
(2009) 06 GAU CK 0034
In the Gauhati High Court

Mridul Kumar Bhattacharjee and Others	APPELLANT
Vs	
State of Assam and Another	RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

PLANTATIONS LABOUR ACT, 1951 — Section 2, 36, 39

Citation : (2009) 122 FLR 923 : (2009) 1 GLR 88 : (2010) 4 GLT 136 : (2010) 1 LLJ 211

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Feeling aggrieved by the order dated January 1, 2007 passed by the learned CJM, Kamrup, directing to issue summons upon the petitioners in Complaint Case No. 7624/2007 taking cognizance of the offence under the provisions of the Plantation Labour Act, 1951, and the Rules made thereunder and the continuance of the proceeding, the petitioners have filed this petition praying for quashing of the said proceeding.

2. I have heard Mr. S. Ali, learned Counsel for the petitioners and Mr B.B. Gogoi, learned APP, Assam as well as Mr. S. Das, learned Counsel for the respondent No. 2.

3. The petitioners herein are Managing Director and Directors of MKB Asia Pvt. Ltd., a company registered under the Indian Companies Act, 1956, having its registered office at 51, Zoo-Narengi Road. The petitioner No. 1 is the Managing Director and the petitioner Nos. 2 and 3 are Directors of the said company. The said company, amongst others, owns, runs and manages the Rani Tea Estates. The aforesaid tea estate has a factory for processing tea leafs. Under the provisions of the Plantation Labour Act, 1951 and the Rules made thereunder certain statutory duties and responsibilities are required to be performed by the "employer" for the welfare of the labours engaged in the plantation as provided under the Act.

4. The Labour Inspector and Inspector under the Plantation Labour Act, 1951, (for short the "Act"), in exercise of his power vested under the Act visited the Rani Tea Estate on May 10, 2007 and detected certain deficiencies with regard to welfare of the labours engaged in the said tea estate, which are allegedly caused due to deliberate inaction of the employer of the said tea estate. Noticing such deficiencies a complaint was filed before the learned CJM, Kamrup, by the Inspector as complainant against the petitioners. Upon receipt of the said complaint, the learned CJM, Kamrup endorsed the same to the Court of the learned Additional CJM, Kamrup, for necessary disposal wherein the said complaint was registered as Complaint Case No. 7624/2007 u/s 36 of the Act. In the said complaint, the complainant alleges that the accused persons being the employers of the labours engaged in the said tea estate are fully responsible for proper implementation of the provisions of the Act and the Rules made thereunder but they have failed to do so. Along with the said complaint a sanction letter dated October 10, 2007 for prosecution of the petitioners granted by the Chief Inspector of Plantation, Assam, is also enclosed along with other documents.

5. The learned Trial Court vide order dated November 1, 2007 passed an order to issue summons to the present petitioners fixing the case on December 3, 2007 for appearance. The petitioner Nos. 1 and 3 appeared on February 12, 2008 before the learned Trial Court and a prayer was made on behalf for adjournment of the case, which was granted by the learned Trial Court. At that stage the present petition praying for quashing the aforesaid Complaint Case No. 7624/2007 has been filed by the petitioners.

6. The contention of the learned Counsel for the petitioner in support of the prayer for quashing is that the petitioners being the Managing Director and Directors of the company they have not run the tea estate. The accused No. 4 has been appointed as Assistant Manager of the tea estate to manage the affairs of the tea estate and in this view of the matter, the petitioners do not come within the definition of "employer" for the purpose of the Act and, as such, continuation of the proceeding against them would be an abuse or the process of the Court. It is further contended that the learned Trial Court has issued summons without passing any order taking cognizance of the offence, as such, continuation of the proceeding is also illegal on this count. In support of his contention, Mr Ali has placed reliance on the following decisions of this Court:

(1) S.K. Mehra v. State of Assam and Anr. (1991) 2 GujLR 356.

(2) R.L. Rikhye v. State of Assam and Anr. (2001) 1 GLT 425.

Mr. Ali has also placed reliance on the decision of the Apex Court rendered in the case of S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others,

7. Mr. Das, learned Counsel appearing for the respondent No. 2, has however, contended that the petitioners being the Managing Director and the Directors of

the company are fully responsible for the implementation of the provisions of the Act and the Rules made thereunder and they are "employer" within the definition of Section 2(e) of the Act, 1951. The learned Counsel further submits that the learned Trial Court upon proper application of mind has proceeded to issue summons against the petitioners after taking cognizance of the offence. The word "cognizance" though not expressly written in the order impugned herein but from the materials available on records, it is abundantly clear that the learned trial Court has taken cognizance of the offence and upon taking such cognizance only, he proceeded to issue summon against the petitioners.

8. I have considered the rival submissions made by the learned Counsel for the parties. It is not disputed at the Bar that certain statutory duties and responsibilities are required to be performed by the "employer" of the company under the Act.

9. Now the question arises as to whether the petitioners fall within the definition of "employer"? The term "employer" has been defined in Section 2(e) of the Act as follows:

"employer", when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantations, 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 relations to that plantation.

10. There is a specific averment in the complaint petition at paragraph-3 to the effect that the accused being the employers of the tea estate are fully responsible for proper implementation of the provisions of the Plantation Labour Acts and the Rules made thereunder.

