

(2010) 08 AP CK 0122

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 7724 of 2008

Nirmal Dutta

APPELLANT

Vs

The Government of India

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Coal Mines Regulations, 1957 — Regulation 114(1)
Criminal Procedure Code, 1973 (CrPC) — Section 255, 482
Mines Act, 1952 — Section 18, 18(5), 5(1), 57, 72A

Citation : (2010) 2 ALD(Cri) 660

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : C. Masthan Naidu in Crl.P. Nos. 7724 and 7725 of 2007 and N. Krishna Rao, in Criminal P. No. 2581 of 2008, for the Appellant; Aruna Yalagiri for 1st Respondent in Crl. P. No. 7724 of 2007, K. Kishore Kumar Reddy, for 1st Respondent in Crl. P. Nos. 7725 of 2007 and 2581 of 2008 and Public Prosecutor for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—Criminal Petition No. 7725 of 2007 is filed by A-1, Criminal Petition No. 7724 of 2007 is filed by A-2 and Criminal Petition No. 2581 of 2008 is filed by A-3 to A-6 who are all accused of offences punishable under Sections 72A, 72C(1)(a) and 72C(1)(b) of the Mines Act, 1952 (in short, the Act) in C.C. No. 712 of 2007 on the file of Judicial Magistrate of the First Class, Kothagudem. Subject-matter of these offences is fatal accident which occurred on 12.11.2006 in Venkateshkhani No. 7 Incline (Mine) at 09.30 a.m. in which T. Sudhir Babu - Senior Under Manager, M. Ramanjee - Head Overman, K. Ramachander - General Mazdoor working as Cable boy and Podugu Butchaiah - General Mazdoor working as Cable boy died on the spot and Pratap Kumar Sharma - Continuous Miner Operator and Thomas N. Kosi - Shuttle Car Operator received serious injuries. It is alleged that during inspection and enquiry, it was revealed that while the last slice in last fender of a pillar in a depillaring panel

was being worked by a Continuous Miner and Shuttle Car combination, a sudden massive roof fall measuring about 47 meters length, 13 meters breadth and 2 to 6 meters thick occurred in the goaf extending to the immediate out-bye junction, wherein six persons got trapped, out of whom four persons died instantaneously and two others sustained serious injuries who could be rescued after about five hours. It is further alleged that had the persons and machine been withdrawn from that critically dangerous phase in time when no operation was being done as required under Condition No. 6.1 of the permission letter dated 17.11.2005 read with Regulation 114(1) of the Coal Mines Regulations, 1957 (in short, the Regulations) and ground movement monitoring and assessment been done as required under condition No. 3.1 of the permission granted under Regulation No. 110A read with Section 18(5) of the Act, this accident could have been averted. With these allegations, the Government of India represented by the Inspector of Mines-cum-Director of Mines Safety, Hyderabad Region No. 1 filed the complaint in the lower court against A-1 to A-6. A-3 was Mines Manager, A-4 was Agent, A-5 was Chief General Manager and A-6 was nominated owner of the Mine inside which the fatal accident took place. A-1 was Shift-in-Charge of M/s. P and H Joy Mining Equipment India Limited for continuous miner panel at this mine project. A-2 was Head, M/s. (P and H), Joy Mining Equipment India Limited (in short, P and H JMEL). Questioning the proceedings in C.C. No. 712 of 2007 of the lower court, A-1 to A-6 filed these three petitions for quashing these proceedings in exercise of inherent powers of this Court u/s 482 Cr.P.C.

