

(2016) 07 JH CK 0082

In the Jharkhand High Court

Case No : Cr. Revision No. 1115, 1136, 1165 of 2014

Nageshwar Sharma

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Mines Act, 1952 — Section 18(4), 72(A), 72(c)(1)(a), 72(c)(1)(b)

Citation : (2017) 1 AIRJharR 115 : (2017) CriLJ 1421 : (2016) 4 JBCJ 62 :
(2016) 4 JCR 801 : (2016) 4 JLJR 526

Hon'ble Judges : Mr. Ravi Nath Verma, J.

Bench : Single Bench

Advocate : M/s. Anoop Kr. Mehta, and Amit Kr. Mehta with Sharad Kaushal, Advocates, for the Petitioner; M/s. M.B. Lal and Sadhna Kumar, A.P.P, for the State; Mr. A.K. Kashyap, Senior Advocate and Anurag Kashyap, Advocate, for the Petitioner; Ms. Anita Sinha, A.P.P,

Final Decision : Dismissed

Judgement

Mr. Ravi Nath Verma, J.—All the four revision applications arising out of the same judgment of affirmation of the conviction and sentences were heard together and are being disposed of by this common judgment.

2. Invoking the revisional jurisdiction of this Court under Section 397 read with 401 of the Code of Criminal Procedure (in short "the Code"), the petitioners of all the four revision applications have prayed for setting aside the judgment dated 03.09.2014 passed by learned Sessions Judge-Dhanbad in Criminal Appeal nos. 73 of 2007, 74 of 2007 and 76 of 2007 whereby and where under the judgment of conviction and sentence dated 09.03.2007 passed by the learned Judicial Magistrate, 1st Class, Dhanbad in C.M.A. Case no. 357 of 1996 has been affirmed.

3. The prosecution case, which is based on a complaint filed at the instance of the complainant - Director of Mines Safety, Dhanbad Region No.1, C.M.A. no. 357

of 1996 was instituted with the allegation that the complaint being the Inspector of Mines under Section 5(1) of the Mines Act received information that on 05.01.1996, when a gang of 17 loaders were engaged in loading coal at Junction-8, East Level of Two Dip, bottom section, Combined Seam, PK-1 Unit of Kusunda Colliery, Coal roof measuring about 7.6m x 6.1m x 0.20 m fell from the height of 2.8 m inflicting fatal injuries to four of them and five others received serious bodily injury whereas the remaining 8 loaders escaped unhurt. During inspection and inquiry by the complainant, following violations were found, which caused the accident: (i) in contravention of Systematic Support Rules framed and enforced under the provision of Regulation 108 of Central Mines Rules, 1957 read with Section 18(4) of the Mines Act, the accused persons namely Mahendra Kumar Gupta, Nageshwar Sharma, Binoy Kumar Mishra and Madhusudan Banerjee failed to support the place of occurrence as per the said Systematic Support Rules.

(ii) in contravention of the above Systematic Support Rules, the accused No.5 i.e. Shankar Prasad Mukherjee Under Manager, Kusunda Colliery could not take step for making inspection of place of occurrence nor gave specific direction pertaining to support the place of occurrence although condition of bad roof were reported to him by Sri Chand Babu-Overman of Shift.

(iii) the accused-overman Sri Chand Babu engaged the loaders at the place of occurrence, which was not supported as per the terms of the Systematic Support Rules even when the condition of bad roof was reported to him by the over man of the previous shift.

(iv) one of the accused Sardar Ambika Singh of the said Colliery deployed the loaders in the face without supporting the roof in terms of Systematic Support Rules.

Hence, the above noted contraventions constitute offences, which are punishable under Section 72 (A) and since the above contraventions resulted in loss of lives of four persons and serious bodily injuries to 5 persons, the accused persons are severally and vicariously liable for punishment under Section 72(c)(1)(a) and 72(c)(1)(b) respectively of the Mines Act, 1952.

After the accident, an inquiry was conducted by competent authority and during inquiry, 21 persons including injured labourers were examined. Inquiry Report was marked as Ext.-5.

4. After substance of accusations were read over and explained to the accused persons, the prosecution in order to prove its case examined Siaram Paswan as PW-1, Bhaskar Bhattacharya-PW-2, Mahadev Mandal-PW 3 and Sanjiv Kumar-PW-4. The documentary evidences were also adduced, which were marked from Ext.-1 to Ext.-15.

