
(1975) 02 CAL CK 0006
In the Calcutta High Court

Lord S.P. Sinha and Others	Vs	APPELLANT
Labour Enforcement Officer		RESPONDENT

Date of Decision : 12-02-1975

Acts Referred:

Citation : 79 CWN 923

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : Ajit Kumar Dutt, Dilip Kumar Dutta and Sovendu Sekhar Roy, for the Appellant; D.N. Ghosh for the State and Surathi Mohan Sanyal, for the Respondent

Final Decision : Allowed

Judgement

N.C. Talukdar, J.—This Rule is at the instance of three accused-petitioners directed against two orders dated the 28th August, 1972 and the 29th September, 1972 passed by Sri S. C. Nundy, Judicial Magistrate, First Class, Asansole in Case No.C/3912 of 1969 pending before him u/s 9(1) of the Coal Mines Provident Fund & Bonus Scheme, 1948 for a contravention of the provisions of paragraph 11(6) of the Coal Mines Bonus Scheme, 1948 rejecting respectively the petitioners prayer for pleading guilty and also their prayer for adjournment.

2. The point involved are points of law arising in the context of facts which need not be set down in details excepting for a consideration of the points involved. The accused petitioners are some of the Directors of M/s. Macneill & Barry Ltd., having its office at 2, Fairly Place, Calcutta. The said company was the Managing Agent of the M/s. Equitable Coal Co., Ltd., who are the owners of the Bhaladi Sand Line. The complainant-opposite party, Labour Enforcement Officer (Central) Niamatpur filed a petition of complaint in the Court of the Sub-Divisional Magistrate, Asansole against the abovementioned Macneill & Barry Ltd., and the Directors of the company alleging the commission of an offence u/s 9(1) of the Coal Mines Provident Fund and Bonus Scheme, 1948 for a purported contravention of the provisions of paragraph 11(6) of the Coal Mines Bonus

Scheme, 1948 inter alia on the allegations that M/s. Equitable Coal Co. Ltd. failed to post all the prescribed particulars of employees in the Bonus Register in Form X appended to the Scheme in respect of the Bhaladi Sand Line for the quarter ending on the 30th September, 1968; that the date of appointment, father/husband's name and the home addresses of the employees were not posted in the said Register; that the above offences were noticed by the Labour Enforcement Officer (Central) Niamatpur at the time of his inspection on 28.12.1968; and as such the accused persons had contravened the provisions of paragraph 11(6) of the Coal Mines Bonus Scheme, 1948 which is punishable u/s 9(1) of the Coal Mines Provident Fund and Bonus Scheme, 1948. The order of sanction was attached along with the said petition of complaint.

3. On receipt of the said complaint the learned Magistrate took cognizance u/s 190(1A) of the Code of Criminal Procedure and some of the accused including the petitioner were summoned u/s 9(1) of the Coal Mines Provident Fund and Bonus Scheme, 1948. On 24.1.1970 all the accused persons excepting the accused C.B. Taraporevala who was reported to have expired, appeared and on their prayer for being represented through their lawyers u/s 205 of the Code of Criminal Procedure, the learned Magistrate allowed them to be so represented on execution of a bond of Rs. 100/- each. The case against the accused reported to be dead was filed by an order dated the 25.4.1970 and the case was transferred. The case cragged on thereafter for several dates on which the accused were represented by their lawyers u/s 205 of the Code of Criminal Procedure and when it was adjourned until 8.1.1971 for examination u/s 242 of the Criminal Procedure Code. On 19.8.1972 a prayer was made on behalf of the accused persons to plead guilty through their lawyers. The learned Magistrate thereafter fixed 21.8.1972 for final hearing. The matter was fixed for orders and again adjourned and ultimately on 28.8.1972 the petition was rejected and the prayer refused. On 29.9.1972 a further prayer was made on behalf of the accused persons for an adjournment for sufficient time was again rejected. These orders were impugned and form the subject-matter of the present Rule which was issued by my learned brother Mr. Justice Murari Mohan Dutt on 3.10.1972 and all further proceedings were stayed. An affidavit-in-opposition affirmed on the 8th January, 1972 was filed on behalf of the opposite-party No. 1, the Labour Enforcement Officer (Central), Niamatpur.

