

(2012) 11 JH CK 0057

In the Jharkhand High Court

Case No : Criminal Revision No. 290 of 2010

Ramjee Kumar Singh @ Ram Jee Singh

APPELLANT

Vs

The State (Govt. of India) and also designated as Deputy
Director of Mines, Safety (Electrical) and The State of
Jharkhand

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Electricity Act, 1910 — Section 36, 37, 49A

Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2013) 1 AJR 696 : (2013) 1 JLJR 76

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Dilip Jerath, Mr. Alok Anand, Mr. Badal Vishal and Mr. Saumitra Baroi,
for the Appellant; Moti Gope, Assistant Public Prosecutor for the State, for the
Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Both these revision applications arise out of the same case, as such, they are being disposed of by this common order. Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners are aggrieved by the Judgment dated 12.1.2010 passed by the learned Additional Judicial Commissioner, F.T.C. No.-VII, Ranchi, in Cr. Appeal No. 206 of 2007, whereby the appeal filed against the Judgment and Order dated 24.9.2007 passed by Sri Yogesh Kumar, learned Judicial Magistrate, 1st Class, Ranchi, in C-III-139 of 2002/Tr. Case No. 308 of 2007, was dismissed by the Appellate Court below. It may be stated that the Trial Court had found the petitioners liable for penalty under Rule 141 of The Indian Electricity Rules, 1956 (hereinafter referred to as the "Rules") and upon hearing on the point of sentence, directed the petitioners to pay the fine of Rs. 300/- each, and in

default of payment of fine, they were sentenced to undergo S.I. for seven days. The appeal filed against the said Judgment and Order was dismissed by the learned Appellate Court below.

3. Petitioner Ram Jee Singh was, at the relevant time, the Manager and the petitioner Shyam Nandan Singh was the Superintending Engineer in K.D. Hesalong Opencast Project of M/s Central Coalfields Ltd. On 10.3.2002, a fatal accident took place in the said open-cast coal mines, wherein, one Sri Prasad Singh, a Foreman in the said mines, while he was lifting the energized flexible trailing cable of an excavator on two hangers, for making passage for dumper underneath, his hand suddenly came in contact with a temporary joint in the said cable and he received electric shock and died instantly. The information about the occurrence was given by the competent officer of the mines to the Deputy Director of Mines Safety (Electrical), South Eastern Zone, Ranchi, who was also an Electrical Inspector u/s 36 of The Indian Electricity Act, 1910, (here in after referred to as the "Act"), who conducted an enquiry, submitted his report and filed the instant complaint in the Court of the Chief Judicial Magistrate, Ranchi, against both these petitioners and one Barjesh Prasad Sinha, being the Manager, Engineer and the Agent respectively, of the Company, alleging that the accident occurred due to contravention of Rules 38(1), 123(1) 36(1) and (2) and 110(1) of the said Rules, as the accused No. 1 (petitioner Shyam Nandan Singh herein), had failed to install proper cable joints and had instructed the person to handle the live cable with full knowledge of its unsafe temporary joints, and the accused No. 2 (petitioner Ram Jee Singh herein), had failed to supply cable joining material for the trailing cable and also failed to implement the safety measures for handling the energized cable. The said contraventions constituted offences punishable under Rule 141 of the said Rules read with Section 37 and 49A of the Act. It may be stated that in the complaint petition although the petitioners and the said Brajesh Prasad Sinha were arraigned as accused, describing them as Manager, Engineer and Agent respectively, of K.D. Hesalong Opencast Project of M/s Central Coalfields Ltd., but the Company, namely, Central Coalfields Ltd., was not arraigned as accused, even though the accident had taken place in the open-cast coal mines, operated by the said Company.

4. From the impugned Judgment passed by the Trial Court below, it appears that the substance of accusation was explained to the accused persons for the offence u/s 141 of the Rules read with Section 37 and 49A of the Act, and upon their pleading not guilty and claiming to be tried, they were put to trial. In course of trial six witnesses were examined by the prosecution including the complainant. The necessary documents, including the complaint petition and the inquiry report submitted by the Electrical Inspector-cum-Deputy Director of Mines Safety (Electrical), were proved and marked as Exhibits and the trailing cable, by which the accident had taken place, was also produced in the Court below.

