

(2004) 08 JH CK 0017

In the Jharkhand High Court

Case No : Criminal M.P. No"s. 800 and 801 of 2003

Kanhaiya Lal Bansal

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Bihar Factories Rules, 1950 — Rule 102, 13, 139
Criminal Procedure Code, 1973 (CrPC) — Section 482
Factories Act, 1948 — Section 21, 9, 92, 95, 96A

Citation : (2006) 3 JCR 436

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Biren Poddar and Ajay Poddar, for the Appellant; Anita Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—Both these applications having been preferred by the same petitioner, they have been heard together and are being disposed of by this common order.

In Cr. M.P. No. 800 of 2003 the petitioner has prayed for quashing the order dated 24th February, 2001, passed by the learned Chief Judicial Magistrate, Dhan-bad, in F.A. Case No. 249 of 2001, whereby and whereunder, the Court below has taken cognizance as against the petitioner and two others for the offence u/s 92 of the Factories Act, 1948. Further prayer has been made to set aside all the proceedings consequent thereto, now pending in the Court of Sri M.P. Yadav, learned Judicial Magistrate, 1st Class, Dhanabad.

In other case Le. Cr. M.P. No. 801 of 2003 the petitioner has challenged the order dated 24th February, 2001, passed by the learned Chief Judicial Magistrate, Dhan-bad, in F.A. Case No. 253 of 2001, whereby and whereunder, the Court below has taken cognizance of the offences against the petitioner and two others under Sections 92 and 95 of the Factories Act, 1948. In this case also the all

subsequent proceedings of F.A. No. 253 of 2001, pending in the Court of Sri R.K. Srivastava, learned Judicial Magistrate, 1st Class, Dhanabd, are under challenge.

2. Cr M.P. No. 800 of 2003: According to the petitioner, the complainant, Inspector of Factories, Dhanbad Circle No. 2, Dhanbad, filed a complaint petition against the petitioner and two others, alleging contravention of the provisions of Section 92 of the Factories Act, 1948. It has been alleged that during the course of inspection, it was found that the licence of the factory, either in original or its attested copy, was not displayed in the factory. The licence of the factory for the year, 2000, is stated to have been signed by the Deputy Chief Inspector of Factories, who was not competent to renew the licence of the factory in absence of any valid order/notification, issued by the Government. The licence for the year, 2001 is stated to have been submitted to the Deputy Inspector of Factories, Bokaro, for renewal. Since the licence for renewal was not submitted before the competent authority Le. opposite party No. 2, Inspector of Factories, Dhanbad, Circle No. 2 Dhanbad, as directed by him, in time, as such, it will be deemed that the factory is running without licence. It was also alleged that uncovered moving parts of transmission machineries were found running without any safeguard, in contravention of Section 21 of the Factories Act. 1948, apart from other illegalities, which were found in running the factory, in contravention of the provisions of the Factories Act, 1948, as detailed in the complaint petition.

Cr M.P. No. 801 of 2003: According to the petitioner, the complainant, Inspector of Factories, Circle No. 2, Dhanbad, filed a complaint against the petitioner and two others, alleging contravention of the provisions under Sections 92 of the Factories Act, 1948. It has been alleged that in the official records of opposite party No. 2 the names of Smt. Vimla Bansal and Sri. K.L. Bansal have been recorded as occupiers of the Factory and their names figure in the list of Board of Directors, in the Memorandum and Articles of Association of this Company, registered with the Registrar of the Companies, West Bengal. It is further alleged that from the official records it appeared that one Vivek Bansal in the year, 1997 has signed in the application for renewal of the licence of the Factory in the capacity of occupier of the factory but no document was available in the office of opposite party No. 2, showing Vivek Bansal as Director of M/s. Om Shri Durga Hard Coke Manufacturing Company (P) Ltd. However, on enquiry no information was made available to opposite party No. 2. During inspection although several registers, including Register of Adult Workers required to be maintained in prescribed Form No. 12 of the Bihar Factories Rules, were demanded, only two registers were produced. On enquiry regarding the other registers, ft was replied that they have been seized by the Income Tax Department, during raid. It is further alleged that opposite party No. 2 directed the management to produce the registers for the years 1997, 1998, 1999 and 2000 and also directed Sri M.P. Bansal and the employee to appear in person on 29.12.2000 in his office but neither the registers were produced nor they turned up, amounting to contravention of the provisions of Sections 9 and 95 of the Factories Act read with Rule 139(i) and 13(j), followed by Rule 102 of the Bihar Factories Rules,