4. Mr. Ajit Kumar Dutt, Senior Advocate (with Messrs Dilip Kumar Dutta and Sovendu Sekhar Roy, Advocates) appearing in support of the Rule made a submission of four dimensions controverting the four steps of reasoning of the learned Judicial Magistrate, for arriving at his ultimate conclusion to reject the petitioners' prayer. The first contention is that it is not the settled law that at the stage of section 242 of the Code of Criminal Procedure that an accused must personally appear to be apprised of the accusation or the charges and the learned Magistrate has misinterpreted and misunderstood the imprimatur of judicial decisions on the point. His second submission that it is the accused shall himself plead guilty, and that it does not follow logically from the provisions of

the section and the long catena of cases on the point that in a summons case where section 242 of the Code of Criminal Procedure had to be complied with when the accused appears, the accusation cannot be stated by the learned Magistrate to the pleader through whom the accused appears and the learned pleader, who is the authorized representative of the accused will take the plea on behalf of the accused. The third branch of Mr. Dutt's contentions is that the learned Trying Magistrate has misinterpreted and misunderstood the provisions of Section 205 of the Code of Criminal Procedure in ruling out the applicability of the said provisions to cases triable under the summons procedure. The fourth and last dimension of Mr. Dutt's submissions is that the interpretation made by the learned Judicial Magistrate, Asansol has circumscribed the meaning and effect of section 366(2) of the Code to Criminal Procedure. Both Mr. D. N. Ghosh, Advocate, for the State and Mr. Surathii Mohan Sanyal, Advocate, appearing for the opposite parties joined issue submitting inter alia that on a proper interpretation of that provisions of law and of the decisions on the point, the four grounds referred to in the order of the learned Judicial Magistrate, Asansol are cogent ones and should prevail while the submissions to the contrary made by Mr. Dutt, are unwarranted and untenable.

5. The first-dimension of arguments relating to the first ground of the learned Judicial Magistrate is one of law. The learned Judicial Magistrate, is not correct in holding that it is a settled principle of law that an accused need be examined personally u/s 242 of the Code of Criminal Procedure in a case triable under Chapter XX of the Code of Criminal Procedure. On the contrary the judicial decisions are almost uniform that the accused persons on being summoned may appear by a pleader if the Magistrate issuing the summons dispenses with his personal attendance and permit him to appear by a pleader. A reference and permit him to appear by a pleader. A reference in support of the same may be made to the provisions of section 205 of the Code of Criminal Procedure and Form I Schedule V of the said Code. In a summons case where the magistrate has dispensed with the personal attendance of the accused, he is permitted by law and by order of the Magistrate to appear by a Pleader and necessarily when he so appears by his Pleader, the Magistrate is to state the particulars of the offence to the accused to represent. He cannot defer performing his duties u/s 242 of the Code of Criminal Procedure. It should not be overlooked that the very purpose and object of section 205 of the Code of Criminal Procedure would be frustrated if it is held that when the accused, permitted by the learned Magistrate who issued the summons, to appear by a Pleader, and does so appear by a Pleader, that does not constitute appearance before the Court within the meaning of section 242 of the Code of Criminal Procedure. The first dimension of Mr. Dutt's arguments accordingly succeeds.

6. The second branch of Mr. Dutt's contentions also has a considerable force behind the same. It follows logically from the provisions referred to above, that in a summons case where section 242 of the Code of Criminal Procedure has to be complied with when the accused appears, the accusation has to be stated by

