
(2005) 02 JH CK 0051

In the Jharkhand High Court

Case No : Criminal M.P. No. 913 of 2003

K.K. Sharan and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Coal Mines Regulations, 1957 — Regulation 112, 36(1), 42(1), 44(8), 57(3)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines Act, 1952 — Section 2C, 72C(1), 73, 75
Penal Code, 1860 (IPC) — Section 286, 288, 304A, 337, 338

Citation : (2005) 3 JCR 481

Hon'ble Judges : H.S. Prasad, J

Bench : Single Bench

Advocate : P.C. Tripathy, for the Appellant; Md. Hatim, for the Respondent

Final Decision : Allowed

Judgement

H.S. Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal case against the petitioners being Bermo P.S. Case No. 134/96, dated 16.10.1996 under Sections 447/304-A/337/338/286/288, IPC and also the subsequent charge-sheet No. 122/98, dated 11.12.1998 under Sections 447/304-A/337/286, IPC including the cognizance order dated 2.1.1999.

2. The case of the prosecution in brief in that on the fardbeyan of the opposite party No. 2, a case being Bermo P.S. Case No. 134/96 was registered under the aforesaid sections and it is further stated that on 16.10.1996 at 8.50 a.m. the informant received an information on telephone that in prohibited area of CCL open cast, while digging mitti (earth), some rocks fell on mitti and some persons have died and some persons are injured. On receiving this piece of information, after making entry in daily diary No. 396/96 the informant proceeded for verification along with SI, T.P. Singh, ASI Surajdeo Singh, Radha Mohan Rai, Hoshila Tripathi and Urman Turi and reached at the place of accident at about

8.50 hours and saw three dead bodies of women buried by boulders and mitti in the Mines No. 11 of Amalo Open Cast. On enquiry by the persons present at the place of accident, it was revealed that the place of occurrence falls in the prohibited area and the responsibility of safety is on the management and the workers of Amalo Open Cast Mines. Still on the same day at 6 a.m. few male and few female of Nawadih P.S. and Bermo P.S. were engaged in digging white clay for the purpose of getting their houses white washed and in the meantime at about 8 a.m. boulders and mitti fell from top, as result of which three female died whose names identified by their family members are Kaushalya Devi, wife of Kailash Mahto, Surjee Devi, wife of Narayan Mahato, Tejani Devi, wife of Baldeo Mahato and they all belong to Nawadih P.S. and three injured persons were hospitalized at Phusaro hospital and some male and female fled away. This area is prohibited area and several times with the help of blasting excavation work has been done and consequently cracks have developed in the rock of top seam and on visual examination it is felt that these boulders can fall down any time and in such circumstance digging of mitti and coal by the outsiders will be very dangerous and on such place neither any notice has been affixed nor outsiders have been forbidden from coming and going nor this mines has been fenced by wire by the management, whereas it was reported by some of the officers of the management that workers are posted shiftwise and under such circumstance officers and workers of mining and excavation are fully responsible for this occurrence and so the informant filed accusation report under Sections 447/304-A/337/338/286/288, IPC. First Information Report was lodged at Bermo P.S. being Bermo P.S. Case No. 134/96. Thereafter Director of Mines and Safety, Koderma region also investigated the matter under the provisions of Mines Act, 1952 to know the causes and circumstances which led to the accident and on final conclusion of his investigation, he filed a complaint petition on 11.4.1997 before ACJM Tenughat under Sections 73, 72-C(1)(a) and Section 72-C(1)(b) of Mines Act, 1957 alleging contravention of Regulations 57(3), 42(1), 44(8) and Regulations 112 and 36(1) of Coal Mines Regulation, 1957 against K.K. Sharan, Agent. B.C. Manjhi, Manager, Mithilesh Prasad, Under Manager, Mathur Mandal, Sirdar, Ram Pravesh Singh, Sirdar, Satya Priya Das, Sirdar, Shio Badan Singh, Attendance Clerk, Karandeo Singh, Attendance Clerk of Amalo Open Cast Project of Central Coalfields Ltd.

3. The learned ACJM took cognizance of the offence and transferred the case for trial and disposal but trial of the case was conducted in the Court of Sri Ashok Kumar, learned Judicial Magistrate, Tenughat and finally the case ended in acquittal vide judgment and order dated 19.10.2001. The Bermo police filed charge-sheet No. 122/ 98. dated 11.12.1998 under Sections 447, 304-A, 337, 286, IPC against 15 named persons. Cognizance in the case was taken on 2.1.1999 against the petitioners.

