
(2003) 04 JH CK 0009

In the Jharkhand High Court

Case No : Criminal M.P. No. 1729 of 1999 (R)

K.C. Majumdar and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Bihar Factories Rules, 1950 — Rule 62
Factories Act, 1948 — Section 105, 105(1), 2, 92

Citation : (2003) 3 LLJ 448

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rana Pratap Singh, Vijay Pratap Singh, Arun Kumar Singh and Ashok Kumar Sinha, for the Appellant; Anita Sinha and APP, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In the present application the petitioners have prayed for quashing of the order dated December 23, 1998 passed by the Chief Judicial Magistrate, Jamshedpur, in C/2 case No. 1078 of 1998 whereby the learned Chief Judicial Magistrate took cognizance of the offences punishable u/s 92 of the Factories Act (hereinafter referred to as the "Act.")

2. The facts in short of the case are that the opposite party No. 2, Sri Awadhchsh Kumar Singh, Factory Inspector, Anchal No. 1 (complainant) submitted a written report on December 21, 1998 before the learned Chief Judicial Magistrate, Jamshedpur, alleging therein that Wood Craft Training Centre, Jojobera is a factory within the meaning of Section 2(m) of the Act. It was stated that in the said factory, manufacturing of the packing boxes, furniture etc. were going on and 30 workers were engaged for the said purpose. It was further stated that during the enquiry, the complainant came to know that Sri. K.C. Majumdar, who was an officer of the TELCO Ltd., was the occupier of the said factory whereas Sri. S.N. Banerjee was the secretary of the said factory. It was alleged that the factory was being run since last 15 years without having any valid licence as

envisaged u/s 6 of the Act. It was alleged that the petitioners did not get the map of the factory approved by the Chief Inspector of the Factories which was violation of Rule 3 of the Bihar Factories Rules, 1950. The complainant alleged that the accused parsons had committed offences punishable u/s 92 of the Act, for violation of the provisions of Act and Rules i. e. for violation of Section 6 of Factories Act, 1948, Rule 3 of Bihar Factories Rules, 1950, Section 61 of the Act read with Rule 79, Section 38 of the Act read with Rule 62, Section 45 read with Rules 64 and 80 of the Bihar Factories Rules.

3. The learned Chief Judicial Magistrate, Jamshedpur, by his order dated December 28, 1998, after perusing the prosecution report as well as the other documents enclosed with the same, took cognizance of the offences punishable u/s 92 of the Act, against the petitioners and issued summons for their appearance.

4. Being aggrieved by the said order of taking cognizance, the petitioners have filed the present application for quashing of the entire criminal proceedings as well as the order taking cognizance.

5. Mr. Rana Pratap Singh, learned senior counsel appearing for the petitioners, has firstly submitted that the order taking cognizance is bad and illegal, as before taking cognizance the previous sanction in writing of the Inspector has not been obtained, as envisaged u/s 105 of the Act. In support of his submission he has relied on a decision reported in Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, .

6. The second submission of the learned counsel for the petitioners is that concern in question i. e. Wood Craft Training Centre, does not come under the purview of the definition of the Factory, as envisaged u/s 2(m) of the Act and therefore, no prosecution could have been launched, for violation of provisions of the Act or Rules. It is further submitted that Wood Craft Training Centre is run by the Lions Club, Jamshedpur and the petitioners are in no way connected with the affairs of the said training Centre. Therefore, cognizance taken against them is liable to be quashed.

7. To appreciate the first submission of the learned counsel for the petitioner, it is relevant to quote Section 105(1) of the Factories Act, 1948 which reads as under.

"105(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector".

8. The submissions of Mr. Singh is that previous sanction in writing of an Inspector for filing the complaint was a sine qua non for taking cognizance for the offence under the Act, cannot be accepted because Section 105(1) of the Act clearly speaks, that either the complaint has to be made in writing by an Inspector and if the complaint is not being filed by an Inspector then in that case, previous sanction in writing by an Inspector is required to be taken.

9. In the present case, since the written complaint was filed by an Inspector of the Factory himself, therefore, no previous sanction at all was required to be

taken. The decision relied on by the learned counsel for the petitioners i.e. Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others, is not applicable in the facts and circumstances of this case. Their Lordships of the Supreme Court in the aforesaid case were dealing with the question of the sanction as required u/s 197, Cr PC.

10. Section 197, Cr PC gives protection to any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government from being prosecuted without previous sanction of the appropriate Government if the offence alleged is committed in discharge of his official duty.

11. Therefore, the object and purport of Section 197, Cr PC and Section 105 of the said Act are quite distinct to each other in their character. Both cannot be equated on any count. Therefore, the first submission of the learned counsel for the petitioners cannot be accepted and therefore is hereby rejected.

12. The second submission of the learned counsel for the petitioners that Wood Craft Training Centre does not come under the purview of the Factory as the same is being run by the Lions Club also cannot be accepted at this stage. The prosecution report clearly alleges that packing boxes and furniture etc. were being manufactured for TELCO Ltd. with the help of electrical machines and. 30 workers were engaged in manufacturing, out of whom 17 workers"were found to be present at the time of inspection made by the complainant. Whether the Lions Club is run by the TELCO or the said concern, Jamshedpur can be decided only at the stage of the trial when the evidence are adduced by the parties.

13. At the stage of the taking cognizance the Magistrate had to find out as to whether any prima facie case for commission of offence was made out or not? In the present case, the learned Chief Judicial Magistrate, after perusing the written complaint as well as the documents enclosed therewith, has taken cognizance of the offence punishable u/s 92 of the Act.

14. In that view of the matter, I find that no illegality has been committed by the learned Chief Judicial Magistrate in taking cognizance.

15. In the result, this application has got no merit, it is accordingly dismissed.