the Magistrate to the learned lawyer through whom the accused appears and the latter as such authorized representative, will take the plea on behalf of the accused. Even in a warrant procedure case when the charges are read over and the plea of the accused is taken, it has not been held specifically that the accused must be personally present. On the contrary the scheme of the Code clearly envisages that in the interest of the accused and in the interest of an expeditious trial and to eliminate hardship and harassment of the accused, the Courts have been empowered to exempt accused persons from their personal attendance in the Court and to appear by a Pleader in the course of the trial u/s 205 of the Code of Criminal Procedure provided that the learned Magistrate who issues the summons should exempt the accused person from such personal attendance and permit him to appear by Pleader. Such appearance of the Pleader constitutes appearance of the accused. Section 353 of the Code of Criminal Procedure again provides that evidence can be taken in the presence of the pleader when the personal attendance of the accused has been dispensed with. The presence of the pleader has been treated as the presence for the accused and section 540A of the Code of Criminal Procedure empowers the Court at any stage of the trial to inquire and to dispense with the personal attendance of the accused if he is represented by a pleader and proceed with the inquiry or trial in the absence of the accused. Section 366 (2) of the Code of Criminal Procedure provides in express terms that in a case where personal attendance of an accused has been dispensed with during the trial, the judgment may be delivered in the absence of the accused and in the presence of his pleader where the sentence is one of fine only. On a constitution of the same it would be abundantly clear that the absolute proposition of law of a bar in limine that the accused himself shall take the plea and on a proper interpretation of the provisions of the statute and the cases on the point, the submissions of Mr. Dutt in this context shall prevail and are hereby upheld.

7. The third facet of Mr. Dutt's contentions is that the applicability of section 205 of the Code of Criminal Procedure to cases triable under the summons procedure has not been ruled out as the learned Magistrate appears to have held. Some cloud has been raised on the point but on a proper interpretation the same should disappear. Mr. Dutt submitted that when the Magistrate held that in a summons case triable under chapter XXII of the Code of Criminal Procedure section 205 of the Code is not applicable or operative, he was trying to legislate. On an anxious consideration of the points involved it appears that no Court has held specifically that in a summon case, the Magistrate who issues the summons cannot dispense with the personal attendance of the accused and permit him to appear by a pleader. There is some conflict of opinion as to whether after issuing the warrant a Magistrate can exempt the accused from personal attendance on a subsequent stage in exercise of his power u/s 205 of the Code but there appears to be no authority for the proposition that in a summons case, the Magistrate cannot exempt the accused from personal attendance. The analogy of section 342 is not applicable is as much as the said section stands on a different footing.

The very terms of section 342 make it abundantly clear that personal attendance of an accused is indispensable when the Court questions the accused to explain circumstances appearing in the evidence against him. It would not be proper to confuse an examination u/s 342 of the Code of Criminal Procedure with that of a plea u/s 242.

8. The Supreme Court in giving its considered views on section 342 of the Code therefore stated expressly that they were not holding that at the stage stating the accusation and taking the plea-whether u/s 242/243 or u/s 255 of the Code of Criminal Procedure or u/s 251A(4) or (5) of the Code of Criminal Procedure, personal attendance is obligatory or necessary. A reference may be made to the case of Bibhuti Bhusan Das Gupta and Another Vs. State of West Bengal, wherein Mr. Justice Bachawat delivering the judgment of the Court observed at page 385 that "It is sufficient to say that the language of those sections and the effect of admissions under them are entirely different." This observations were made when Their Lordships' attention was drawn to a reported decision where it has been held that at a stage of section 242 and 243 of the Code of Criminal Procedure, personal attendance of the accused was not necessary and the pleader representing the accused can be examined u/s 242 of the Code of Criminal Procedure and can take the plea u/s 243 of the Code. It is apparent therefore that the Supreme Court was not overruling the decision in the case of Dorabshah Bomanji Dubash Vs. Emperor, which laid down that where a Court has dispensed with the attendance of an accused appearing by a pleader u/s 205 of the Code of Criminal Procedure, the Court can act upon the plea given by the pleader in a case filed u/s 242 and 243 of the Code of Criminal Procedure. A reference again may be made to the case of Sm. Prova Debi Vs. Mrs. Fernandes, wherein Mr. Justice S. K. Sen clearly supports the contention of the petitioner at page 206 paragraph 4 and the four other learned Judges did not express any dissent on his interpretation of section 242 and 243 of the Code of Criminal Procedure although two of the learned Judges had differed on the interpretation of section 342 of the Code of Criminal Procedure. It is now pertinent to refer to the case of Mahant Kaushalya Das Vs. State of Madras, . The Supreme Court was not considering therein a case of accused exempted from personal attendance and appearing by a pleader nor was it considering the question whether in such a case a pleader could be called upon to take the plea and the Court could act on such plea u/s 243 of the Code of Criminal Procedure. The facts are distinguishable as in the case of Kousalya Das the accused appeared personally under sections 242 and 247 of the Code of Criminal Procedure and he did not know English or Tamil in which language the proceedings were conducted. On a consideration of the facts of the said case I find that Their Lordships were not considering the question whether in a case where the accused has been permitted to appear by pleader at the stage of section 242 of the Code of Criminal Procedure the Court could state the accusation to the pleader, who was statutory personating the accused and where the pleader on hearing the accusation could plea guilty or not guilty. The submissions of Mr. Ajit Dutt in this