5. The trial court after considering the evidences both oral and documentary and hearing the parties convicted the accused persons namely Mahendra Kumar

Gupta, Nageshwar Sharma, Binoy Kumar Mishra, Sahid Akhtar Khan and Madhusudan Banerjee under Sections 72(A), 72(c)(1)(a) and 72(c)(1)(b) of the Mining Act and sentenced them to undergo rigorous imprisonment for a term of six months, two years and one year respectively with fine with default clause. Aggrieved by the judgment of conviction and order of sentence, the accused persons preferred three appeals bearing Criminal Appeal no. 73 of 2007, Criminal Appeal No. 74 of 2007 and Criminal Appeal no. 76 of 2007 before the Sessions Judge, Dhanbad. The appellate court after hearing the parties affirmed the judgment of conviction and order of sentence. Hence, the above revisions.

6. Though the revisions were filed by different counsels but the main submission was advanced by Mr. Kashyap learned senior counsel appearing for the petitioner in Criminal Revision no. 1165 of 2014 and the other counsels adopted the same submissions except Mr. Anoop Kumar Mehta the learned counsel appearing in Cr. Revision no. 1115 of 2014 and Cr. Revision no. 1136 of 2014, who further submitted on the issue of grant of sanction.

7. Mr. Kashyap learned senior counsel appearing for the petitioner while assailing the judgment of conviction and sentence of the trial court and its affirmation by the appellate court as not sustainable in the eye of law seriously contended that before lodging the complaint, an inquiry was made by the complainant and during inquiry, the statement of 21 persons were recorded but the prosecution examined only one witness, who was not even injured witness, out of the said 21 witnesses to prove the case before the learned trial court and no other injured person or even any unhurt person, who was working at the time of accident, was examined in court. It was also submitted that except PW 1- Siaram Paswan and Mahadev Mandal-PW 3, no witness named in the complaint petition was examined by the prosecution but without applying its judicial mind, the trial court convicted the petitioners, which was subsequently affirmed by the appellate court. Learned senior counsel further contended that the complaint petition was signed by the Director of Mines Safety, Dhanbad Region but in contravention of the provisions of the Act, the same was presented in court of learned Chief Judicial Magistrate, Dhanbad not by the complainant but by some other person. It was also contended that sanction of DGMS was necessary before filing of the case but the same was not obtained and never filed in the court and the non-examination of witnesses other than the two uninjured PW 1 and PW 3, the prosecution has failed to prove its case and even there is no allegation in the entire complaint as to which provision of any regulation or any laws or any order made thereunder has been contravened by the petitioners, which constitute the offence punishable under Sections 72(A), 72(c)(1)(a) and 72(c)(1)(b) of the Mines Act and in absence of any such allegation, the judgment of conviction and sentence cannot sustain and are liable to be set aside. Learned senior counsel inviting the attention of the Court to para-10 of the trial court judgment where the court has come to the finding that accused persons were all aware about the dangerous condition of the said mines for which they were strictly bound to follow the provisions of Systematic Rules seriously contended that this finding is

perverse as no such evidence has been brought before the trial court by the prosecution. Even, there is no evidence on the record to show the negligence on the part of the petitioners even after being reported regarding the faulty condition of the roof but the trial court in para 12 of the judgment has recorded a finding that the matter relating to the bad condition of the roof was reported to the authorities. PW-1 in his evidence has testified that Champai Munda and Kishori Bouri had given the information regarding the bad condition of mines roof to the Mining Sardar Ambika Singh but there is no evidence on the record to show that the said Ambika Singh had ever informed of such condition to the petitioners and the two persons Champai Munda and Kishori Bouri have also not been examined by the prosecution to corroborate the said statement. Hence, the judgment of conviction and sentence passed by the trial court and its affirmation by the appellate court, merely based on the allegations made in the complaint, cannot sustain and being unwarranted and illegal are liable to be set aside. Learned senior counsel in support of his contention relied on several judgments including (2004) 7 SCC 659, *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand and others*, (2004) 7 SCC 665, *Ram Briksh Singh and others v. Ambika Yadav and another*, 2012 (2) East Cr. C. 645, *Surendra Chauhan & Ors. v. State of Bihar*, 2002 (4) Crimes, 101, *Maguni Ranjan Jyoti v. State of Orissa* and 2012(4) East Cr.C. 461 (Jhr.), *Raju Sahu v. State of Bihar* (now Jharkhand).