1950. It is further alleged that opposite party No. 2 on 1.1.2001 informed the occupiers regarding contravention, fixing 9.1.2001. They having not appeared on 9.1.2001, next date was fixed as 15.1.2001. Opposite party No. 2 further alleged that M.P. Bansal also made efforts to influence the complainant in discharge of his duties, which contravenes Rule 13 of the Bihar Factories Rules, 1950. Likewise contravention of other provisions of the Factories Act, 1948 were also alleged in the complaint petition.

3. Counsel for the petitioner Submitted that the orders taking cognizance dated 24th February, 2001 (in both the cases) have been passed without application of mind and without verifying the correctness or otherwise of the complaint petition. Though the learned Chief Judicial Magistrate, Dhanbad, was required to be satisfied that a prima facie case is made out against the petitioner and to take cognizance of an offence only thereafter, such procedure was not followed. Further case of the petitioner is that M/s. Om Sri Durga Hard Coke Manufacturing Company (P) Ltd. was incorporated under the Companies Act, 1956 on 26th September, 1989 and the petitioner at that stage was inducted as one of the Directors of the said Company. The petitioner thereafter, resigned from directorship of the company with effect from 1st July, 1990 as is evident from Form No. 32, issued by the Assistant Registrar of Companies. West Bengal, on 9th October, 2000 and the petitioner is not even a share-holder. As per Clause 17 of the Article of Association of Company, only a share-holder can remain a Director of the Company and whole power and duties to run the company rests with Directors as per Clauses 20 and 21 of the Articles of the Association of the Company.

4. Counsel for the petitioner further submitted that the petitioner, not being an occupier and Manager of the Factory, can not be held guilty of the offences under Sections 92 and 95 of the Factories Act, 1948 and, therefore, there was no occasion to take cognizance against him.

5. It appears that two other accused in both the cases, namely, Sri M.P. Bansal and Smt. Vimla Devi Bansal, moved before this Court vide Cr. Misc. No. 139 of 2002 against the order taking cognizance dated 24th February, 2001 in F.A. No. 251 of 2001, whereby cognizance of the offence u/s 96A of the Factories Act was taken against them. They also challenged the entire criminal proceeding, pending against them. The petitioners of the said case assailed the order taking cognizance mainly on the ground that in the licence the name of one S.C. Rai has been shown as occupier and not the petitioners and, therefore, the criminal prosecution against them, other than the occupier, is vitiated in law. A Bench of this Court having noticed the facts and circumstances of the case, held that this Court is not supposed to enter into the merits of the contention of the petitioners as to whether they are occupiers within the meaning of the provisions of the Act and the Rules, which points they may raise at the time of framing of charges. The petition u/s 482, CrPC was dismissed. The case of M.P. Bansal is reported in 2004 (2) JCR 590 (Jhar).

6. From paragraph No. 7.01 of the complaint petition, filed by opposite party No. 2, in both the cases, it appears that in the official record, names of Vimla Bansal and the petitioner Sri K.L. Bansal have been recorded as occupiers of the factory. The petitioner is the younger brother of Sri M.P. Bansal and is Director No. 2, as alleged at paragraph No. 7.04 of the complaint petition in both the cases.

7. The other evidence can not be taken into consideration by this Court at this stage to come to a conclusion that at present the petitioner is not the occupier of the factory. All these points can be raised by the petitioner at the time of framing of charges. Therefore, this Court is not inclined to interfere with the order taking cognizance in both the cases. There being no merit, both the petitions are hereby dismissed.