
(2012) 02 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 537 of 2000 (R)

Ram Kumar Lal @ R.K. Lal

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Bihar Factories Rules, 1950 — Rule 56A
Factories Act, 1948 — Section 29, 92

Citation : (2012) 134 FLR 993 : (2013) 1 JLJR 452 : (2012) 4 JLJR 426

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : A.K. Mehta and Ananda Sen, for the Appellant; Shashank Shekhar Prasad, APP., for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This application has been filed for quashing order dated 3.12.1999 passed by learned Chief Judicial Magistrate, Dhanbad in F.A. Case No. 653 of 1999, whereby he took cognizance u/s 92 of Factories Act against petitioner. It appears that Factory Inspector Dhanbad has filed a complaint on inspection of M/s. Loyabad, Cooking Bye-Products Recovery Plant, Loyabad, alleging therein that lifting machines chains, ropes being used in the factory premises without annually examined by competent authority, which is violative of provisions of section 29 of the Factories Act and Rule 56-A of Bihar Factory Rules, 1950.

2. It appears that said complaint received in the Court of learned Chief Judicial Magistrate, on 3.12.1999 and on the same day he took cognizance of the offence u/s 92 of the Factories Act.

3. It is submitted by Sri A.K. Mehta, learned Counsel for the petitioner that petitioner being a Director of the company cannot be prosecuted u/s 92 of the Factories Act, because he is not occupier within the meaning of section 2(n) of the Factories Act. It is submitted that the person who manage the affairs of

factory is occupier, therefore he can only be prosecuted u/s 92 of the Factories Act. It is submitted that petitioner has not been appointed by Central Government as occupier of the factory, therefore order taking cognizance is bad. It is further submitted that order taking cognizance is also violative of section 106 of the Factories Act.

4. On the other hand, Sri S. S. Prasad, learned Additional PP submits that petitioner has been appointed by Central Government as occupier which manifest from Annexure-A to the counter-affidavit. Sri Prasad further submits that petitioner put his signature on Annexure-B as occupier of factory. Under the said circumstance, as per section 92 of the Factories Act, petitioner can be prosecuted for violation of any of the provisions of the Factory Act and Rules

5. Having heard the submissions, I have gone through the record. Section 29 of the Factories Act reads as under:--

29. Lifting machines, chains, ropes and lifting tackles.--(1) In any factory the following provisions shall be complied within respect of every lifting machine (other than a hoist and lift) and every chain, rope or lifting tackle for the purpose of raising or lowering persons, goods or materials:--

(a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be--

(i) of good construction, sound material and adequate strength and free from defects;

(ii) properly maintained; and

(iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;

(c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within [six metres] of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in Factory-

(a) prescribing further requirements to be complied within addition to those set

out in this section;

(b) providing for exemption from compliance with all or any of the requirements of this section, wherein its opinion, such compliance is unnecessary or impracticable.

(3) For the purpose of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Rule 56-A of the Bihar Factory Rules, 1950 is as follows:--

56-A. Lifting machines, chains, ropes and lifting tackles--No lifting machine and no chain, rope or lifting tackle, except fibre rope or fibre rope sling shall be taken into use in any factory for the first time in that factory unless it has been tested and all parts have been thoroughly examined by a competent person and a certificate of such a test and examination specifying the safe working load or loads and signed by the person making the test and the examination, has been obtained and is kept available for inspection:

Provided that where lifting machine, chains, ropes or lifting tackles are already in use of a factory such a certificate shall be obtained within one month of the date on which this rule comes into effect....

6. From perusal of complaint petition, I find that at the time of inspection in the factory premises lifting machines chains, ropes being used in the factory premises without annually examined by competent authority which is violative of section 29 of the Factories Act and Rule 56-A of Bihar Factory Rules, 1950. Section 92 of the Factories Act provides that if there is contravention of any provisions of Factories Act, or any rules made thereunder, then occupier and manager of the Factories shall be held guilty of the offence. Thus as per section 92 of the Factories Act occupier and manager of the factory can be prosecuted for violation of the provisions of Factory Act or Rules.

7. The contention of learned Counsel for the petitioner that at the relevant time petitioner was not managing the affairs of the factory as its occupier, cannot be accepted, because as per proviso 3 of section 2(n) of Factories Act if the factory is owned or controlled by Central Government then the person appointed by Central Government to manage the affairs of the factory shall be deemed to be the occupier. In the instant case a counter-affidavit filed by opposite party No. 2. Annexure-A to the said counter-affidavit reveals that petitioner was appointed as occupier of M/s. Loyabad, Coke Plant. It further appears that petitioner put his signature on Annexure-B as occupier of M/s. Loyabad, Cooking Bye-Products Recovery Plant, Loyabad (factory in question). From Annexure-B it is clear that petitioner is the occupier of factory. Under the aforesaid circumstance, I find that contention of learned Counsel for the petitioner has no leg to stand.

8. Now coming to the next contention that order taking cognizance is barred by law of limitation, it is worth mentioning that factory in question inspected, on 3.9.1999. Thereafter petitioner was directed to remove irregularities vide letter No. 561 dated 10.9.1999. It appears that when said direction not complied, present complaint filed on 3.12.1999. Proviso to section 106 of Factories Act provides that if the offence consists of disobeying of written order made by an inspector, the complaint petition can be filed within six months from the date on which the offence is alleged to have been committed. As noticed above, in the instant case, factory inspector gave direction to the petitioner to remove irregularities within a certain period, but said direction not complied. Therefore, in this case complaint can be filed within six months from the date on which said offence came in the knowledge of inspector. Under the aforesaid circumstance, mere is no delay in filing of complaint petition. Accordingly, second contention raised by Sri A.K. Mehta is also rejected. In view of the discussions made above, I find no merit in this application. Accordingly, same is dismissed.