5. The complainant was examined as PW-1 in the case, who deposed about the enquiry made by him and he also identified the seized cable in the Court, which

was marked as Material Exhibit-M. The complainant also proved his inspection report, apart from other documents, which was marked as Exhibit-6. From his evidence, it is evident that the deceased Foreman died as a result of electrical shock, as his hand suddenly came in contact with the naked wire while lifting the flexible trailing cable, through which 3300 Volt electricity was passing and he received the electric shock and died instantly. He has also deposed that the cable in question was not vulcanized and therefore, insulation resistance value was low, and since the temporary joint of cable was not properly joined, it was dangerous. This witness, however admitted in his cross-examination that had the Foreman adopted safety measures, and had the safety switch been switched off, the accident would not have occurred.

6. The other important witnesses are PW-3 Balbir Singh and PW-5 Raju Bediya, as these witnesses were present at the time and place of occurrence. PW-3 Balbir Singh was the Crane Operator in the said mines and he was operating the crane when the accident took place. He has stated about the accident stating that the hand of the deceased came in contact with a temporary joint in the said cable, due to which he received electrical shock. He has also stated that at the time of lifting the trailing cable, the said Foreman had not put on the gloves in his hands. This witness has also deposed that when the deceased was lifting the cable, this witness asked him whether the line was shut down or not, to which the deceased had replied that it was shut down. PW-5 Raju Bediya was the Mechanical Helper and he was also present at the time and place of occurrence. This witness has also stated in his cross examination that the deceased had shown the signal of cross with his hands, indicating that the power had been switched off. PW-4 Hrishkesht Naik was the Dy. Chief Medical Officer in the regional hospital in Dakara, where the dead body of the deceased Foreman was brought and this witness had declared him dead.

7. It may be pointed out that Exhibit-6, which is the enquiry report of the Deputy Director of Mines Safety (Electrical), reveals that on enquiry it was found that there were two temporary joints in the trailing cable making the cable unsafe, that the petitioners had full knowledge about the unsafe condition of the trailing cables and that the Superintendent Engineer Excavation, the Manager and the Agent of the Mines could not shift the responsibility since the unsafe cable was kept for operation and working. However, it was also found that there was a field switch nearby, which could have been switched off for de-energizing the cable by the Foreman, but this was not done. Though the trailing cable was generally handled in live condition during the time of production and progress of excavator, but the cable was to be handled taking necessary precautions like wearing proper hand gloves, but the victim was not wearing any hand glove, although he was provided with the hand gloves. It has also been found in the enquiry, that the accident could have been averted, had the trailing cable joint been properly constructed and the person handling the cable wore suitable gloves prior to handling the same.

8. The Trial Court below on the basis of the evidence on record found that there was no contravention of Rule 36(1) and (2) by the accused persons, as it had come in the evidence that the management had provided adequate gloves and other safety measures and it was for the deceased to avail the safety measures. So far as Rule 110(1) is concerned, it is found by the Trial Court that it was the duty of the Owner, Agent, Engineer and the Manager of the Mines to comply with and enforce the Rules. It was also found that Rule 123 of the Rules lays that the flexible cables in such cases should be of two cores or multi cores and should be covered with insulating material and shall be efficiently protected from mechanical injury. Rule 38(1) provided that flexible cables shall not be used for portable or transportable motors, generators etc., unless they are heavily insulated and adequately protected from mechanical injury. Finding the contravention of these provisions by the petitioners, they were found liable for the penalty as provided in Rule 141 of the Rules and accordingly, the Trial Court passed the order imposing fine on the petitioners. The appeal filed against the said Judgment was dismissed by the learned Appellate Court below.

