
(1934) 01 CAL CK 0005
In the Calcutta High Court

Keshardeo Goenka and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 16-01-1934

Acts Referred:

Mines Act, 1952 — Section 15(1), 15(2)

Citation : AIR 1934 Cal 387

Judgement

1. Petitioners 1 and 2 are the owners of a colliery. They appointed one P. N. Ghose as the Manager of the Colliery in August 1932, but the appointment was rejected by the Chief Inspector of Mines on 16th September 1932 as Ghose was already Manager of another Colliery. The said two petitioners were therefore tried on the allegation that in spite of this rejection they allowed Ghose to continue as Manager of their Colliery from 16th to 30th September 1932.

2. On 1st October 1932 petitioners 1 and 2 informed the Chief Inspector of Mines that they had appointed their Assistant Manager, petitioner 3, to act as Manager of their Colliery for one month from 1st October 1932, as a temporary Manager in a case of emergency. During the course of that month the Chief Inspector of Mines drew the attention of the first two petitioners to the fact that as Mukherji, the third petitioner, had already been appointed a temporary manager after the resignation of the last incumbent in July, he could not be appointed a temporary manager a second time without his special sanction and required them to appoint a duly qualified manager at once. On 2nd November he paid a surprise visit to the Colliery and it is said that when he did so he found that Mukherji was still in charge and work going on in it. These constitute another set of facts upon which the three petitioners were tried.

3. The first two petitioners therefore were tried for two offences for having contravened the provisions of Section 15(1) and Section 15(2), Mines Act (4 of 1923) read with Regulations. 21, 22 and 23 of the Indian Coal Mines Regulations, and the third petitioner for having contravened the provisions of Section 15(2) of the Act read with Regulation. 23 of the said Regulations. The offences are

punishable u/s 39 of the Act. They have been convicted for the said offences and their sentences as modified by the Sessions Judge are that the first two have to pay a fine of Rs. 500 each, and the third a fine of Rs. 100. Of the grounds on which this rule has been obtained those that have been pressed before us are Nos. 7, 8 and 17.

4. On these grounds several arguments have been addressed to us. One of the arguments, and that is the main argument in so far as the conviction is based upon a contravention of Section 15(2) of the Act, is that the expression "if a mine is worked" occurring in the said provision should be read as meaning actual mining operations, that is to say, such operation underground as relates to the actual raising of coal. The learned Judge has held that on 2nd November 1932 the mine was worked within the meaning of the provision. He has observed thus:

Mr. Lang deposed that on 2nd November he found no persons engaged underground but the pumping machinery was being worked and a number of the men were carrying out surface duties. As the trying Magistrate has pointed out, the definition of a "mine" does not mean only underground but also surface activities which Mr. Lang saw fall under the heading of working of a mine.

5. It may be pointed out that in Mr. Lang's report it was said:

When I visited the mine 22 persons were employed loading waggons, and others were employed on the surface, but no miners were at work. Steam was up. Pump Khalasis had been employed on the 1st and over 50 persons had been employed on 31st October.

6. Now, the word "mine" is defined in Clause (f), Section 3 of the Act. And the word is to be understood in the sense of that definition wherever it is to be found in the Act, unless there is anything repugnant in the subject or context. The definition, it must be conceded, is clumsy and very loosely expressed. According to the definition, the word means an excavation and includes works and machinery, tramways and sidings whether above or below ground in or adjacent to or belonging to a mine. It is expressed in the widest possible terms: and apart from anything else the expression "adjacent to" which connotes proximity or nearness and not necessarily the idea of touching, seems to have been misused. It is possible that if too strict an interpretation is applied it would include things never contemplated to come within its scope. But, as it stands, there can be no question that in addition to excavations, machinery, etc., and works which are incidental to or connected with mining operations clearly fall within the definition and are meant to be covered by it. This is sufficiently indicated by the definition of the word "employed" as given in Section 3, Clause (d) of the Act. Whether a particular kind of work comes within the mischief of the definition or not must always be a question of fact. It may be pointed out that although the primary lexicographical meaning of the word "mine" standing alone is an underground excavation made for the purpose of getting minerals, the particular signification of the word as used in a contract, where there is no question of any definition,

may be varied largely by the context, (see per Kay, J., in *Midland Ry. Co. v. Haultch wood Brick and Tile Co.* (1882) 20 Ch D 552 and per Lord Halsbury, L.C. and Lord Watson and Lord Macnaghten, L. JJ., in *Glasgow Corporation v. Farie* (1888) 13 AC 657. The term "mine" is not a definite term, but is susceptible of limitation or expansion according to the intention in which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature. We are of opinion that what was found by Mr. Lang as going on on the premises may well be regarded, on a question of fact, as amounting to a working of the mine within the meaning of the Act.

7. On the question of knowledge on the part of petitioner 2, so far as that charge is concerned, we are unable to hold that the findings of the two Courts below are not correct. Nor are we prepared to hold that Regulation 24, of the Regulations would exonerate the petitioners in respect of the offence upon the facts that have been found against them. We have considered the question of the sentences so far as petitioners 1 and 2 are concerned. The sentences are no doubt heavy. But according to Mr. Lang's report, this was not the first occasion that the petitioners were found contravening the law, and moreover the contravention in the present case was persisted in inspite of the warning given in Ex. 2. The rule is discharged.