4. Learned counsel appearing for the petitioners submitted that filing of the FIR No. 134/96, dated 16.10.1996, charge-sheet No. 122/98, dated 11.12.1998 and subsequent order dated 2.11.1999 of learned ACJM, Tenughat for taking

cognizance of offence including continuance of trial of the instant case in the Court of learned Judicial Magistrate, Tenughat is beyond the process of normal law. It was further pointed out that Sri Gopal Singh, SI Bermo P.S. is complainant in the instant case as FIR was lodged on his statement and written fardbeyan and he is the complainant in the case and he should not have been the Investigating Officer and he should not have investigated the case for fairness in the investigation and it was natural that he should not have become I.O. of the case and investigate a case and this is a serious infirmity and Apex Court has condemned such actions on the part of the prosecution. In this connection, reliance was placed upon in the case of Megha Singh Vs. State of Haryana, . A similar observation has also been made in Rajasthan High Court in the case of Gyan Chand Vs. The State of Rajasthan, It was further pointed out that the case is based on the same facts, occurrence and circumstances for which the police has no jurisdiction since the matter and circumstances warrant to be investigated and tried under the provisions of Mines Act, 1952 which have also been observed by the judgment dated 24.11.1999 in Cr. Misc. No. 4050/97 (R) and Cr. Misc. No. 4108/97 (R), Ramesh Khana and Fulchand Sood v. State of Bihar. Reliance was also placed in the recent judgment in Cr. Misc. No. 3545/2001, Alok Kumar Sengupta v. State of Jharkhand, 2002 (2) JCR 512 : 2002 (2) ECC 77 (Jhr) : 2002 (3) JLJR 472, and in that view of the matter prosecution of the petitioners under various sections of IPC is unwarranted and abuse of the process of Court. It was further pointed out that this is a case of double jeopardy in view of the fact that petitioners have already faced trial u/s 72-C of the Mines Act, 1952 and for the same set of occurrence these petitioners should not face trial. It was further pointed out that petitioner K.K. Sharan, Agent, was appointed u/s 2-C of Mines Act. Petitioner No. 2 is Manager, appointed under Sub-Regulation 31. Petitioner No. 3 was appointed under Sub-Regulation 32 and petitioner Nos. 4, 5, 6, 7, 8, 10 and 11 were appointed under Sub-Regulation 36 and petitioner Nos. 9 and 12 were appointed under Sub-Regulation 33 of Coal Mines Regulations, 1957. It was further pointed out that prosecution under IPC is beyond the jurisdiction and abuse of process of power in view of the fact that provisions have been made in the Mines Act, 1952 for prosecution of persons committing offences. There is bar in this respect u/s 75 of the Mines Act, 1952 and with the approval of Chief Inspector a case may be filed but in the instant case no approval of District Magistrate has been obtained. Further no case under any of the sections under which cognizance has been taken is made out because u/s 447 there is no allegation of criminal trespass against these petitioners. u/s 286 also there is no allegation and so far as under Sections 304-A and 337 are concerned, there is no direct or proximate nexus between the act of the petitioners and cause of death and, therefore, no case is made out in the any of the sections.

5. On the other hand, learned State counsel submitted that all the plea can be taken at the stage of trial.

6. On a careful scrutiny on the facts and circumstances of the case and also the

submissions of the parties and legal position in this regard, it appears that petitioners have already faced the trial and they have been acquitted of the charges levelled against them. Now they have also been charge-sheeted under various sections of IPC and when there is a statutory provision for punishing the delinquent, the continuance of the case under other sections of IPC is not justified and not proper. The learned counsel for the petitioners have referred to various sections of the Act and Regulation to show that for the occurrence committed on their part, there is a provision for punishing the delinquent or so under various regulations and, therefore, the instant case should not be allowed to continue and it will amount to abuse of the process of Court. Further a man cannot be prosecuted twice or convicted twice for the same occurrence or for the same cause of action and here petitioners have already faced criminal prosecution under various sections of Mines Act and Regulation and they have been acquitted of the charges levelled against them and further prosecution of the petitioners under these sections will be violative of the principle of natural justice.

7. In that view of the matter, this application is allowed and entire criminal case against the petitioners being Bermo P.S. Case No. 134/96, dated 16.10.1996 under Sections 447/304-A/337/338/286/288, IPC and also the subsequent charge-sheet No. 122/98, dated 11.12.1998 under Sections 447/304-A/337/286. IPC including the cognizance order dated 2.1.1999 are hereby quashed.