9. Learned counsel for the petitioners has submitted that the impugned Judgments passed by the Courts below are absolutely illegal and cannot be sustained in the eyes of law, in as much as, from the evidence brought on record it is manifestly clear that the deceased himself was responsible for the negligence, if any, as he was not putting on the safety gloves, which were provided to him and also in view of the fact that the safety switch was not put off to de-energize the cable. Even though he was asked by the crane operator PW-3 Balbir Singh, whether the line was shut down or not, he answered that the line was shut down. He also gave the signal to PW-5 Raju Bediya, Mechanical Helper, showing his hands crossed, indicating that the power of the main has been switched off. It has been submitted by the learned counsel that though the petitioners have been found guilty of non-compliance of the Rules 110 and 123 of the Indian Electricity Rules, 1956, but these Rules were not applicable to the open-cast mines. It has further been submitted that even though the occurrence took place in the mines operated under the Central Coalfields Ltd., but the Company was not made an accused in the case, even though the complaint was filed for offence by the Company, u/s 49A of the Act. Learned counsel submitted that Section 49A of the Act, which provides for vicarious liability of the persons in charge of and responsible to the Company, also provides that the Company shall also be deemed to be guilty for the offence, and it is well settled principal of law that in such cases, if the Company is not made an accused, other persons cannot be vicariously made liable for the offence. Learned counsel, further submitted that in the entire complaint petition, it was no where averred that at the time of the offence, the petitioners were in charge of and were responsible for the conduct of the business of the Company and accordingly, in absence of such averment in the complaint petition, petitioners cannot be vicariously found liable for any offence, if any, essentially committed by the Company and accordingly, the Judgment of conviction and Order of fine imposed against the petitioners

cannot be sustained in the eyes of law.

10. In support of his contention, learned counsel for the petitioners placed reliance upon the decision of the Supreme Court of India in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, wherein the Supreme Court explaining the similar provision in Section 141 of the Negotiable Instruments Act has laid down the law as follows:-

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in the complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

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Similarly, in support of his contention that in view of the fact that the Company has not been made accused, the petitioners cannot be held guilty for the offence by way of vicarious liability, learned counsel placed reliance upon the decision of the Supreme Court of India in Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., , wherein it has been held as follows:-

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicated.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution u/s 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. -----

(Emphasis supplied)

Placing reliance on these decisions, learned counsel for the petitioners has submitted that the petitioners cannot be found guilty and be penalized for the latches as alleged.

11. Learned counsel for the State on the other hand, has submitted that even

though it has come in evidence that the deceased was negligent, in as much as, he was not wearing the protective gloves and he did not switch off the safety switch for de-energizing the cable, but the fact remains that unsafe cable had been used in the mines and the petitioners, being the Manager and the Engineer, cannot escape the liability of their negligence for providing the unsafe cable in the mines. Learned counsel submitted that this aspect has elaborately been dealt with in the Judgments passed by the Courts below and thus, there is no illegality and/or irregularity in the impugned Judgments worth interference in the revisional jurisdiction.

12. The date of accident in the present case being 10.3.2002, the provisions of The Indian Electricity Act, 1910 and The Indian Electricity Rules, 1956 were holding the field on the date of accident. The Courts below have found the petitioners negligent for Rule 38(1), which prohibits the use of flexible cables for portable or transportable motors etc., unless they are heavily insulated and adequately protected from mechanical injury. In view of the fact that the occurrence had taken place in the mines due to unsafe cable and it was found that the cable was not adequately insulated and protected, the petitioners, being the Manager and Engineer of the mines, cannot escape the liability of violation of this Rule, for which there is penal provision in Rule 141 of the Rules. The other provisions of the Rules for which the petitioners have been found negligent are Rules 110 and 123, about which, it has been submitted by the learned counsel for the petitioners that they are not applicable in open-cast mines. Both these Rules fall under the chapter X of the Indian Electricity Rules, 1956. Rule 109 deals with the Application of Chapter and it reads as follows:-

109. Application of Chapter.-(1) The rules in this Chapter shall apply only where energy is used in mines as defined in the Mines Act, 1952 (35 of 1952).

(2) In mines and oil fields, the rules in this Chapter shall not apply to apparatus above the ground level except where such apparatus may directly affect the safety of the persons employed in underground, open-cast and oil-fields.