2. There is no dispute about factum of fatal incident which took place on 12.11.2006 at the mine in which four persons died and two persons sustained serious injuries. The dispute is regarding liability and more particularly criminal liability for this fatal accident. A-1 and A-2 disclaim their liability contending that they are working for gain on contract basis with P and H JMEL and that they have no contractual obligations with Singareni Collieries Company Limited (in short, SCCL) and that P and H JMEL is not in any way connected with operations of this mine and that as per Section 18 of the Act, liability is on owner, agent and Manager of the mine. On the other hand, A-3 to A-6 contend that they are not liable for the fatal accident in the mine because operations in the mine were being monitored by A-1 and A-2 representing M/s. Joy Mining Machinery Limited, U.K (in short, JMML). A-1 and A-2 further contended that contract between JMML and P and H JMEL is only a supply contract for supply of material at this mine and nothing more. This Court in this petition u/s 482 Cr.P.C. cannot go into defence of A-1 and A-2 based on private documents between JMML and P and H JMEL. It is for them to produce those documents relating to contract between JMML and P and H JMEL and prove those contracts together with terms contained therein during trial of the case before the Magistrate. This Court while exercising power u/s 482 Cr.P.C. cannot undertake pre-trial of the case relating to defence of A-1 and A-2. It is well settled principle of law that in a petition u/s 482 Cr.P.C., this Court is expected to take the prosecution allegations on their face value and see whether the complaint made out the offences with which the accused are

proposed to be charged therein. This Court is also precluded from entertaining controversial questions of fact and decide the same in a petition u/s 482 Cr.P.C.

3. Section 72-A of the Act prescribes punishment for contravention of any regulation or bye-law or order made thereunder relating to matters specified in Clauses (d), (i), (m), (n), (o), (p), (r), (s) and (u) of Section 57 of the Act. Section 72-C of the Act prescribes punishment for contravention of any provisions of the Act or Regulation or Rule or Bye-law or any order made thereunder. If the contravention resulted in loss of life then Clauses (a) thereof applies; and if the contravention caused injury or danger to the persons employed in the mine or other persons in or about the mine, then Clause (c) thereof applies. As pointed out earlier, the 1st respondent who is the complainant alleges contravention of condition No. 6.1 of the permission letter dated 17.11.2005 read with Regulation No. 114(1) of the Regulations and also condition No. 3.1 of the said permission letter issued under Regulation No. 100-A of the Regulation.

4. The relevant conditions of the permission letter said to have been contravened herein are as follows:

3.1. It being a new method, installation and monitoring of the instruments in the CMP 1 panel shall be done by trained engineers of M/s. Rock Mechanics Technology (RMT) of U.K, who shall monitor convergence, load on support, stress developed over pillars, separation of the overlying beds for prediction of strata behaviour and caving characteristics. They shall also suggest connective measures in advance during extraction.

6.1. The operation shall be carried out under the supervision and guidance of representatives of M/s. Joy Mining Machinery and M/s. Rock Mechanics Technology, UK, who would be operating this panel on contract basis, complying with all Statutory obligations.

5. Regulation No. 100-A of the Regulations prescribe the procedure for extraction of coal by a method other than the usual method of Bord and Pillar System. The said regulation reads as follows:

100-A. Extraction of coal by method other than Bord and Pillar System: Where in any mine or part thereof it is proposed to extract coal by a system other than the bord and pillar system, the owner, agent or manager shall give notice in writing of the proposed system of working to the Chief Inspector and the Regional Inspector in Form III of the Third Schedule and no such system shall be commenced or carried out except with the permission in writing and in accordance with such conditions as the Chief Inspector may specify by an order in writing.

It is only under Regulation No. 100-A, DGMS, New Delhi issued permission letter dated 17.11.2005. The permission was granted to extract pillars by "caving method" with the introduction of Continuous Miner in Panel No. CMP-1 in King

seam at Venkateshkhani No. 7 Incline Mine as indicated on plan No. VK/KS/PC/C.M.P.-1/05/517 and No. VK/KS/OP.ME/CMP-1/05/519 dated 19.07.2005, enclosed with the application under reference, on experimental basis, subject to the strict compliance of the conditions mentioned in the permission letter.

