

(1996) 06 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 12644 of 1990

Ramanand Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 30, 30(2), 32, 34, 35
Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 460

Citation : (1997) 1 PLJR 378

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Braj Kishore Prasad, Vijay Nandan Sahay and Arun Srivastava, for the Appellant; R.B.S. Pahepuri, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—Both the cases arise out of Complaint Case No. 329 C2 of 1990 and similar questions are involved. They have been heard together and are being disposed of by this order.

2. In both the cases prayer has been made for quashing of the entire proceeding including the order dated 5.10.1990 passed by the Additional Chief Judicial Magistrate, Danapur, in case No. 329 C2 of 1990 whereby cognizance for the offence under Sections 32 and 34 of the Bihar Shops and Establishment Act, has been taken.

3. The Assistant Labour Commissioner-cum-Inspecting officer filed a complaint petition before the Additional Chief Judicial Magistrate, Danapur, stating therein that he inspected M/s Bata Shoe Company Ltd. unit Bata India Ltd., Digha, Patna on 12.1.1990. Shri Suresh Gogte, Personnel Manager, unit Bata India Ltd. Bata Ganj, informed that in the establishment 36 casual labourers, 2 sweepers, 25 Guards, 1 doctor and 4 compounders were working. Besides as above in the Club 5 staff, 1 gardener, and in the Administrative Section 3 and in the Accounts Section 16 persons were employed. He also stated that register with regard to

number of employees for loading and unloading would be produced on the date fixed for inspection. On his request he fixed 22.1.1990 for inspection. On the date fixed no register and other required documents were produced for inspection. Accordingly, vide letter dated 7.2.1990 directed to produce the registers and other documents for inspection on 12.2.1990, the details of which have been mentioned in the complaint petition. Information was also given to the Chairman and the Managing Director for compliance of the direction. On the date fixed Sri Suresh Gogte filed a petition for time for production of the said documents. Accordingly, 5.3.1990 was fixed for production of those documents. On that date no body appeared on behalf of the establishment. However, Sri Gogte met him and requested to come on 27.3.1990 in the factory for inspection of those documents. He went to the factory at about 11 A.M. but on the petition of Sri Gogte 29.3.1990 was fixed for inspection. On that date due to non-appearance he vide letter dated 5.4.1990 directed to produce all the documents for inspection on 12.4.1990 at 2.30 P.M. a copy of which was also sent to the Chairman and the Managing Director. On 12.4.1990 and 24.4.1990 Sri Gogte showed his inability to produce the documents and requested for fixing Anr. date. Accordingly, 2.5.1990 at 2.30 P.M. was the date fixed for inspection of the documents. However, the direction was not complied with till 31.7.1990 and accordingly he visited the establishment on 1.8.1990 for inspection. On that very time Sri Gogte and Nawal Kishore, factory labour and welfare officer, were present. Sri Gogte said that he is going to High Court and from there he will go to the Deputy Labour Commissioner and thereafter he will appear before him but he did not appear before him. Thereafter, vide letter dated 13.8.1990 directed the Chairman and the Managing Director for compliance of the direction on 22.8.1990 but the direction was not complied with. They evaded to comply the direction without any cogent reason only with a view to get the cases time barred and to conceal the exploitation of casual labourers and other employees, who have been engaged for work of the establishment.

4. On the aforesaid complaint petition cognizance was taken on 5.10.1990 against the Petitioners for the offence under Sections 32 and 34 of the Bihar Shops and Establishment Act, hereinafter referred to as "the Act".

5. Learned Counsel for the Petitioners contended that the Petitioners are not liable for prosecution as they were not incharge of the affairs at the relevant time nor anything has been mentioned in the complaint petition that the Petitioners were incharge of the affairs or had ultimate control over the affairs of the establishment. He also pointed out that the inspecting officer has no power to issue direction for production of the documents and hence cognizance taken against them is bad in law.