context and if the abovementioned decision in Mahant Kaushalya Das Vs. State of Madras, was laying down any law that at the stage of section 242 and 243 of the Code of Criminal Procedure the accused has to appear personally, the Supreme Court in the case reported in Bibhuti Bhusan Das Gupta and Another Vs. State of West Bengal, would have held that the law has already been decided and the case reported in Dorabshah Bomanji Dubash Vs. Emperor, has been overruled. There is much force behind this submission because the Supreme Court did not say so and on the contrary, without disagreeing with the case reported in Dorabshah Bomanji Dubash Vs. Emperor, , the Supreme Court was not pronouncing expressly its views excepting in a limited way observing that the case reported in Dorabshah Bomanji Dubash Vs. Emperor, might have laid down the correct law as the language and content of admissions under the section 242 and 243 of the Code of Criminal Procedure are entirely different. The point involved is undoubtedly one of the law and a proper meaning and effect has to be given to the provisions of the statute and the principles laid down in a long catena of judicial decisions. A further reference may be made to the cases of State of M.P. Vs. Lakhanlal and Others, ; Hamer Kunwar Bai v. State reported in 1967 Cri LJ 672; and 21 C.W.N. 167 (In re: Mrs. Sukhalata Gupta decided by Chitty and Richardson, JJ.). On a consideration of the submissions of Mr. Dutt and also the principles laid down in the above-mentioned decisions, I uphold the third dimension of Mr. Dutt's submissions as well.

9. The fourth and last dimension of Mr. Dutt's submission relates to section 366(2) of the Code of Criminal Procedure. It provides in express terms, that in a case where the personal attendance of an accused has been dispensed with during the trial, the judgment may be delivered in the absence of the accused and in the presence of his pleader where the sentence is one of fine only. Only in a case where the Magistrate decides to impose a sentence of imprisonment, he will require the accused to attend the Court to hear the judgment. No distinction has been made between a summons case and a warrant case. For a proper determination of the point at issue, one cannot overlook the nature of the offence as to whether it is a clearly technical one and for that purpose the facts have to be taken into consideration. "Facts are like sacks", observed Pirandello "which cannot stand on their own"; and the facts of each case are very essential in this context for a proper consideration. The alleged contravention in this case is of a technical rule taking place in 1968 and the Directors or the Managing Agents at best incur a vicarious disability. It appears to me that in a case of this description it is against the principle of justice and fairness to insist on the personal appearance of the Directors quite subsequently in 1973. The directors who had already been permitted to appear by a pleader, have so appeared and taken their plea u/s 242/243 of the Code of Criminal Procedure, and therefore there is no bar in law to state the accusation to the accused appearing through a pleader and to take their plea through the mouth of the pleader. The Court has to consider that plea in full and decide whether it is going to impose a sentence of fine or an imprisonment. In my view the learned Judicial Magistrate is not

