
(2012) 07 MP CK 0110
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 10868 of 2010

NTPC and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 47, 53, 55
Criminal Procedure Code, 1973 (CrPC) — Section 469(1), 473, 482

Citation : (2012) ILR (MP) 2880 : (2013) 1 MPJR 8

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : P.R. Bhave and Mr. R.C. Shrivastava, for the Appellant; P.K. Chourasia, P.L. for Respondent No. 1/State and Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Mishra, J.—Since a common yet mixed question of fact and law is involved, this order shall govern disposal of all the five petitions, u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code"), moved for getting the corresponding criminal proceedings quashed as time-barred. In this regard, the petitioners are aggrieved by the orders passed by Chief Judicial Magistrate, Sidhi, treating the second complaints as well within the extended period of limitation as well those passed by the Revisional Court, negating the plea of limitation. In each one of these cases, cognizance of the offence punishable u/s 47 of the Building and other Construction Workers (Regulation of Employment and Working Conditions) Act, 1996 (for short the "Act") for contravention of provisions regarding safety measures in the form of rules made thereunder, was initially taken upon the first complaint filed by the respondent no. 2 against the petitioners except petitioner no. 1 Company namely National Thermal Power Corporation Limited, and other persons arrayed as accused. However, the proceedings as against petitioner nos. 2 to 4, were quashed by the Apex Court

for the reason that the Company of which they were the officers-in-charge at the relevant point of time, was not arraigned as accused. Relevant extracts of the common order passed on 21/9/2007 in Cri. Appeal Nos. 1285/07 & 1286/06 @ SLP (Cri.) No. 1517 and 1560/2007 may be reproduced as under-

...Appellants herein who are the Directors and Officers of the National Thermal Power Corporation, which is a company within the meaning of the provisions of Section 53 of the said Act, are sought to be prosecuted without the Company being impleaded as a party. The statute provides for vicarious liability on the part of the officers concerned, although in law they may not be otherwise liable, only in the event the statutory requirements are fulfilled. In such a situation, it was obligatory on the part of the complainant-respondents to comply with the statutory requirement by impleading the Company as a party as an accused.

In this view of the matter the impugned judgment cannot be sustained. It is set aside accordingly. The order taking cognizance against the appellants is quashed.

Ms. Makhija, the learned counsel appearing for the respondents, however, states that the respondents shall take steps to file another complaint. We do not want to make observation in respect thereof.

2. Accordingly, all the complaints, so far as they related to the petitioner nos. 2 to 4, were dismissed on 25.07.2008. Thereafter, in each case, on admission of guilt, the co-accused were convicted and sentenced. However, much prior to dismissal of the first complaints as against petitioner nos. 2 to 4, the second complaints, impleading the petitioner no. 1 as one of the accused, had already been presented on 19.12.2007.

3. For the sake of convenience, details of complaints and the orders in question may be tabulated as under-

4. Before proceeding further, it is necessary to first advert to the relevant provision in the form of Section 55 of the Act, which reads -

55. Limitation of prosecutions. - No. Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

5. A close analysis of the orders passed by the Magistrate would reflect that the second complaint was regarded as within time for two reasons-

(i) Each one of the complaints was filed within the period of three months (as prescribed in Section 55 [above]) commencing from the date of the Apex Court's order.

(ii) There was no need to give opportunity of hearing to the accused persons.

6. The Second reason was presumably based on the fact that cognizance of the offences against the petitioners other than the petitioner no. 1 had already been taken upon the first complaint that was admittedly filed within the prescribed period of limitation whereas the first reason appears to be inspired from clause (c) of Section 469(1) of the Code, which is couched in the following terms-

469. Commencement of the period of limitation.-

(1) The period of limitation, in relation to an offender, shall commence,-

(a)....; or

(b)....; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(Emphasis supplied)

7. In revision, learned Sessions Judge declined to interfere with the orders directing issuance of process while concurring with the reason no. (i) [supra].

8. Learned Senior Counsel appearing on behalf of the petitioners has strenuously contended that the second complaints were barred by limitation. He is further of the opinion that continuance of proceedings against them even after non-grant of liberty by the Apex court to file second compliant is an abuse of the process of the Court.

9. While supporting the orders, learned Panel Lawyer has submitted that the Supreme court had merely refused to go into the question as to whether the respondent no. 2 was entitled to takes steps to file fresh complaints, based on the same facts. According to him, by virtue of Section 473 of the Code, the Magistrate had the jurisdiction to condone the delay even without a formal application for the purpose. Attention has also been invited to the fact that during the course of proceedings initiated upon second complaints, one of the petitioners namely R.P. Gupta has already been convicted on his plea of guilt in each one of the cases.

10. At the outset, it may be observed that the admission of guilt by R.P. Gupta would have no bearing on the merits of the controversy raised in these petitions. Moreover, the provision of Section 473 of the Code would not be applicable in view of the specific bar engrafted in Section 55 of the Act. (PP Unnikrishnan and Another Vs. Puttiyotttil Alikutty Anr Another, Even otherwise, none of the orders passed by the Magistrate fulfils the requirements of an order u/s 473 of the code, as laid down by a three-Judge Bench in State of Himachal Pradesh Vs. Tara Dutt and Another, Relevant observations may be reproduced as under-

...Respect of the offences for which a period of limitation has been provided in S.

468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognized principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence.

11. This apart, the Supreme Court also did not, in any way, relax the rigour of the provision of Section 55 of the Act. Thus, the view taken by learned Magistrate and upheld by learned Sessions Judge was apparently misconceived for more than one reasons.

12. However, fact of the matter is that the Court takes cognizance of the offence and not the offender and therefore, the number of accused person or the legal status of anyone of them did not assume any significance. Admittedly, in each case, the first complaint arraigning the petitioners except petitioner no. 1 company and the co-accused (since convicted) was presented within the prescribed period of limitation. In such a situation, summoning of the petitioners to stand trial was only a part of process of taking cognizance of the offences allegedly committed by them and the co-accused named in the first complaint. Accordingly, none of the second complaints could be treated as barred by time.

13. To conclude, since the orders issuing process deserve to be affirmed though for a different reason, no interference under the inherent powers is called for. All the petitions, therefore, stand dismissed.

Copy of this order be retained in each one of the connected petitions