

(2021) 10 CAL CK 0024
In the Calcutta High Court
Case No : C.R.R. No. 2439, 2440 Of 2003

Maple Hotels & Resorts Ltd. (Formerly Known As Darjeeling
Plantation Industries Limited) APPELLANT

Vs

Assistant Labour Commissioner, Plantation, Birpara, Jalpaiguri
& Anr. RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 227
Code Of Criminal Procedure, 1973 — Section 258, 309, 311, 482
Plantation Labour Act, 1951 — Section 2(e), 36

Citation : (2021) 10 CAL CK 0024

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Judgement

Shekhar B. Saraf, J

1. The instant criminal revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973. The petitioner company seeks quashing of the proceedings being Complaint Case No. CR-138 and 139 of 2002 pending before the Learned Chief Judicial Magistrate, Jalpaiguri initiated by the Opposite Party No. 1 purportedly under Section 36 of the Plantation Labour Act, 1951 (hereinafter referred to as "the said Act") and West Bengal Plantation Labour Rules, 1956 (hereinafter referred to as "the Rules") framed thereunder.

Facts:

2. The allegation in the complaint case is that the accused persons being associated with the administration of Kathalguri Tea Estate and having control over the affairs of the Tea Estate are "Employers", in relation to that Tea Estate, have violated the provisions of Plantation Labour Act, 1951 and the West Bengal Plantation Labour Rules, 1956. According to the complaint, the petitioner have violated the W.B. Plantation (W.O.) Rules, 1979, namely:

As mentioned in Complaint case no. 139 of 2002

- a) Rule 4 - Non appointment of Labour Welfare Officer.
- b) Rule 22 (5) - Non-appointment of a qualified Medical Practitioner in the garden.
- c) Rule 38 - Not supplying clean clothes to the crèche staff for use while on duty in the crèche.
- d) Rule 47 - Not constructing house at least 8% of the resident workers.
- e) Rule 49 (1) - Not supplying wholesome drinking water within a reasonable distance of housing accommodation of labour quarters.
- f) Rule 52 (1) - Not executing necessary repair of the labour quarters.

3. It is alleged that the inspector under Plantation Labour Act, 1951 designated as Assistant Labour Commissioner (Plantation) found the above irregularities on January 7, 2002 when he visited the Tea Estate. Thereafter, it is alleged that the accused persons have committed the offences mentioned above and are liable to be punished under Section 36 of the Plantation Labour Act, 1951 for contravention of the provisions of the said Act and the Rules. The criminal proceedings initiated in pursuance of violation of the Rules was challenged by the petitioner and upon hearing the present petitioner this Court was pleased to pass an order of stay of all further proceedings pending before the Learned Magistrate.

Submissions:

4. Counsel for the petitioner submits that the Tea Estate had a full-fledged manager and the affairs of the Tea Estate were under control of the Manager of the said Tea Estate. Therefore, the petitioner company cannot be treated to be an employer under Section 2(e) of the Plantation Labour Act, 1951 which defines - "employer" when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation. For this argument, the petitioner relies on the judgment passed in S.K. Mehra -v- State of Assam reported in (1991) 2 Gau LR 356. Relevant extract of the judgement is presented below:

"5. I have heard Mr. P.K. Goswami, learned counsel for the-petitioner. Mr. Goswami submits that for violation of the provision of the Act the employer can be prosecuted. An employer has been defined in section 2(e) of the Act. According to Mr. Goswami, from the terms of section 2(e), it is clear that only such person who has ultimate control over the affairs of the plantation is an employer except in case the affairs of any plantation are entrusted to any other person where such other person may be deemed to be the employer in relation to the plantation. According to the Labour Inspector as well as the sanctioning authority there was a Manager of the Tea Estate. Admittedly, he was looking after the affairs of the plantation. He may be termed as a person to whom affairs

of the plantation were entrusted, and as such, deemed to be an employer; but to term the President of the Company as an employer or to bring him under the definition of "employer", the prosecution must have materials on record to show that the President "had the ultimate control over the affairs of the plantation." Simply because-a person happens to be President of the Company, it cannot be said that he is also in the control of the affairs of the plantation more so in case of companies owning a large number of plantations-(tea gardens) spread all over the country. In the instant case, the learned counsel for the petitioner submits that there is not even a word in the complaint or in the sanction to show that the petitioner, who was the President of the company, was having any control over the affairs of the plantation. In the absence of any such-allegation on record, not to speak of evidence, it is difficult to-term the President of the company as an employer."

