

(1995) 02 PAT CK 0037
In the Patna High Court
Case No : C.M.P. No. 17369 of 1993

Rama Kant Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Payment of Wages (Mines) Rules, 1956 — Rule 22, 5A

Citation : (1996) 3 LLJ 1197

Hon'ble Judges : Aditya Narayan Chaturvedi, J

Bench : Single Bench

Advocate : Ashok Kumar Singh and S.D. Jha, for the Appellant; Dasrath Mehto, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Aditya Narayan Chaturvedi, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing the entire prosecution including the order dated October 23, 1990 in G.O. case No. 67 of 1990 T.R. No, 1057 of 1993, pending in the Court of Sri B.K. Chaudhary, Judicial Magistrate, 1st class, Nawada who by his order dated October 23, 1990 took cognizance of the offences under Rule 22 of the Payment of Wages (Mines) Rules, 1956 against the petitioners.

2. As it appears from the petition, while petitioner No. 1, Rama Kant Singh was Additional Director, Mines at Ranchi he was appointed Managing Director of the Biliar State Mineral Development Corporation at Ranchi, an undertaking of the Govt. of Bihar. a notification dated June 3, 1989 (annexure 1) issued by the Govt. of Bihar in the Mines and Geology Department. While petitioner No.2 Jaiyant Kumar Chaudhary was District Mining Officer at Rohtas he was deputed to the Bihar State Mineral Development Corporation as per notification dated January 16, 1990 (annexure - 3) issued by the Govt. of Bihar in Mines and Geology Department. It further appears from the petition that the Bihar State Mineral Development Corporation has its head office at Ranchi where the

Managing Director (petitioner No. 1) was holding his office. Petitioner No.2 had his office at Jhumri Talaiya where he was discharging his duties as Project Manager. Opposite party No. 2 who was the Labour Enforcement Officer (Central) filed a complaint petition dated October 22, 1990 before the Chief Judicial Magistrate, Nawada against the petitioners for their prosecution under Rule 22 of the Payment of Wages (Mines) Rule, 1956 on the ground that they have failed to maintain the register in Form "B" properly as photographs "were not affixed under serial Nos. 97 and 98 as per Rule 54 and the compliance report submitted by the employer was not considered satisfactory. The Chief Judicial Magistrate took cognizance of the offence under Rule 22 of the said rules and transferred the case to Magistrate for trial with a direction to issue summons to the accused-petitioners.

3. It was contended by the learned counsel for the petitioner that petitioner No. 1 being Additional Director, Mines at the time of his posting as Managing Director of Bihar State Mineral Development Corporation as per notification (annexure -1) of the Government of Bihar was a public servant and similarly petitioner No. 2 being District Mining Officer, Rohtas, at the time of his deputation to the said Corporation under the notification (annexure -3) issued by Government of Bihar was also a public servant and, that being so, sanction for their prosecution for the said offence was necessary in accordance with Section 197 of the Code of Criminal Procedure. It was further contended that Bihar State Mineral Development Corporation is a company of the Govt. of Bihar registered under the Companies Act and is an undertaking of the Govt. of Bihar and, that being so, the petitioner No. 1 being Managing Director and petitioner No. 2 being Project Manager are public servants within the meaning of Section 21 of the Indian Penal Code and Section 197 of the Code of Criminal Procedure and at the relevant time were employed in connection with the affairs of the State Government. The above contentions were not controverted by the learned counsel for the State (opposite Party No. 1).

4. It was further contended on behalf of the petitioners that the Bihar State Mineral Development Corporation has got several mines of different minerals on lease from the State of Bihar at different places all over Bihar but its head office is located at Ranchi where petitioner No. 1 being Managing Director of the Corporation was holding his office at the relevant time and since the different mines and projects of the Corporation at different places were being run and managed locally by different officers of various level in the concerned mines and projects in accordance with the provisions of Mines Act, 1952, the Managing Director (petitioner No. 1) of the Corporation at the apex of the Executive hierarchy sitting and discharging his official duties in the head office at Ranchi cannot be expected to manage and look after the day-to-day daily routine work at the site of the mines and project all over Bihar. It was further contended that the Corporation had divided its mines in different units according to the area and a unit contains six or seven mines and every mine is being run and managed locally by the Mines Manager and, therefore, the petitioner No. 2 who was in

charge of two units with his head officer at Jhumri Tilaiya cannot be expected that he will be able to look after day today routine work at different mines. It was further contended on behalf of the petitioners that the allegations made in the complaint petition are cryptic and vague and the allegations do not constitute any offence by the petitioners. It was also contended that in the complaint petition it has not been pointed out as to how and in what manner the petitioners being Managing Director and the Project Manager of the Corporation would be held responsible. The above contentions were also not controverted by the learned counsel for the State.

5. A perusal of the complaint petition (annexure-4) would show that the only allegation against the petitioners is that the register in Form "B" had not been maintained properly i.e. photographs had not been affixed under serial No. 97 and 98 as per Rule 5A and the compliance report submitted by the employer was not considered satisfactory. The learned counsel for the petitioner referred to: Rule 5 A of the Payment of Wages (Mines) Rules, 1956 which provides that the register required to be maintained under the Mines Rules, 1955 in Form "B" in the First Schedule to those rules shall be deemed to be required to be maintained under these rules also. The learned Counsel also referred to Form "B" in the First Schedule to the Mines Rules and pointed out that the same does not provide for affixing photographs against serial numbers and this fact was conceded by the learned Counsel for the State and in view of this it was contended on behalf of the petitioners that the said register in Form "B" cannot be said to have not been maintained properly simply because photographs had not been affixed under serial Nos. 97 and 91 as per Rule 5-A. It also contended that in the complaint petition it has not been clearly stated as to how the compliance report submitted by the employer was not considered satisfactory and so the allegation to this effect is vague. There appears substance in the above contentions of the learned counsel for the petitioners.

6. It was further contended on behalf of the petitioner that it is incumbent on the prosecution to fix the liability with particular Officer in default and there should be a specific averment to that effect in the complaint petition too and since it has not been done so in the complaint petition the cognizance of the offence taken against the petitioners is fit to be set aside in support of this contention. Reliance was placed on the decision of Calcutta High Court reported in 1979 Taxation Law Reports 2001 (Ajit Kianar Sarkar v. Assistant Registrar of Companies). In the said decision it has been held by Calcutta High Court that it is incumbent on the prosecution to fix liability with particular Officers in default and there should be specific averment to that effect in the complaint failing which the complaint is liable to be quashed.

7. The learned counsel lastly referred to annexure-3 which is body of an order dated August 29, 1988 passed by a Bench of this Court in Criminal Miscellaneous Case No. 5872 of 1988(sic) and submitted that in similar circumstances the prosecution of the Managing Director of Bihar State Mineral Development

Corporation u/s 22A of the Minimum Wages Act was quashed.

8. In view of what has been pointed out above, this Criminal Misc. petition is allowed and the criminal prosecution of the petitioners, including the order dated October 23, 1993 in G.O. Case No. 67 of 1990 (T.R. Case No. 1037 of 1993) is hereby quashed.