6. As per condition No. 3.1 of the permission letter, installation and monitoring of the instruments shall be done by trained engineers of M/s. Rock Mechanics Technology of U.K (in short, RMT). RMT shall also monitor convergence, load on support, stress developed over pillars, separation of the overlying beds for prediction of strata behaviour and caving characteristics. They shall also suggest connective measures in advance during extraction. As per condition No. 6.1 of the permission letter, the operation has to be carried out under the supervision and guidance of representatives of JMML and RMT who should operate the panel on contract basis complying with all Statutory obligations. Therefore, A--1 and A-2 who represent JMML at the operation site cannot claim that they have no liability for this fatal accident. Irrespective of technical support and monitoring new technology in mining by RMT and JMML through P and H JMEL, A-3 to A-6 who are owner, agent and managers cannot contend that they have no duties and responsibilities u/s 18 of the Act. If the persons and machinery at the phase had been withdrawn from the critically dangerous area in time when no operation was being done, in spite of occurring sudden massive roof fall in the goaf, six persons would not have been trapped resulting in death of four persons on the spot and serious injuries to two others. Who out of A-1 to A-6 was actually responsible for such failure, is a question of fact, which question has to be decided by the trial Court after recording evidence to be let in by both the parties and after assessment of such evidence coupled with application of law.

7. State v. B.M.N. Rao 1998 (2) ALD (Crl.) 154 of this Court has no application herein, as it was a matter which arose out of dropping of proceedings u/s 255 Cr.P.C. It is specifically stated in the present complaint that if the accused took steps to withdraw persons and machinery from the critically dangerous area when no operation was being done, these fatal results would not have occurred in spite of sudden massive roof fall and that there was no proper ground movement monitoring and assessment and it resulted in loss of four lives and serious injuries two persons.

8. Placing reliance on N.V. Subrahmanyam v. State (Government of India) 2002 (2) ALD (Crl.) 165 it is contended by the senior counsel appearing for A-3 to A-6 that u/s 75 of the Act the Chief Inspector before sanctioning prosecution has to satisfy himself about the owner, agent or manager failing to exercise due diligence to prevent commission of such offence and that the Chief Inspector has to give reasons for coming to the conclusion that due diligence was not exercised. Section 75 of the Act does not prescribe any sanction for prosecution of the Owner, the Agent and the Manager of the Mine. It only deals with institution of prosecution which is entirely different from sanction for prosecution. Section 75 of the Act reads as follows:

75. Prosecution of owner, agent or manager: No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector:

Provided that the Chief Inspector or the District Magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.

Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector.

9. Thus, as per Section 75 of the Act, prosecution has to be instituted against any owner, agent or manager except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the chief inspector. The present case was instituted by the Inspector of Mines who is also designated as Director of Mines Safety, Hyderabad Region No. 1, Hyderabad. It was stated in the complaint in para-VIII that the complainant was authorised by the Chief Inspector of Mines u/s 75 of the Act to institute prosecution on his behalf vide notification No. Law/G-32/85/883, dated 30.01.1990 published in the Gazette of India dated 03.03.1990 at Para-III, Section-I. It is further stated therein that apart from said special authorisation, there is an earlier general authorisation given by Chief Inspector of Mines and Director General of Mines Safety by virtue of powers conferred on him u/s 75 of the Act authorising all officers of the Directorate who are subordinate to the Chief Inspector of Mines and who are appointed as Inspector of Mines u/s 5(1) of the Act to institute prosecutions for any offences under the Act against the owner, agent or manager of any Mine situated within their respective jurisdiction, in modification of earlier notification in No. G-22/85/7174, dated 21.10.1986 published in the Gazette of India part-III, Section-I, dated 06.12.1986. Therefore, there is sufficient compliance of Section 75 of the Act by the complainant in instituting the prosecution against A-4 to A-6.

10. Having regard to limited scope of scrutiny u/s 482 Cr.P.C. and in view of my above discussion of various aspects of this case, this Court is of the opinion that no relief can be granted to any of the petitioners in these three petitions.

11. In the result, all the petitions are dismissed.