8. Mr. Anoop Kumar Mehta learned counsel for one of the petitioner Nageshwar Sharma (in Cr. Rev. no. 1115 of 2014) adopted the submissions of learned senior counsel Mr. Kashyap but addressed the Court on the point of sanction and seriously contended that the judgment of conviction by the trial court and its affirmation by the appellate court are bad in law as no sanction as provided under Section 197 of the Code was granted by the competent authority. Resultantly, the order taking cognizance is itself bad in law. Mr. Mehta further submitted that the petitioners were all senior officers like General Manager, Manager and being public servant, a protection has been given under Section 197 of the Code but the prosecution has not produced any document to show the grant of sanction by the competent authority as previous sanction for their prosecution was necessary. Lastly it was submitted by Mr. Mehta that though the petitioner Nageshwar Sharma has been shown to be an Agent and on that ground, he has been prosecuted but he was never appointed by the competent authority as an Agent and this fact has been supported by PW 2- Bhaskar Bhattacharya in his evidence that the accused was Additional General Manager on the date of alleged occurrence. This fact also finds support from Ext.11/1 in which he was shown as Additional General Manager and not an Agent of Kusunda Colliery and since he was not an Agent, he cannot be prosecuted in the light of the judgment delivered on 08.10.2014, in Cr.M.P. no. 4878 of 2001, *S. Aikat v. State of Jharkhand* and another wherein cognizance of offence taken against the petitioner of that case, who was never nominated as an Agent or deemed Agent under Coal Mines Regulation Act, 1957, was quashed.

9. Per contra, learned Additional Solicitor General appearing on behalf of the

Director of Mines Safety, Dhanbad submitted that there are ample legal evidence on record to show that the complaint was presented before the Chief Judicial Magistrate by an authorised person on behalf of Director of Mines Safety and the same would be clear from the letter addressed to the Chief Judicial Magistrate forwarding the complaint petition and that it was the intention of the framer of law that under Section 75 of the Mines Act, the Director General of Mines or the other competent person has not to be physically present before the Chief Judicial Magistrate for the presentation rather he may authorise any other person or even an Advocate to present the complaint petition before the competent court. Learned A.S.G. further contended that both the courts have rightly evaluated the evidences on record and convicted the petitioners and even if the petitioners were public servant, no sanction was required in their cases as none of them was removable from their office save by or with the sanction of the government. Such sanction under Section 197 of the Code for launching of prosecution against such officers i.e. the petitioners are not required and in support of his contention, the learned A.S.G. relied on a case *K. Ch. Prasad v. J. Vanalagha Devi and others*, as reported in (1987) 2 SCC 52. It was also submitted that since the accident has not been denied by the defence, examination of the witnesses cited as witness during inquiry is not necessary. Lastly, it was submitted that this court sitting in revision cannot undertake indepth and minute re-examination of the entire evidences and upset the concurrent findings of the trial court and first appellate court.

10. Before I enter into the veils of submissions of the learned counsels, it is pertinent to examine the powers of this Court sitting in revision. Learned senior counsel Mr. Kashyap relying upon a case *State of Maharashtra (supra)* submitted that the Hon^{ble} Supreme Court in para 22 of the judgment has held that the revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 of the Code. Section 401 of the Code is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. So, the High Court sitting in revision can exercise all the appellate powers. But, on going through the entire judgment, I find that the Hon^{ble} Supreme Court has considered the revisional power of High Court in that case otherwise. In the said case *State of Maharashtra (supra)*, the accused was convicted by the trial court and the appellate court being the Sessions Court affirmed the judgment of conviction and sentence passed by the trial Court, Where after, matter came in revision before the Hon^{ble} High Court and the Hon^{ble} Court acquitted the accused persons from the charges. The matter went up to the Hon^{ble} Supreme Court and the Hon^{ble} Supreme Court setting aside the judgment of acquittal held that there were no grounds available with the High Court to upset the verdict of conviction and sentence passed by the two courts and to direct acquittal of the accused. The Hon^{ble} Supreme Court in paragraph 21 of the said judgment held as follows:

"21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 Cr.P.C. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. Ram Briksh Singh v. Ambika Yadav. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below."

