

(2012) 02 JH CK 0162

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 544 of 2000 (R)

Ram Kumar Lal @ R.K. Lal

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Shri Birendra Kumar
Thakur, Inspector of Factory, Dhanbad Circle No. 1, Dhanbad

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Bihar Factories Rules, 1950 — Rule 71
Factories Act, 1948 — Section 106, 2, 46(2), 92

Citation : (2012) 02 JH CK 0162

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

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. 655 of 1999, whereby he took cognizance u/s 92 of Factory Act against petitioner. It appears that Factory Inspector Dhanbad made inspection of M/s Loyabad, Cooking Bye-Products Recovery Plant, Loyabad and thereafter filed complaint alleging therein that during inspection management show one dilapidated building and said that it is Canteen, but said building did not look like a canteen. It is further alleged that no canteen committee constituted by the management, Which is violative of provisions of Section 46(2) of the Factory Act and Rule 71 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 Factory Act.

3. It is submitted by Sri A.K. Mehta, learned counsel for the petitioner that petitioner being a director of the company can not be prosecuted u/s 92 of the Factory Act, because he is not occupier within the meaning of Section 2 (n) of the Factory 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 Factory 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 Factory 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 Factory Act, petitioner can be prosecuted for violation of any of the provisions of the Factory Act and Rules framed thereunder. 6. Having heard the submissions, I have gone through the record. Section 46 (2) of the Factory Act reads as under:-

29. Canteens.- Without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen; [(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]

(c) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c)

6. From perusal of complaint petition, I find that at the time of inspection in the factory premises one dilapidated building shown by the management as Canteen, but the same did not look like a canteen. It is also alleged that no canteen committee constituted which is violative of Section 46(2) of the Factory Act and Rule 71 of the Bihar Factory Rules 1950. Section 92 of the Factory Act provides that if there is contravention of any provisions of Factory Act, or any rules made thereunder, then occupier and manager of the Factory shall be held guilty of the offence. Thus as per Section 92 of the Factory 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 Factory 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 10.09.1999. It appears that when said direction not complied, present complaint filed on 3.12.1999. Proviso to Section 106 of Factory 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, there 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.