though, summons were ordered to be issued against the petitioners in the first instance, but no service report at any point of time was thereafter received in respect of the summons issued. Yet, the learned court below had proceeded to issue bailable warrants followed by non-bailable warrants and had even proceeded to issue processes under Sections 82 and 83 Cr. PC. Such procedure, as adopted by the court below, is contrary to the procedural law and is therefore, illegal.

7. The next issue raised is that even after taking cognizance of the offence, the Magistrate should have applied his judicial mind to assess as to whether all or any of the accused persons be summoned to face trial.

From perusal of the complaint / prosecution report, there does not appear any specific averment as to how the ladies namely, Kamala Devi and Prabhawati Devi (petitioner Nos. 4 and 6 respectively) are responsible, for the alleged violation. Merely because they happen to be the partners of the Firm, they cannot be called upon to face trial for any such offence by thrusting upon them vicarious liability, unless it is pointed out specifically in the prosecution report that both the ladies were involved and responsible in the Management of the business transaction and the affairs of the partnership Firm.

8. Considering the above facts and circumstances, the issuance of summons against the lady accused persons also appears to have been ordered without application of judicial mind by the court below. However, as regards the other accused persons, there appears statement in the complaint / prosecution report that they being active partners, are responsible for the Management and affairs of the petitioner No. 1 firm and hence, issuance of summons to them cannot be termed as illegal.

9. In the light of the above facts, the summons issued against the petitioner Nos. 4 and 6 namely, Kamala Devi and Prabhawati Devi, is hereby quashed. The warrants of arrest and the processes issued under Sections 82 and 83 Cr. PC against the accused petitioners, is also quashed. Petitioners Nos. 2, 3, 5 and 7 are directed to appear before the court below within three weeks from today and take appropriate steps.