In another case *Duli Chand v. Delhi Administration*, (1975) 4 SCC 649, the Hon^{ble} Supreme Court while considering the similar issue held in paragraph-5 as follows:

"5. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

Though observation was made by the Hon^{ble} Supreme Court in the above case, but the Hon^{ble} Supreme Court further held in para-24 that it is necessary to note that in the case of *Duli Chand* (supra), the High Court had re-appreciated the whole evidence and confirmed the findings of the two courts below. This Court, therefore, did not interfere with the findings.

11. Obviously in the light of the ratio decided by the Hon^{ble} Supreme Court, this Court sitting in revision cannot re-appreciate or review the entire evidence but at the same time, this Court cannot ignore to re-examine the findings recorded by the two courts below to see whether those findings are based on the appreciation of evidence in right perspective and not perverse.

12. So far as the submission of the learned senior counsel Mr. Kashyap that the complaint was not presented by the Director of Mines Safety or by any other person authorised by him, is concerned, on perusal of complaint petition (Ext.1), it would appear that the complainant was B. Bhattacharya, Director Mines Safety, Dhanbad Region and his signature is there on the complaint petition. The forwarding letter of the same authority is also there by authorising Sri M.M. Ansari, the Special P.P./A.P.P. Mines of the Directorate to present the complaint before the Chief Judicial Magistrate. In this connection, a reference of Section 75 of the Act is important and the Section 75 of the Act provides that no prosecution shall be instituted against any Agent or Manager for any offence under the Act except at the instance of Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by the general or special order in writing by the Chief Inspector. The new designation of the post of Chief Inspector is Director General and Inspector is equivalent to Director. The word "At the instance" as

used above does not mean that the complaint should be presented by the person named above by physically present in Court. It appears from perusal of the complaint that it was signed by the Director, Mines Safety, who had been authorised and in the forwarding letter to the learned Chief Judicial Magistrate, the name of the Advocate was duly authorised to conduct the case. So, there appears to be no contravention of the provision of Section 75 of the Act.

13. The second submission of learned senior counsel Mr. A.K. Kashyap and learned counsel Mr. Anoop Kumar Mehta was on the issue of sanction as no previous sanction was obtained before taking cognizance though the accused persons were all public servant. In the case K. Ch. Prasad (*supra*), the Hon^{ble} Supreme Court while dealing with the almost similar situation in which the accused was an Officer in a Nationalized Bank held in para-6 as follows:

"6. It is very clear from this provision that this section is attracted only in cases where the public servant is such, who is not removable from his office save by or with the sanction of the government, it is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view of the matter even if it is held that appellant is a public servant, still provisions of Section 197 are not attracted at all."

At this juncture, learned senior counsel Mr. Kashyap contended that obviously the petitioners are not holding the post or posts where they could be removed from services except by or with the sanction of the Government but the competent authority, who can remove the petitioners from services derives his power under regulations and those regulations ultimately derive from authority or the Act of the Parliament and, therefore, it was contended that the regulations are framed with the approval of the Central Government. It is true that the authority under the BCCL has derived powers under regulations, which were enacted by the Parliament but it does not mean that the petitioners cannot be removed from their services by anyone except by or with the sanction of the government. Even though the petitioners were public servants, sanction was not required. Hence, the cognizance taken by the learned Magistrate in the instant case cannot be said to be without jurisdiction.

14. So far as another contention of learned counsel Mr. Mehta relating to one of the petitioner Nageshwar Sharma that he was never an agent, is concerned, a close scrutiny of Section 77 of the Mines Act is necessary which provides the circumstances under which the liability could be avoided by the owner, agent or Manager. The Section permits the owner, the agent or the Manager to file a complaint against the actual offender or to have the accused produced before the court. When the owner, agent or Manager successfully proves that he used due diligence to enforce execution of the relevant provisions of the Act, (a) that the person, who actually committed the offence, did so without his knowledge, consent and connivance and (b) that when actually offender is thus brought to book, the liability of the owner, agent or Manager is avoided. But in the instant

case, there is no evidence on record to show that either the owner or agent or Manager at any point of time even tried to bring the actual offender before the court or even there is no whisper that this issue was raised either before the trial court or before the first appellate court.

