
(2019) 12 JH CK 0207

In the Jharkhand High Court

Case No : Criminal Revision No.550 Of 2014

Ramsevak Yadav @ Ram Sewak Yadav

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Factories Act, 1948 — Section 2M(1), 2(cb), 2(k), 2(k)(i), 2(m), 2(m)(ii), 2(xi), 6, 92
Mines Act, 1952 — Section 3 Jharkhand Factories Rules, 1950 — Rule 3, 4

Citation : (2019) 12 JH CK 0207

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Mahesh Tewari, Pramod Kr. Choudhary

Final Decision : Disposed Of

Judgement

The instant application is directed against the judgment dated 08.05.2014, passed by the learned Principal Sessions Judge, Pakur in Cr. Appeal

No.25/2013, whereby the appeal preferred by the petitioner has been dismissed and the judgment of conviction and order of sentence dated

17.06.2013, passed by learned ACJM, Pakur in O.C.R. Case No.01/2009 (T.R. No.671/2013), whereby the petitioner has been found guilty for the

offence punishable under Section 92 of the Factories Act and was convicted and sentenced to undergo imprisonment for one year with fine of

Rs.1,000/- and in default of payment of fine, he was further directed to undergo SI for one week, has been sustained.

The prosecution case in brief, as contained, in the complaint petition (Ext.-4 and 5) of the complainant (P.W.1) Binit Kumar Singh, Factory Inspector,

Sahibganj is that; on 30.10.08 while, he inspected the factory of the petitioner, which was running on Sidhpahari, found that one Uday Shankar Yadav,

being clerk of the said factory was present. The said factory was running by diesel engine, in which, stones were being broken in small pieces and

stone chips were prepared and in course of inspection, he found certain irregularities such as said factory was not registered as per section -6 of the

Factory Act and Rule-4 of the Jharkhand Factory Rules and further the factory was running with the help of 15 labourers, which comes under the

purview of section 2M(1) of the Factory Act, for which, map and approval has not been sanctioned by Chief Factory Inspector, Jharkhand, Ranchi,

which violated the provision of section-6 of the Factory Act and Rule-3 of Jharkhand Factory Rules, which is punishable u/s 92 of the Factory Act.

The accusation levelled against the petitioner was explained to him for which he pleaded not guilty and sent up for trial.

Based upon the evidences, both oral and documentary, the learned trial court found the petitioner guilty for the offence punishable under Section 92 of

the Factories Act and accordingly convicted and sentenced him.

Being aggrieved, the petitioner challenged the impugned order passed by the learned trial court before the learned Principal Sessions Judge, Pakur.

The learned appellate court after concurring with the finding of the trial court upheld the judgment.

The learned counsel for the petitioner submits that the impugned orders are liable to be set aside for the reason that the same has been passed without

application of judicial mind so much so that the stone crusher plant forms part of mines and in connection with mines and provisions of Factories Act is

not applicable in a mine according to Section 2 (m) (ii) of the Factories Act. He further submits that the learned courts below has not taken into

consideration the materials available on record and in most mechanical manner has dismissed the contention of the petitioner without appreciating the

legal issue. In sum and substance the learned trial court has convicted the petitioner on surmises and assumption without deciding the issue of

applicability of the Factories Act in the case of the petitioner firm.

Per contra, the learned APP heavily relied on the impugned orders and submits that the contention of the petitioner is not sustainable in the eyes of

law. He further submits that both the courts below after appreciating the evidences, both oral and documentary, came to specific conclusion that there

was some irregularities under the Factories Act as pointed out by the Factory

Inspector in his evidence. In this view of the matter the instant application deserves to be dismissed.

Heard learned counsel for the petitioner and the learned APP.

For appreciating the instant case few provisions of the Factories Act as well as Mines Act are required to be reproduced herein below:

Section 2 (m) of the Factories Act is reproduced herein below:

â?? (m) â??factoryâ?? means any premises including the precincts thereofâ?

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,â?

but does not include a mine subject to the operation of 9[the Mines Act, 1952 (XXXV of 1952)], or 10[a mobile unit belonging to the armed

forces of the Union, a railway running shed or a hotel, restaurant or eating place];

11[Explanation [1]12.â?"For computing the number of workers for the purposes of this clause all the workers in 13 [different groups and

relays] in a day shall be taken into account;]

14[Explanation II.â?"For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed

in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises

or part thereof;]â??

Section 2 (cb) of the Factories Act:

â??hazardous processâ? means any process or activity in relation to an industry specified in the First Schedule where, unless special care

is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would -

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution of the general environment:

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;â??

Section 2 (k) of Factories Act:

â??manufacturing processâ?? means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating

or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

[(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or [(iv) composing types for printing, printing by letter press, lithography,

photogravure or other similar process or book binding;] [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]

[(vi) preserving or storing any article in cold storage;]

Section 2 (xi) of the Mines Act:

â??any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale

of minerals or of coke is being carried on;â??