6. To appreciate the questions raised by the learned Counsel for the Petitioners it is necessary to refer the relevant provisions of the Act. Section 30 of the Act deals with the power and jurisdiction of the inspecting officer. Sub-section (2) of Section 30 of the Act says that "Inspecting Officer shall for the purpose of inquiry

under this Act have same power regarding the summoning and attendance of witnesses and compelling the production of the documents as a Civil Court under the Code of Civil Procedure". Section 32 of the Act says that "Any person who, voluntarily obstructs an inspecting officer in exercise of any power conferred on him by or under this Act or any person lawfully assisting an inspecting officer in the exercise of such power or who fails without sufficient cause to comply with any lawful direction made by an inspecting officer shall be punishable with imprisonment which may extend to six months or with fine which may extend to 250/-rupees or with both". In the instant case the inspecting officer visited the establishment for inspection. Some information was given by Sri Gogte with regard to the employment in the establishment. The inspecting officer wanted to inspect the relevant documents details of which have been mentioned in the complaint petition with regard to violation of certain provisions of the Act. The Petitioners were directed to produce the documents. Several adjournments were granted at the request of Sri Gogte for production of the documents but the documents were not produced for inspection. Intimations for production of the documents were also given to the other Petitioners but without any cogent reason they did not produce the documents for inspection. It is evident from the provisions of the Act as discussed above that the inspecting officer has power to issue direction for production of the documents and violation of the direction itself is an offence u/s 32 of the Act. Thus, in my view, the contention of the Petitioners that the inspecting officer has no power to issue direction for production of the documents is, without any substance. The decision relied upon by the learned Counsel for the Petitioners in the case of *Madhav Prasad Agrawal v. The State of Bihar* 1986 PLJR 742 is not relevant in the circumstance as it deals with obstruction and not with regard to power to issue direction.

7. With regard to the next contention of the Petitioners that nothing has been mentioned in the complaint petition that the Petitioners had ultimate control over the affairs of the establishment or were incharge at the relevant time, it is necessary to deal with Section 35 of the Act. Section 35 of the Act says the "If the person contravening any provision of the Act or a rule or order made thereunder is a company or partnership firm every Director, Partner, Manager or Secretary thereof shall, unless he proves that contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention be deemed to be guilty of such contravention". It is thus obvious from the aforesaid provision that Director, Partner, Manager or Secretary all shall be liable for prosecution unless they prove that the contravention took place without their knowledge or that they exercised all due diligence to prevent such contravention. Besides the questions raised by the learned Counsel for the Petitioners has already been settled in the case of *Sri Badri Prasad Gupta v. The State of Bihar* reported in 1986 PLJR 246 (F.B.) wherein after considering the relevant provisions of law it has been held that when the clause of the enactment describes the person who can be prosecuted, it is not required to plead in the complaint that the Director, Partner, Manager or Secretary had ultimate control

over the affairs of the company or partnership firm or were in immediate charge of the general management or control thereof for contravention of the provisions of the Act. It is on them to prove that the offence took place without their knowledge or they exercised due diligence to prevent the same. The burden of proof is clearly laid down on the office bearers of the company. Thus, in view of the full Bench decision there is no substance in the submissions of the learned Counsel for the Petitioners.

8. Learned Counsel for the Petitioners further contended that Additional Chief Judicial Magistrate, Danapur has no jurisdiction to take cognizance. The Bata factory falls within the jurisdiction of Patna Sadar Sub-Division and not within the jurisdiction of Danapur.

9. A counter affidavit has been filed on behalf of the opposite party No. 2 in which it has been categorically stated that M/s Bata India Ltd. Bataganj, Petitioner No. 3, is situated within the jurisdiction of Dinapur Sub-Division and hence Additional Chief Judicial Magistrate, Dinapur, is competent to take cognizance for the offence committed in the said premises. However, Section 460 of the Code of Criminal Procedure deals with irregularities which do not vitiate the proceedings. Relevant portion is quoted hereinbelow:

Section 460: Irregularities which do not vitiate proceeding: If any Magistrate not empowered by law to do any of the following things, namely:

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) To take cognizance of an offence under Clause (a) or Clause (b) of Sub-section (1) of Section 190.

10. It is, thus, obvious from the aforesaid provision that even if the court had no jurisdiction to take cognizance, it is merely an irregularity which does not vitiate the proceeding. However, the Petitioners are at liberty to raise this question before the court below itself who shall examine the question and shall pass order in accordance with law.

11. Thus, on consideration of the entire facts and circumstances of the case, as discussed above, I am of the view that there is no merit in this application. Accordingly, both the applications are dismissed.