Sub Rule (2) quoted above, has been substituted by G.S.R. 112, dated 22.3.2000, with effect from 15.4.2000 and accordingly, on the date of accident, i.e., 10.3.2002, this Rule was applicable in the open-cast mines, in case the apparatus used above the ground level directly affected the safety of the persons employed in open-cast mines. In the present case the unsafe trailing cable, though used above the ground level, did affect the deceased Foreman working in the open-cast mine and as such, Rules 110 and 123 of the Rules were quite applicable in this case. It appears that prior to this amendment, this Chapter was not applicable to the open-cast mines, as prior to the amendment, Rule 109 of the Electricity Rules, 1956 read as follows:-

109. Application of Chapter.-(1) The rules in this Chapter shall apply only where energy is used in mines as defined in the Mines Act, 1952 (35 of 1952).

(2) In mines, the rules in this Chapter do not apply to apparatus used above

ground, excepting such apparatus as may directly affect the safety of persons below ground.

13. Thus in view of the fact that on the date of accident, there was already an amendment in the Rules making it applicable to the open-cast mines also, I am of the considered view that the submission of the learned counsel for the petitioners that Rules 110 and 123 are not applicable to the open-cast mines, is absolutely misconceived. The petitioners being the Engineer and Manager of the Mines shall be responsible also for the observance of the Rule 110 of the said Rules and they shall also be responsible to ensure that the flexible cables used in the mining process are in accordance with Rule 123 of the said Rules. Any violation of these Rules shall also attract the penal provision in Rule 141 of the Rules.

14. However, I find force in the submission of the learned counsel for the petitioners that in view of the law laid down by the Supreme Court of India in S.M.S. Pharmaceutical Ltd (Supra), it was necessarily required to be averred in the complaint petition that at the time of offence, the petitioners were in charge of and responsible for the conduct of the business of the Company. The complaint petition has been proved as Exhibit -10, which clearly shows that there is no such averment in the complaint petition. Though the law has been laid down by the Supreme Court of India with respect to Section 141 of the Negotiable Instrument Act, but both the provisions u/s 141 of the Negotiable Instrument Act, as well as u/s 49A of the Act are similar. Section 49A of The Indian Electricity Act, 1910 reads as follows:-

49-A. Offences by companies. - (1) If the person committing an offence under this Act is 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:

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Similarly, Section 141 of the Negotiable Instruments Act also reads as follows:

141. Offences by companies.-(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was incharge 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:

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15. Thus, the plain reading of both these provisions clearly shows that they are in pari materia, and the law laid down by the Supreme Court in the cases of S.M.S. Pharmaceutical Ltd. (supra) and Aneeta Hada (supra), interpreting Section 141 of the Negotiable Instruments Act, shall be applicable to the present case also. As such, it was necessarily required to be averred in the complaint

petition that at the time of offence, the petitioners were in charge of and responsible for the conduct of the business of the Company. Similarly, in view of the law down by the Supreme Court, the petitioners cannot be made vicariously liable for the offence committed by the company unless the company was made an accused in this case, as in such cases, for maintaining the prosecution of the persons mentioned in the other categories in Section 49A of the Act, arraigning of the Company as an accused is imperative.

16. In the present case, neither the Company has been made an accused, nor it is averred in the complaint petition that at the time of offence, the petitioners were in charge of and responsible for the conduct of the business of the Company. Accordingly, the prosecution of the petitioners, on both these counts, cannot be sustained in the eyes of law. In the result, both these revision applications succeed. The Judgment and Order dated 24.9.2007 passed by Sri Yogesh Kumar, learned Judicial Magistrate, 1st Class, Ranchi, in C-III-139 of 2002/Tr. Case No. 308 of 2007, as also the Judgment dated 12.1.2010 passed by the learned Additional Judicial Commissioner, F.T.C. No.-VII, Ranchi, in Cr. Appeal No. 206 of 2007, are hereby, set-aside. Consequently, the petitioners are acquitted of their accusations. Both these revision applications are, accordingly, allowed. Let the Lower Court Records be sent back forthwith.