5. The petitioner also contends that the Chief Inspector of Plantations failed to satisfy himself subjectively before issuing the sanction to prosecute as he has simply reproduced the provisions as printed in the Rules without any reflection as to what extent the petitioner failed to comply with the provisions of the Rules. Further, the petitioner states that the complainant is ex facie ambiguous and suffers from vagueness in the absence of any clear description of non-compliance of any statutory provisions. Counsel for the petitioner relies on S. Ramakrishna Sarma -v- State of Kerala decided in CrI. M.C. No. 3832 of 2014 reported in 2017 SCC OnLine Ker 35134 wherein the court held that the prosecution did not bring on record the reply to the show cause cum prosecution notice issued to accused and such deliberate act amounts to abuse of process of the court. Relevant paragraph of the judgement is mentioned below:

"5. The complaint was filed on 28.11.2013. Learned counsel for the petitioners submits that on reading the complaint it would be evident that it admits that the petitioners filed a reply to the show cause cum prosecution notice. Deliberately, the 2nd respondent, even though being a responsible officer, has chosen not to bring it on record and the reason is simple. In that reply itself, the petitioners had disclosed that there had been serious labour unrest in the plantation so much so that, on and after 11.10.2013, the labourers had seized the plantation and thrown out the management. The management was forced to approach this Court for police protection order and after hearing, by judgment dated 12.11.2013, this Court issued protection order. All these were contained in the reply to the show cause that was filed by the petitioners on 16.11.2013. It was further stated that the management was unable to get the possession and hence unable to comply with the directions issued in the inspection order. They had sought time to comply as soon as possible after possession is restored. It is submitted on behalf of the petitioners that for this reason alone, though all the materials were available in the reply itself in defence to the prosecution, the Inspector of Plantations has not appended the reply while filing the complaint in which facts as stated in the reply redress the complaint itself and it is clearly an abuse of process of the Court.

6. I have heard the parties and perused the documents including the reply as filed and acknowledged in the complaint itself. If what is stated in the reply to the show cause is taken into account, then, there is no case for prosecution at all. The prosecution would be malafide in fact and in law. The complainant alleges that pursuant to the inspection, inspection order was issued for compliance. The complaint is that no compliance is shown and in spite of notice, the reply is unsatisfactory. As I have already noted, reply fully explains the position. That being so, in my view, it would clearly be an abuse of process of Court to allow the prosecution to continue. Accordingly, it is a fit case in which this Court should exercise its power under Section 482 of the Code of Criminal Procedure and quash the complaint as aforesaid. Consequently, the Magistrate is restrained from proceeding further in the matter. The prosecution case is closed accordingly and this application is allowed."

6. It is argued by the petitioner that the order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto and he has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegation made in the complaint supported by satisfactory material on record and since the above requirements are lacking in the present case the same is bad in law. For this argument, the petitioner relies on the judgement passed by the Hon'ble Supreme Court in GHCL Employees Stock Option Trust -v- India Infoline Ltd. reported in (2013) 4 SCC 505. Relevant paragraph of the judgement is mentioned below:

"14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record."

7. Finally, the petitioner avers that the management was forced to abandon the Tea Estate due to unrest and prevailing vandalism as a result of which the Tea Estate was closed sometime in the year 2002-2003 and ultimately the lease granted to the petitioner was cancelled in the year 2005 or so. Hence, no purpose will be served by continuing the prosecution of the complaint case which is a cause of harassment and abuse of process of the court.

Observations with Order:

8. I have heard the submissions made by the petitioner. Firstly, it must be examined whether the petitioner qualifies to be an "employer" as per the definition contained in Section 2 (e) of the Plantations Labour Act, 1951. The primary requirement to fall under the ambit of this section is to have direct or ultimate control over the affairs of plantations. The case referred by the Counsel for the petitioner applies to the case at hand as well. In S.K. Mehra (supra), the

Hon'ble Gauhati High Court while interpreting the above section held that the sanctioning authority granting sanction for prosecution of the Manager and the President of Tea Estate must satisfy the requirements as mentioned in Section 2 (e) of the Act and the complaint must disclose that the alleged employer had direct control over the affairs of the Tea Estate.

9. In the instant case, the petitioner company cannot be prosecuted as the prosecution must have materials on record to show that it had ultimate control of the affairs of the plantations. No such required material is presented by the Inspector at the time of initiating criminal proceedings by filing a complaint and therefore, going forward with such proceedings would be unjustified. In the case of Delhi Municipality -v- Ram Kishan reported in AIR (1983) SC 67, a similar finding was made while deciding the issue of vicarious liability of the Director of the company. It was held by the Apex Court that the nature of duty of the manager may qualify him to be vicariously liable for the offence but as far as directors are concerned it was observed that no act has been committed by them which would justify vicarious liability on their part. Relevant paragraph of the judgement is mentioned below:

"15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (Accused 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

The above discussion makes it clear that the petitioner company is not liable for direct and ultimate control over the affairs of the plantations as the nature of their duty is not similar to that of a manager who is specifically appointed for ultimate control over the affairs of the Tea Estate and hence, it does not fall under the ambit of Section 2 (e) of the Act.