Section 77 of the Act clearly shows that if any other person (actual offender), apart from "owner" or "agent" or "manager" is proved to the satisfaction of the Court, to have committed the offence, such other has to be convicted of the offence and has to be made liable to the like punishment" as if he were the "owner", "agent" or "manager" of the Mines. This provision clearly shows that not only the "owner", "agent" or "manager" can be prosecuted but other person, actually contravening the provisions, can equally be prosecuted. The word "whoever" as used in Sections 72-A, 72-B and 72-C brings within its sweep, not only the above three but also any person whatsoever who may be found to be contravening the provisions of the Act. Hence, I do not find any force in the submission of the learned counsel Mr. Mehta that the petitioner Nageshwar Sharma being not an agent, his prosecution was bad in law. However, as the opportunity provided to him under the Act, has not been followed, the said petitioner cannot evade his prosecution in this case.

15. The further contention of the learned senior counsel Mr. Kashyap that the two courts below have not appreciated the evidence in right perspective, in my opinion, in view of the ratio decided by the Hon^{ble} Supreme Court in the case State of Maharashtra (supra), this Court cannot re-appreciate or review the evidence in depth. Even then I perused the evidences on record. It is true that all the persons, quoted as witnesses in the inquiry report (Ext.-5), have not been examined. It is well settled that it is the discretion of the prosecution to whom he wants to examine in court. The statements of the injured witnesses were recorded during inquiry and they are also the part of the record (Ext.-4 to Ext.4/20). PW 1- Siaram Paswan was one of the victim, who had escaped unhurt in the said accident, has testified in his evidence that on the day of occurrence, he was working in Kusunda Colliery as mining loader and the occurrence took place on 5th January. He was attending the duty from night of 4th January in third shift, which commenced at 12.00 hours mid night to 8.00 hours in the morning. On 5th January at 5:30 a.m., when the occurrence took place, 17 persons were working there and when the roof fell, nine workers received hurt and four workers received serious injury. Later on, seriously injured workers namely Kishori Bouri, Guna Manjhi, Gopal Mandal and Sagar Manjhi succumbed to their injuries. This witness in paragraph-5 of his deposition has further testified that at the time of working, he along with other workers found the condition of the roof bad, where after Kishori Bouri and Champai Munda of the gang informed the Mining Sardar Ambika Singh about the bad condition of the roof. They were apprehending that roof will fall on them. The said Ambika Singh directed to call the dresser, who came and reported that the condition of the Chal i.e. roof was not proper upon which the Mining Sardar reacted and said that he has experience of 20 years and nothing will happen and asked the loaders

including the witness to continue the excavation. The witness has further testified that the workers protested and requested to give support to place but the Mining Sardar refused to listen and during that period, the roof at the junction fell down and the accident took place but as the witness had moved from that place, he did not sustain any injury. During cross-examination, the witness has stated that the complaint was made to Ambika Singh by Kishori Bouri and Champai Munda as there was no cog at the junction bolting and this fact was reported to the Inspector Mines also and since the workers i.e. the loaders were working at the place of occurrence without cog in the bolts, the roof fell down suddenly. It is no doubt that the two persons Champai Munda and Kishori Munda have not been examined by the prosecution but the facts remain that due to violation of Systematic Support Rules, the occurrence took place. The defence during cross-examination had not given any suggestion that the injured persons died otherwise in any other incidence. Even in their statement recorded under Section 313 of Cr.P.C., the accused persons have not denied the said incidence or the factum of death of four loaders. Secondly the reason for non-examination of Kishori Bouri was that after sustaining injury, he succumbed to the injuries. On perusal of the judgments of the court below, I find that the court below has discussed the evidences available on record in right perspective and the submission of the learned senior counsel that the evidences were not properly appreciated, has no force.

16. Lastly so far as the submission of Mr. Kashyap that there is no basis for conviction of the petitioners under Section 72(c)(1)(a) and Section 72 (c) (1) (b) as the courts below have not pointed out any contravention or violation of any provision of Mines Act or of any regulation or rule or bye-laws, the judgment of conviction and order of sentence are bad in law, in my opinion, P.W.1 in his evidence has clearly testified that there was violation at the hands of the authorities as the complaint was made to the Mining Sardar and the Inspector of Mines. Both the courts below have considered the negligence on the part of the petitioners. The appellate court in para-12 of the judgment has considered this aspect and the trial court has also considered the negligence of the petitioners as well as violation of rules.

17. In view of the discussions made above, I do not find any merit in the above revision applications. Hence, all the above revision applications, being devoid of any merit, are, accordingly, dismissed.