

(2005) 02 PAT CK 0031
In the Patna High Court
Case No : Criminal M. No. 24673 of 2002

Mahesh Agrawal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Minimum Wages Act, 1948 — Section 12(1), 13(1), 14, 18, 20

Citation : (2005) 106 FLR 317 : (2005) 3 LLJ 376 : (2005) 1 PLJR 595

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Advocate : Gajendra Pd. Singh and Raj Kishore Prasad, for the Appellant; Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sinha, J.—This application u/s 482 of the Code of Criminal Procedure ("the Code", in short) has been filed by the petitioners for quashing the entire criminal proceeding including the order recorded by the Sessions Judge. Vaishali at Hazipur dated July 18, 2002 in Criminal Revision No. 264 of 2001 as well the order taking cognizance of offence dated August 8, 2001 recorded by the Chief Judicial Magistrate, Vaishali at Hazipur in Case No. C2-588 of 2001 whereby and where under the learned Magistrate had taken cognizance of offence under Sections 12(1) and 18 of the Minimum Wages Act, 1948 ("1948 Act", in short). The complaint at Annexure-1 was filed by the Deputy Labour Commissioner, Muzaffarpur against the petitioners basing the allegations on the inspection made in the premises of petitioner No. 3. J.J. Industries at Hajipur also claiming that the labourers were being paid remuneration less than the minimum wages fixed by the Government as well for violation of various related Rules.

2. The learned Counsel for the petitioners submitted that Penal Sections have been wrongly quoted whether or not the Penal Sections have or have not been correctly mentioned, but if the allegations mentioned therein constitute any

offence punishable under the 1948 Act, then on the ground as submitted the complaint would not be dismissed.

3. The other argument was that the inspection was made on January 20, 2001, but cognizance of offence was taken on August 8, 2001, beyond a period of six months. As submitted, Section 22B(2) of the 1948 Act bars cognizance of an offence under Clause (a) or Clause (b) of Section 22 of the Act, unless complaint thereof was made within one month of the grant of sanction under this Section or, in the case of an offence u/s 22A, unless complaint thereof was made within six months of the date on which the offence was alleged to have been committed.

4. Section 22 of the Act provides penalties for certain offences including payment of wages lower to the minimum rate fixed by the competent Government. The punishment provides with imprisonment for a term which may extend upto six months, or with fine which may extend upto five hundred rupees, or with both.

5. When this argument was made, and it was not clear from the materials on record as to when the complaint was received in the office of the Chief Judicial Magistrate concerned, a report in that regard was called from the Chief Judicial Magistrate. Vaishali at Hajipur which is on the record stating therein that complaint aforesaid was received in his office on June 29, 2001 though that was placed before the Chief Judicial Magistrate, Vaishali at Hajipur on August 8, 2001. From the materials on record it appears that sanction was granted on June 26, 2001 which is also the date of sanction as given in the counter affidavit filed by opposite party No. 2. Therefore, when the complaint, in which sanction was given on June 26, 2001 was received in the office of the Chief Judicial Magistrate, Vaishali at Hajipur on June 29, 2001, taking of cognizance would not be barred under the provisions of Section 22B(2)(a) of the Act.

6. It was also submitted that cognizance was also barred u/s 468 of the Code as in the circumstances of the case, no cognizance of offence could have been taken u/s 22 of the 1948 Act, and for violation of Rules, the punishment was of fine. It was submitted that u/s 468 of the Code if the offence was punishable with the fine only then the cognizance could not be taken after six months of the date when the offence was found to have been committed, the date of inspection being January 20, 2001.

7. Learned Additional Public Prosecutor countered this argument stating that non-payment of minimum wages was a continuing offence and there was clear allegation in the complaint that this offence was committed by the petitioners, hence the limitation period for taking cognizance would extend at least to one year from the date on which offence was detected.

8. Learned Counsel for the petitioners in that regard pointed out provision u/s 22B(1)(a) of 1948 which is reproduced below:

"22-B. Cognizance of offence- (1) No Court shall take cognizance of a complaint against any person for an offence

(a) under Clause (a) of Section 22 unless an application in respect of the facts constituting such offence has been presented u/s 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint."

9. Learned Counsel for the petitioners submitted that no application in respect of the facts constituting such offence has been claimed to have been presented u/s 20 of the 1948 Act or any such application to have been granted wholly or in part, hence requirement of taking of cognizance of offence punishable u/s 22B(1) (a) of the 1948 Act has not been fulfilled.

10. Section 20(1) and (2) of the 1948 Act in this regard may be reproduced:

"20. Claims.-(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any Officer of the Central Government exercising function as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under Clause (b) or Clause (c) of Sub- section (1) of Section 13 or of wages at the overtime rate u/s 14 to employees employed or paid in that area.

(2) Where an employee has any claim of nature referred to in Sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any inspector, or any person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3)."

11. Though requirement of law need not be pleaded in any application or petition but the fact on the basis of which a particular law is sought to be made applicable, must be pleaded to show that particular law would apply in view of the facts so pleaded.

12. This case was heard, due to paucity of time, on more than one day. In course of hearing it was pointed out to the learned Counsel for the petitioner that it was nowhere mentioned in the instant (sic) petition that no application as envisaged u/s 20 of the 1948 Act was filed by any of the employees of the company himself, or by a legal practitioner or by any officers of the registered trade union authorised in writing to act on his behalf or any Inspector or any other authorised persons.

13. Even when this was pointed out in course of argument, on the next date such claim was not brought on the record by way of supplementary affidavit rather learned Counsel argued that though aforesaid fact has not been pleaded but the application should succeed on other points placed by him.

14. Therefore, at this stage, in view of the materials available on record, it is not possible to allow this application on this ground. However, this ground may be available to the petitioners to be urged in course of trial if relevant evidence is brought on the record in that regard.

15. Therefore, cognizance of offence punishable u/s 22(a) of the 1948 Act remaining on the record against the petitioners, the cognizance of offence would not be hit u/s 468 of the Code.

16. In view of the aforesaid, I am not inclined to allow this petition which stands dismissed.