

**(2019) 01 JH CK 0180**

**In the Jharkhand High Court**

**Case No :** Criminal Miscellaneous Petitions No. 1157 Of 2010

Rakesh Dixit @ Ajay Kumar Dixit @ Ajay Dixit

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision :** 08-01-2019

**Acts Referred:**

Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Act, 1979 — Section 8, 12(1)(b), 25, 26, 27  
Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Central Rules, 1980 — Rule 7, 23, 51, 54

**Citation :** (2019) 162 FLR 561 Citation

**Hon'ble Judges :** Rajesh Shankar, J

**Bench :** Single Bench

**Advocate :** P.P.N.Roy, L.G. Ranjan Sahdeo, Rajiv Sinha

**Final Decision :** Allowed

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## **Judgement**

1. The present petition has been filed for quashing the entire criminal proceeding initiated against the petitioner including the order dated 25.06.2009

passed by the Chief Judicial Magistrate, Saraikela in connection with G.O. Case no. 59 of 2009 whereby the cognizance for the offence under Sections

25/26 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (in short "the Act, 1979") has been

taken.

2. The prosecution case as culled out from the complaint is that on 26.02.2009, the complainant (opposite party no. 2) while discharging his duties as

the Inspector under the Act, 1979 visited the premises of M/s. Siemens Ltd., the contractor engaged in executing the contract work for extension of

400 KVA Sub-Station at Power Grid Corporation Ltd., Gamharia, District-Seraikela-Kharswan. On such visit, he found 14 inter-state migrant

workmen working there which according to him was in contravention of Section 8 of the Act, 1979 read with Rule 7 of the Inter-State Migrant

Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 (in short 'the Rules, 1980'). It was also noticed by the

opposite party no.2 that an extract of the Act, 1979 and the Rules, 1980 in the form approved by the Deputy Chief Labour Commissioner (Central)

was not displayed in English and Hindi as well as the register of displacement-cum-outward journey and return journey were also not maintained at or

near the workplace which were in contravention of the rules 54 and 51 of the Rules, 1980 respectively. Further, as the accused persons failed to issue

pass books to the migrant workmen, same amounted to contravention of Section 12(1)(b) of the Act, 1979 read with rule 23 of the Rules, 1980.

3. On the said allegation, a complaint was filed by the opposite party no. 2 under Section 25/26 of the Act, 1979 in the court of Chief Judicial

Magistrate, Seraikela, in pursuance of which, cognizance of the aforesaid offence was taken by the learned Chief Judicial Magistrate, Seraikela vide

order dated 25.06.2009.

4. Mr. P.P.N. Roy, learned Senior Counsel for the petitioner, submits that the petitioner happened to be the Chief Executive Officer of M/s. Siemens

Ltd., who was not concerned with the day-to-day affairs of the said company. Even the complaint filed by the opposite party no. 2 does not disclose

that the petitioner was anyway concerned with the affairs relating to execution of the contract work for extension of 400 KVA Sub-Station at Power

Grid Corporation Ltd., Gamharia, district- Seraikela-Kharswan. The petitioner was having his office at Gurgaon and thus he cannot be said to be

responsible for maintaining the relevant register/records for due observance of various provisions of the Act, 1979 and the Rules, 1980. However

ignoring the said aspect, the learned Chief Judicial Magistrate, Seraikela vide order dated 25.06.2009 has taken cognizance of the offences under

Sections 25/26 of the Act, 1979. It is also submitted that the co-accused Armin Bruck @ Amin Bruck had also challenged the order of cognizance

dated 25.06.2009 as well as the entire criminal proceeding of G.O. Case no. 59 of 2009 and a Bench of this Court vide order dated 23.08.2012 passed

in Cr.M.P. no. 813 of 2010, was pleased to quash the entire criminal proceeding of G.O. No. 59 of 2009 including the order of cognizance dated

25.06.2009.

5. Per contra, A.C. to learned A.S.G.I. appearing on behalf of the opposite party no. 2, submits that M/s. Siemens Ltd., as a contractor of Power Grid

Corporation Ltd, Gamaharia, was executing the work of extension of 400 KVA Sub-Station at Power Grid Corporation Ltd., Gamharia, district-

Seraikella-Kharsawan. M/s. Siemens Ltd. was issued form-V by the Power Grid Corporation of India Ltd. and on that basis, the said company had

taken a labour licence. Since the petitioner is the Chief Executive Officer of the said company, he cannot be absolved from the responsibility of due

compliance of the provisions of the Act, 1979 and the Rules, 1980 and therefore, the prosecution has rightly been launched by the opposite party no.2.

6. Heard the learned counsel for the parties.

7. For appreciating the rival submissions of the learned counsel for the parties, it would be appropriate to go through the provisions of Section 27 of the

Act, 1979 which reads as under:

â??27. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the

offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1), where any offence under this Act has been committed by a company and it is

proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.â??

8. On perusal of the aforesaid provision, it would appear that when an offence is committed by a company, every person who at the time of

commission of offence was in charge of, and was responsible to the company for

the conduct of its business, shall be deemed to be guilty of the offence and would be liable to be proceeded against and punished accordingly.

9. On perusal of the order dated 23.08.2012 passed by a Bench of this court in Cr.M.P. no. 813 of 2010, it appears that taking note of the fact that co-

accused Armin Bruck @ Amin Bruck-Managing Director of M/s. Siemens Ltd. was not found involved in day-to-day affairs of the company, the

order of cognizance dated 25.06.2009 as well as the entire criminal proceeding of G.O. Case no. 59 of 2009 as against him has been quashed. In the

present case also, there is no allegation in the complaint instituted by the opposite party no. 2 that the petitioner being the Chief Executive Officer of

M/s. Siemens Ltd. was in-charge and was responsible for the conduct of the business of the said company so as to allege violation of the relevant

provisions of the Act, 1979 and the Rules, 1980. Thus, in my opinion, the order of cognizance dated 25.06.2009 cannot be sustained in law.

Accordingly, the entire criminal proceeding of G.O. Case no. 59 of 2009 including the order dated 25.06.2009, whereby the cognizance of offence

punishable under Sections 25/26 of the Act, 1979 has been taken against the petitioner, is hereby quashed.

10. The present Cr.M.P. is accordingly allowed.