11. Mr. Ali has strenuously submitted that the respondent No. 4 was appointed by the company as Manager of the tea estate so it is the assigned function, duties and responsibilities of the said Manager to implement the provisions of the Acts and the Rules made thereunder. The Managing Director and the Directors are no way responsible for day-to-day business of the tea estate and accordingly, they do not fall within the definition of "employer" as provided in Section 2(e) of the Act.

12. A close scrutiny of the word "employer" as defined in Section 2(e) of the Act disclose that in order to become "employer", the concerned person should have ultimate control over the affairs of the plantation. There is nothing on record to show that the Manager has the ultimate control over the affairs of the plantation. He may take certain decisions as regards implementation of various schemes, but that must have final nod from the Managing Director/Director of the company.

13. In the case of *R.L. Rikhye v. State of Assam and Anr.* (supra), relied on by Mr. Ali, the affairs of the plantation was entrusted to the Manager. Accordingly, the Manager was held deemed to be the "employer" in relation to the Act. But in

the instant case there is no such entrustment of the responsibilities upon the respondent No. 4.

14. Referring to the case of S.K. Mehra v. State of Assam and Anr. (supra), relied on by Mr Ali, in the said case it was admitted at the Bar that the Manager of the tea estate who was looking after the affairs of the plantation and as such he was termed as a person to whom the affairs of the plantation were entrusted and, as such, was deemed to be an "employer" in the said case. The President of the Company was also impleaded as respondent in the said case and the Court found that the President has no such control over the day-to-day affairs of the company and it is the Manager of the garden who had such control.

15. Coming to the case in hand there is no such material before this Court to hold that the accused No. 4, the Assistant Manager of the garden has/had the ultimate control over the affairs of the plantation. No such material also existed before the learned Trial Court. The reliance placed by Mr. Das on the annual return of the tea estate of the year 2006 submitted on May 20, 2007 has got much relevance in this regard. In the said return, the petitioner under column "Name and address of the employer (whether called a Managing agent, Manager, Superintendent or by any other name)", the name of the petitioner No. 1 has been shown as the employer. This goes to show that the Managing Director and the Directors have retained the ultimate control over the affairs of the plantation. No other document in contrast to the aforesaid Annual Report has been brought to the notice of this Court. It appears that the learned Trial Court has proceeded with the matter on the basis of the materials those were made available before the learned Trial Court. As to whether the accused No 4 was entrusted with the ultimate control over the affairs of the plantation or not, is a question of fact to be decided by the learned Trial Court during the trial itself. In the absence of any prima facie material contrary to it, I find it extremely difficult to accept the contention of Mr Ali that the petitioners are not the employers within the meaning of Section 2(e) of the Act.

16. Turning to the other submissions made by Mr. Ali that the learned Trial Court has not taken cognizance of the offence as yet, but issued summons to the petitioner, I find from the records that the complaint in question is addressed to the learned CJM, Kamrup, Guwahati and upon receipt of the said complaint, the learned CJM endorsed the case for necessary disposal to the Court of the learned Additional CJM, Kamrup, Guwahati. Upon receipt of the said case records, learned Additional CJM, Kamrup, Guwahati vide order dated November 1, 2007 issued summons to the accused persons. Now it is to be seen as to whether the learned Trial Court had taken cognizance of the offence or not before issuance of summons to the accused persons.

Cognizance of offence for violation of the provisions of the Act and the Rules is required to be taken as per Section 39 of the Act. Section 39 of the Act provides that no Court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the Chief

Inspector and no Court inferior to that of a presidency magistrate or a Magistrate of the second class shall try any offence punishable under this Act.

17. The decision of the Apex Court in *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. and Ors.* (supra), relied on by Mr. Ali, when the cognizance of an offence is said to have been taken, came up before the Apex Court. The Apex Court held as follows (2008) 2 MLJ 1656 at p. 1660:

12. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a Court or a Judge, it connotes "to take notice of judicially". It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance, is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence, depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance....

18. Taking note of the fact that there is no rule of universal application, but depends upon the facts and circumstances of each case, we find in the instant case that along with the complaint petition wherein the Laboqur Inspector and Inspector under the Plantation Labour Act, 1951, is the complainant annexed the inspection report dated June 6, 2007, sanction for prosecution granted by the Chief Inspector of Plantation, Assam, dated October 10, 2007 and other relevant documents, and the learned Additional CJM, issued summons to the petitioners. The offence complained of in the case is an offence under the special statute, namely the Plantation Labour Act, 1951, which prescribes specific procedure for taking cognizance u/s 39 of the Act, without compliance of such provisions of the Act, the cognizance of the offence cannot be taken and only after taking cognizance of the offence the summons to appear before the Court can be issued. In that view of the matter, unless the Magistrate takes cognizance of the offence requiring him to be satisfied with all the requirements of Section 39 of the Act although there is no specific-recording of order that cognizance has been taken but cognizance deemed to have been taken in this case. The learned Magistrate applied his judicial mind to the compliance of the provisions of Section 39 of the Act otherwise summons would not have issued.

19. In view of the aforesaid facts, the relying on the decision rendered by the Apex Court in *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. and Ors.* (supra), I am of the opinion that the learned Trial Court has taken cognizance of the offence and thereafter issued process upon the petitioners.

20. In view of the above discussions, I do not find any merit in this petition. However, it is made clear that if on any subsequent stage of the proceedings it transpires on assessment of facts that the petitioners are not the "employer" within the meaning of Section 2(e) of the Act that benefit would go to the petitioners.

21. In the result, the petition stands dismissed. The interim order dated April 4, 2008 stands vacated. Send down LCRs forthwith.