Section 3 of the Mines Act:

â??Act not to apply in certain cases.- (1) The provisions of this Act, except those contained in [sections 7, 8, 9, 40, 45 and 46], shall not

apply to-

(a) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals

for use or sale:

Provided that-

(i) not more than twenty persons are employed on any one day in connection with any such excavation;

(ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres or, in the case of an excavation for

coal, fifteen metres; and

(iii) no part of such excavation extends below superjacent ground; or

(b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, single, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, [slate], road metal, earth, fullers earth [,marl, chalk] and limestone:

Provided that-

- (i) the workings do not extend below superjacent ground; or
- (ii) where it is an open cast working-
 - (a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;
 - (b) the number of persons employed on any one day does not exceed fifty; and
 - (c) explosives are not used in connection with the excavation.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that, having regard to the

circumstances obtaining in relation to a mine or part thereof or group or class of mines, it is necessary or desirable so to do, by notification

in the Official Gazette, declare that any of the provisions of this Act, not set out in sub-section (1), shall apply to any such mine or part

thereof or group or class of mines or any class of persons employed therein.

(3) Without prejudice to the provisions contained in sub-section (2), if at any time any of the conditions specified in the proviso to clause (a)

or clause (b) of sub-section (1) is not fulfilled in relation to any mine referred to in that sub-section, the provisions of this Act not set out in

sub-section (1), shall become immediately applicable, and it shall be the duty of the owner, agent or manager of the mine to inform the

prescribed authority in the prescribed manner and within the prescribed time about the non-fulfilment.]â??

The definition as it stands is very wide in its terms. Section 2 (k) of the Factories Act defines â??Manufacturing Processâ? which includes process of

â??breaking upâ?. What is â??manufacturing processâ? will have to be understood from what it means and how it is defined in the Act itself. In the

mines Act â??manufacturing processâ? is not defined and as such the definition given in the Factories Act has to be taken into consideration. The

only question which is to be decided by this Court as to whether "stone crushing" done with the aid of power engaging more than 10 employees

will come under the purview of Factories Act or not.

The learned counsel for the petitioner vehemently argued that Factories Act will not be applicable in the case of the petitioner and as such the

conviction arising out of the complaint filed by the Factory Inspector is nonest in the eye of law. In this regard, I would like to refer the judgment

passed by the Division Bench of Hon'ble Orissa High Court wherein it has been held that stone crushing means breaking the boulder into the chip is

manufacturing process and according to the definition under Section 2 (k) (i), premises where such stone crusher operation is carried out with aid of

power and by engaging 10 or more workers is a Factory within the meaning of Section 2 (m). In this regard para 4 of the judgment of M/s Larsen and

Toubro Ltd. and another vs. State of Orissa and others reported in 1992 LAB.I.C.1513 is quoted herein below:

"It is well known that different statutes define a particular word or expression differently and while examining the import of the

expression used in one statute, it would not be very relevant to be guided by the definition given in other statutes. As per the definition of

"manufacturing process" as given in the Act, we have no doubt that breaking of boulders into chips would be a manufacturing process.

For this purpose, coming into existence of a new product is not necessary. If that be so, the premises where ten or more workers are

working and the operation is being carried on with the aid of power has to be regarded as a factory as defined in Section 2 (m) of the

Act."

Further in the case of Desai Metal workers vs. ESI 1993 Vol 67 FLR 121 (Bom.)the Hon'ble Court has held that crushing of boulders into smaller

size for making it marketable will come within the expression of "breaking up".

In the instant case, admittedly, the owner of M/s Yadav Stone works had not applied for registration under Factories Act and without being registered

under the Factories Act was operating the work of stone crushing.

In view of the aforesaid discussions and the decisions referred to herein above, I hold that stone crushing operation will come under the definition of

Factories Act. Thus, the petitioner was liable for registration under the Factories Act. As such, the petitioner has rightly been held guilty under Section

92 of the Factories Act and was convicted for the same, as such the judgment of conviction passed by the learned trial court and upheld by the

learned appellate court is, hereby, confirmed.

However, so far as sentence is concerned, admittedly, it is technical offence and the incident is also of the year 2009 and 10 years have elapsed and

the petitioner must have suffered the rigors of litigation for the last 10 years. It is not stated that the petitioner has ever misused the privilege of bail.

Further, the incident does not reflect any cruelty on the part of the petitioner or any mental depravity.

In a situation of this nature, I am of the opinion that no fruitful purpose would be served by sending the accused person back to prison rather interest

of justice would be sufficed if the sentence is modified in lieu of fine.

Thus, the sentence passed by the Court below is, hereby, modified to the extent that the petitioner is sentenced to undergo for the period already

undergone subject to the payment of fine of Rs. 10,000/-.

It is made clear that the petitioner shall pay the aforesaid fine of Rs.10,000/- within a period of 3 months from today before the Secretary, DLSA

Pakur.

With the aforesaid observations, directions and modification in sentence, this revision application stands disposed of.

The petitioner shall be discharged from the liability of his bail bonds, subject to fulfillment of aforesaid condition.

Let the lower court record be sent back to the court concerned forthwith.

Let the copy of this order be communicated to the court below and the Secretary, DLSA, Pakur.