

(2018) 05 GAU CK 0013
In the Gauhati High Court
Case No : Crl.Pet. 903 of 2015

PROMOD KUMARJALAN

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Plantations Labour Act, 1951 — Section 2(e), 15, 16, 36
Assam plantations Labour Rules 1956 — Rule 58, 59

Citation : (2018) 05 GAU CK 0013

Hon'ble Judges : AJIT BORTHAKUR

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. G. N. Sahewalla, learned counsel for the petitioner and Mr. D. Das, learned Addl. PP, Assam, appearing for the State.

2. Perused the record.

3. This is a petition under Section 482 Cr.P.C., praying for setting aside and quashing the complaint and the impugned order, dated 07.05.2015, passed

in C. R. Case No. 474/2015 by the learned Judicial Magistrate, 1st Class, Morgaon.

4. The petitioner's case, in a nutshell, is that he is one of the Directors of Gopal Krishna Tea Co. (P) Ltd., a company registered under the

Companies Act, 1956 and owns a tea estate, namely Gopal Krishna Tea Estate in Morigaon District, Assam. For the purpose of management of the

said tea garden, the company appointed one Rahul Srivastava as the General Manager of the Tea Estate and as such, he is the employer as defined in

Section 2 (e) of the Plantations Labour Act, 1951 (for short 'the Act'). The

petitioner has contended that there are 368 permanent worker families, out of which, the employer has provided 249 pucca quarters as per the provisions of the Act and the balance 119 worker families have been provided with semi-pucca and kutcha quarters, with periodical repairings at considerable cost as per requirement. As all the quarters could not be made pucca constructed, execution of plan of the Company is underway for such construction, in a phased manner.

5. The garden authority received the said show cause notice, dated 07.04.2015, when the General Manager was on leave and away in Delhi for his medical check-up. Therefore, the Deputy Manager submitted an application on 17.04.2015 praying for 10 days time to reply to the show-cause citing the ground of medical leave of the General Manager during the period. After return to the tea estate, the General Manager submitted the reply, on 02.05.2015, to the Labour Officer, Morigaon explaining all the facts stating that they have no intention to violate any of the provisions of the Act and rules and they are making all efforts to complete construction of pucca quarters phase-wise. However, without waiting for the reply to the show cause notice by the management, the Labour Officer submitted a complaint before the Court of learned Chief Judicial Magistrate, Morigaon on 27.04.2015, wherein the petitioner was arrayed as an employer and alleging that the employers had violated the provisions of Section 16 of the Act read with Rules 58 and 59 of the Rules made thereunder and the Government Notification, dated 22.08.2003, issued in this regard and as such, they should be convicted under Section 36 of the Act and further, for direction to rectify the defects/ irregularities, whereupon, on being made over for disposal by the learned Chief Judicial Magistrate, Morigaon, the learned Judicial Magistrate, 1st class, Morigaon took cognizance of the offence under Section 36 of the Act and issued summons accordingly.

6. Mr. G. N. Sahewalla, learned senior counsel assisted by Ms. S. Katakey, learned counsel appearing for the petitioner, submits that as per Rule 58, the employer is obliged to provide for worker and his family housing accommodation as nearly as possible near to the work place in prescribed standard and as such, it is not that immediately at a time, all the quarters must be made pucca. Mr. Sahewalla further submits that there was absolutely no violation of Section 16 of the Act as well as Rules 58 & 59, made

thereunder, and without granting sufficient opportunity to file the reply to the show cause, filed the complaint in haste and accordingly, the learned Magistrate took cognizance of the offence.

7. Mr. D. Das, learned Addl. PP, Assam, appearing for the State respondent fairly submits that no reasonable opportunity was, in fact, granted to the

petitioner to explain his company's position to the allegations raised in the show cause, which was issued during the period of the General

Manager's medical leave and ignoring the Deputy Manager's petition, dated 17.04.2015, praying for extension of time by 10 days to submit

appropriate reply in the matter filed the complaint on 27.04.2015. However, Mr. Das submits, the case was filed on 27.04.2015, by the Labour Officer,

Morigaon without waiting for reply of the management of the tea estate.

8. Section 2 (e) of the Act defined the term 'employer' in relation to a plantation for growing tea, coffee, rubber etc. as the person, who has the

ultimate control over the affairs of the plantations, such as Manager, Superintendent etc. Section 15 of the Act requires the employer to provide and

maintain housing accommodation for every worker and his family residing in such plantations. Section 16, on the other hand, empowers the State to

make rules relating to housing. Rule 58 of the Assam plantations Labour Rules requires every employer to provide for worker and his family

accommodation conforming to the prescribed standards, which is, of course, subject to relaxation, when necessary, to be made by the State

government and Rule 59 prescribes the standard and specification of such housing accommodation. Section 36 prescribes the punishment for

contravention of any of the provisions of the Act.

9. As it appears from the contentions made in the petition, the petitioner is aggrieved by the act of the Labour Officer, Morigaon, who, issued a show

cause notice, dated 04.04.2015, granting 15 (fifteen) days time for alleged violation of the provisions of the Act but did not wait for the period prayed

for extension of the time, to make adequate representation by the management and filed the impugned complaint under Section 36 of the Act, on

27.04.2015.

10. Perusal of the notice, dated 04.04.2015 (Annexure "I") reveals that a Committee constituted by the D.C., Morigaon, inspected the

petitioner's tea estate on 31.03.2015 and in course of such inspection, the

Committee, of which the complainant Labour Officer, Morigaon was a member, found defects in respect of housing, drinking water, bathing enclosures and latrines provided to the workers, which amounted to contravention of provisions of the Plantations Labour Act, 1951 and Govt. Notification No. GLR (RC) 41/96/171, dated 22.08.2003. By the said notice, 15 (fifteen) days time was granted to the petitioner to submit his show cause reply. However, from the letter, dated 17.04.2015, written by the Deputy Manager of the petitioner's tea estate addressed to the Labour Officer, Morigaon reveals that the employer, namely, General Manager Mr. Rahul Srivastava of the tea estate was away in Delhi in connection with his medical checkup, for which request was made to grant 10 days more time to reply to the show cause. However, the letter was not responded and the General Manager by his reply, dated 02.05.2015, (Annexure â" III) addressed to the Labour Officer, Morigaon claimed to have implemented the provisions of the Act and Rules framed thereunder and assured to implement the statutory obligations in a phased manner, subject to availability of funds. However, without granting adequate time to file the reply to the show cause as requested to file the complaint, on 04.04.2015 (Annexure â" IV) before the Court of learned Chief Judicial magistrate, Morigaon and thereupon, the learned Judicial Magistrate, 1st Class, Morigaon took cognizance of the offence under Section 36 of the Act and issued summons to the petitioner- the Director and Rahul Srivastava, the General Manager passed the impugned order, dated 07.05.2015, in C.R. Case No. 474/2015. The Labour Officer, Morigaon, therefore, appears to have acted in undue haste depriving the petitioner and another named in the complaint of being heard.

11. Resultantly, the criminal proceedings in question, that is, C.R. Case No. 474/2015, pending in the Court of the learned Judicial Magistrate, 1st Class, Morigaon as well as the impugned order, dated 07.05.2015 are not sustainable in law and as such, the impugned proceedings and the said order are quashed and set aside. Consequently, the petition is allowed.