permitted to observe that even though he is fully apprised of the accusation, and he himself has stated the particulars of the offence, charging the accused, he cannot make up his mind as to what sentence he will impose. This, on ultimate analysis, is a judicial exercise of the discretion of the Court. If he decides even in such a technical offence, to inflict imprisonment upon the Directors in the year 1973, the law permits him to fix a date for judgment and call upon them for appearance but that is no reason however for not permitting the accused to appear by his learned lawyer to hear the charge and take their plea by him. The provision of section 10B of the Coal Mines Provident Fund and Bonus Scheme, 1948 does not make it obligatory that all the Directors of the Company is liable for an offence, must be prosecuted. In the instant case the company is the accused No. 1. Therefore insistence on the personal presence of the accused does not appear to be warranted even by the provision of the act. A reference in this context may be made to the case of Helen Rubber Industries Kottayam and Others Vs. State of Kerala and Others, wherein Mr. Justice V. Khalid observed in paragraph 6 of the judgment that when the accused appears before a court either personally or through his pleader, the particulars of the offence can be put to him or to his pleader u/s 242 and if the accused or his pleader admits the guilt, the court can pass orders immediately. u/s 366 of CrP Code, the accused is permitted to be absent to receive judgment when his personal attendance has been dispensed with during trial or when the sentence is one of fine only or when he is acquitted in which case the judgment can be delivered in the presence of his pleader. Mr. Dutt has contended that these salutary provisions have been incorporated in the Code of Criminal Procedure to be resorted to in order to help the accused and not to deny them their benefits. A reference again may be made to a recent decision dated the 14th February, 1974 by Mr. Justice S. K. Bhattacharyya in Criminal Revision Case Nos. 758 of 1973 (still unreported) wherein the Full Bench case of Probhadebi reported in AIR 1926 Cal 203 as also the case of Helen Rubber Industries Kottayam and Others Vs. State of Kerala and Others, were referred to and relied upon and the learned Judge ultimately agreed with the defence contentions that in cases which are technical in nature and which do not involve the offence of moral turpitude and where the sentence is only a fine exemption should be a rule and the Court should insist upon the appearance of the accused only when it is in his interest to appear and when the Court feels that his presence is necessary for the effective disposal of the case. The application ultimately succeeded and the Rule was made absolute. I agree with the ratio of the said judgment. The exigencies of a welfare State call for a wider outlook and new dimensions must be broken. Modern penology must keep pace with the pressing demands of the modern age and dovetail into the manifold demands of a welfare society. As was observed by Mr. Justice McCardie in Ronald True's case in Notable British Trials (Vol. I : Ronald True) at page 246 that "All law must progress or it must perish in the esteem of man". The new world calls for a new approach. A reference in this context may be made to "The New Jurisprudence: - The Grammar of Modern Law" (Tagore Law Lectures) by Dr. P. B. Mukherji wherein the learned author referred to the incoming new forces

and observed that "Many old continent of jurisprudence have disappeared. New continents have appeared demanding recognition." A reference may also be made to "Law in a Changing Society" by W. Friedmann while discussing Criminal Law in the Welfare State - Mens Rea and the Public Welfare Offence it was observed that "A whole new area of criminal law has developed out of the steadily increasing responsibilities of the modern state for the maintenance of certain crucial standards demanded by the proper functioning of a modern industrialized and urbanized society." I respectfully agree and I hold that the approach to the point at issue must be a broad approach in the backdrop of the manifold demands of a welfare society. The well-known observations of Mr. Justice Frank further abide our consideration, namely, that "Law is not mere abstraction. It is not a mere imprisonment of the past but unfolding of the future." I respectfully agree and on an overall consideration therefore of the facts and circumstances of the case, and the decisions in law, I ultimately hold that the fourth and last dimension also of Mr. Dutt's submissions must succeed.

10. In the result, I make the Rule absolute; set aside the impugned orders dated the 28th August, 1972 and 29th September, 1972 passed by Sri S. C. Nandi, Judicial Magistrate, First Class, Asansol, in Case No. C/3912 of 1969; and I remand the case to the court below for being tried in accordance with law and expeditiously and in the light of the observations made above from the stage reached on the 28th August, 1972 before the impugned orders were passed.

11. The Record shall go down expeditiously.