10. The next issue that requires examination by this court is regarding the due process and legality of sanction given by Chief Inspector of Plantations to cause inspection and prosecution thereafter. The sanction for prosecuting the petitioner ideally is preceded by a show cause notice seeking compliance of the alleged irregularities. No such document has been presented by the prosecution wherein it could be highlighted that the sanction by the Chief Inspector of Plantations is granted after giving due consideration and time to the petitioner company to comply with the rules that are alleged to be violated. In my opinion, initiating such criminal proceedings without following due process is bad in law. The Magistrate who is responsible for application of mind before issuing summons

has to record all the proceedings leading to prosecution of the petitioner, omission in doing so is bad in law. The Hon'ble Supreme Court has decided in the case of GHCL Employees Stock Option Trust (supra) that summoning of the accused must be preceded by sufficient matter on record and application of mind which points towards criminal liability. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record. In the instant case, it appears that the above process has not been adhered to, no document has been filed which points towards the same.

11. Furthermore, it must be noted that in spite of service on several occasions upon the Assistant Labour Commissioner, none has appeared on its behalf. Furthermore, the order of stay was passed in the year 2003 by the court, but the complainant has taken no steps for having the stay vacated. When the matter was called on July 29, 2021, this court had given a direction upon the petitioner to intimate the order passed upon the complainant and serve a copy of this petition on opposite party no. 1 and file affidavit of service on the adjourned date. Again, when the instant matter was fixed for final hearing on September 20, 2021 by the order dated September 1, 2021, the opposite party was directed to appear on the day of final hearing. Despite of service the opposite party no. 1 does not appear before this court to contest the matter. It does not appear that they are interested in pursuing this complaint case.

12. In light of the above facts and circumstances, I quash the complaints bearing Case no. 138 and 139 of 2002 and all proceedings arising therefrom pending before the learned Chief Judicial Magistrate, Jalpaiguri, in so far as it relates to the petitioner.

13. Accordingly, both criminal revisional applications are allowed.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

Epilogue:

15. Another issue is required to be addressed in relation to the umpteen number of cases pending before the High Court and the manner in which the huge pendency may be mitigated. I would also like to reproduce the relevant section of the Plantations Labour Act, 1951 under which the criminal proceedings was initiated against the petitioner.

"S.36. Other offences.-Whoever contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

It is evident that the above provision does not fall under the category of offences

of grave nature. The penal provision for the offence provides for maximum punishment of three months for the alleged offence in the present case if the petitioner is convicted after successful conclusion of the trial. The question to be answered is even if the prosecution was lodged correctly whether such matters should be allowed to continue after the prolonged delay.

16. In my view, the objective to go ahead with criminals proceedings must be looked in light of the alleged wrong committed by the accused. Around 19 years have passed since the complaint case was filed and the petitioner is still bearing the burden of pending criminal case. Such pending criminal proceedings against an accused have an inherent stigma attached to it given the requirements to declare such pendency in various application forms. An alleged accused person for almost two decades suffers not just some monetary damages but is exposed to disrepute and stigma from society. They lose a significant part of their lives while running from pillar to post to arrange for a lawyer to argue for them and arranging finances for the same, a privilege which is not possessed by significant stratum of our society. The criminal justice system must not go against the main objective to be achieved and it is the duty of criminal courts to keep this factor in consideration while ruling in criminal matters.

17. The petitioner has the right to speedy trial and cannot be left in lurch for an inordinate period of 19 years that too at the stage of framing of charges. In *Pankaj Kumar -v- State of Maharashtra* reported in (2008) 16 SCC 117, it was held by the Apex Court that in case where right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances. Relevant paragraph of the judgement is mentioned below:

"23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.

22. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases."

18. The above judgement was passed after relying on the landmark seven-judge bench judgement, P. Ramachandra Rao -v- State of Karnataka reported in (2002) 4 SCC 578, on the issue of right to speedy trial. Relevant paragraph of the judgement is extracted below:

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] [as modified in Common Cause (II) [(1996) 6 SCC 775 : 1997 SCC (Cri) 42]] and Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and Raj Deo Sharma (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I) [(1996) 4 SCC 33: 1996 SCC (Cri) 589] , Raj Deo Sharma case (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] . At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as

mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary - quantitatively and qualitatively - by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms."

19. If one were to apply the principle of balancing act as prescribed in Pankaj Kumar (supra), the long delay in getting the criminal revisional application heard and disposed itself amounts to punishment given under the applicable penal provision to the petitioner. In my opinion, it would be unfair to send back the matter for trial after considerable delay of 19 years. The petitioner have borne the stigma of being alleged criminals which warrants an intervention by this court in the interest of justice. Needless to mention the thoughts espoused in the Epilogue would only be applicable for cases where the maximum penalty is less than three years and not for cases where graver crimes are committed. Furthermore, I must add as a caveat that facts and circumstances peculiar to the case in hand have to be examined before the Court quashes such proceedings on the ground of inordinate delay simpliciter. One may add that the right to speedy trial stems from Article 21 of the Constitution of India and is equally applicable to all persons, natural and juristic.

20. Moreover, non-appearance of the opposite parties in such revisional applications highlights that they are not interested in pursuing these cases. If the matter is sent back to trial it would further infringe upon the Right to Speedy Trial of the petitioner as the lower courts are already burdened with colossal pendency and further inordinate delay would be inevitable.