
(2002) 06 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5283 of 1998

N.V. Subrahmanyam and Others

APPELLANT

Vs

State (Govt. of India)

RESPONDENT

Date of Decision : 11-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines Act, 1952 — Section 75

Citation : (2002) 2 ALD(Cri) 165 : (2002) CriLJ 3264

Hon'ble Judges : Ch. S.R.K. Prasad, J

Bench : Single Bench

Advocate : K. Venkat Rao, for the Appellant; C.V. Ramulu, S.C. and C.G., for the Respondent

Judgement

Ch. S.R.K. Prasad, J.—The petitioners, who are accused in C.C. No. 219 of 1996 on the file of the Judicial Magistrate of I Class Court. Mummdivaram, East Godavari District invoke the inherent powers of this Court to quash the proceedings in the said C.C. 219 of 1996.

2. The facts that led to filing of the complaint and later this petition can be briefly stated as follows : The petitioners are working as Chief Engineer/Mines Manager; Chief Engineer/Asst. Mines Manager and General Manager/Agent in Oil and Natural Gas Corporation Limited (O.N.G.C). They have undertaken also drilling operations near GS-15-AB (Offshore) Location operating within 12 nautical miles from the site village. The drilling operations were entrusted to their Contractor. As per the contract the entire drilling operation will be conducted; by the Contractor and thereafter production tests have to be conducted. It appears that on 23-11-1992 when the Contractor himself was conducting production tests at GS-15-AB, oil gas leakage was observed in the flow line and while four persons were working on the burner boom held by four steel ropes in an offshore drilling, one of the ropes snapped due to shearing of bolts at the eye pad, leading to collapse of the boom. All the four persons fell into the sea and one of them died

due to shock, after 45 minutes. Thereafter the accident was reported on 20-11-1995. Sri Megharaj Deputy Director of Mines, Safety, Hyderabad Region No. 1 also an Inspector of Mines u/s 5(1) of the Mines Act, 1952 made an inspection of the aforesaid mines on 1-12-1995, 18-1-1996, 2-2-96 and 16-2-1996 to enquire into the circumstances which led to the said accident. An enquiry was conducted in respect of the accident and statements of witnesses were recorded at Rajahmundry and Hyderabad. Thereafter the Deputy Director of Mines Safety submitted a report. Subsequently he filed a complaint before the Judicial Magistrate of I Class, Mummidivaram and the same was registered as C.C. 219 of 1996 for the offence u/s 72(c) of the Mines Act and the learned Magistrate ordered issue of summons. Aggrieved by the same the present criminal petition is filed.

3. Sri Manohar, the learned Senior Counsel for the petitioners has contended that the boom was not inspected by the Inspector as it was under transportation to Visakhapatnam and further there was no application of mind by the authority concerned for launching of prosecution against the petitioners-accused before filing of the complaint. It is also contended that the prosecution cannot be laid without producing specific order mentioning the fact of exercising due diligence to prosecute the said offence as required u/s 75 of the Mines Act and the complaint itself is not maintainable for want of an order u/s 75 of the Act.

4. On the other hand, the learned Counsel appearing for the Central Government contends that the Deputy Inspector of Safety was authorised by the Chief Inspector to present a complaint and therefore the complaint is not bad and it is maintainable. It is also contended that no special order in writing need be passed by the Chief Inspector. The Chief Inspector authorised the Deputy Inspector of Safety u/s 75 of the Act before launching a complaint.

5. Adverting to the said contentions Section 75 of the Mines Act of 1952 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.

(Providing 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 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.

It is clearly mentioned u/s 75 of the Act that before sanctioning prosecution the Chief Inspector shall satisfy himself that the owner, agent or manager had failed to exercise due diligence to prevent commission of such offence. No such thing is mentioned in the complaint. It is clear while satisfying himself that the Chief Inspector has to give reasons in his order for coming to the conclusion that due diligence was exercised. No order has been passed under this section by the Chief Inspector or his authorised person. There is much force in the contention of the senior counsel Sri Manohar that in the absence of the same, the prosecution is not maintainable. It is held by the Supreme Court in the decision reported in *State of Karnataka Vs. M. Devendrappa and Another*, as follows :

While exercising inherent powers the Court does not function as a Court of appeal or revision. Inherent jurisdiction u/s 482, Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In *R.P. Kapur Vs. The State of Punjab*, , this Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

- (1) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction:
- (2) Where the allegation in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged:
- (3) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Hence it is clear that inherent powers of High Court shall be exercised to quash the proceedings if there is legal bar for want of sanction. It is a case where no order has been passed u/s 75 of the Mines Act, which is mandatory. It is also not mentioned in the complaint clearly that such an order has been passed. In the absence of any order the complaint itself is not maintainable. Moreover the contractor is not shown as accused in this case though the accident occurred on account of the negligence of the contractor. On a close scrutiny of the complaint discloses that boom supplied by O.N.G.C. was not examined. He presumed that

another boom is not having proper condition but the present boom involved in the accident is also defective and such presumption does not arise in criminal cases and on that basis nobody should be prosecuted. On the basis of analogy law does not permit to prosecute the accused. I find that complaint is not maintainable for want of an order u/s 75 of the Mines Act and the proceedings are liable to be quashed. Further, there was no application of mind for sanction of prosecution of the petitioners. Further there is no finding regarding the negligence on the part of owner. Manager, agent.

In the result, the proceedings in Criminal Case No. 219 of 1996 on the file of the Judicial Magistrate of 1 Class. Mummidivaram are quashed and the petition is ordered accordingly.