
(1978) 07 PAT CK 0018

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 146 of 1975

Rana Pratap, General Manager (Works), Usha Martin Black
(Wire Ropes) Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-07-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 202, 204
Industrial Disputes Act, 1947 — Section 2, 20, 31, 33

Citation : (1978) 26 BLJR 565

Hon'ble Judges : Satyeshwar Roy, J; Hari Lal Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—The petitioner, who is the General Manager (Works) of a limited Company, known as Usha Martin Black (Wire Ropes), has filed this application for quashing a Criminal Proceeding taken against him, which is at present pending in the Court of the Sub-Divisional Judicial Magistrate, Ranchi. The said proceeding started on a complaint filed before the Chief Judicial Magistrate, Ranchi, by the Labour Officer, Ranchi (Opposite party No. 2) for his prosecution tinder Section 33(1) of the Industrial Disputes Act, 1947, for his alleged violation of the provisions of Section 33(1) of the Act.

2. The facts giving rise to the institution of the above case are that the Secretary of the Engineering Mazdoor Sabha, Ranchi, sent a letter to the petitioner objecting to the suspension of nine workmen of the Company on the ground that their suspension was mala fide. The nine workmen in question are said to have been suspended by the petitioner Company in course of a domestic inquiry for acts and charges of resorting to violence and throwing stones, brick-bats and bombs, etc. at the Company's Watch & Ward personnel and the police posted at the factory gate on 15-4-1973. The suspension order was issued on 19-4-1973. The Assistant Commissioner of Labour and Conciliation Officer, Ranchi, made

efforts to conciliate the dispute between the parties, but he having failed, a failure report was submitted to the Government on 20-6-1973 u/s 12(4) of the Act. The stand of the Company in the said proceeding was that suspension pending inquiry being not a dispute within the meaning of the Act, the conciliation proceeding should be dropped. Thereafter some attempt was also made for a fresh conciliation by the Joint Labour Commissioner and Conciliation Officer, Bihar, Patna (Opposite Party No. 3), but in the meantime the workmen were dismissed by the petitioner by his order dated 28-1-1974. The State Government then made a reference to the Labour Court, Ranchi, for adjudication of the dispute with respect to the dismissal of the aforesaid workmen. A petition of complaint, a copy of which is Annexure "1" to the writ application, was then forwarded by the Labour Officer, Ranchi, to the Chief Judicial Magistrate, Ranchi, which was taken up on 23-12-1974 and cognizance was taken by him u/s 33(1) of the Act against the petitioner and the case was transferred for disposal to the Court of the Sub-Divisional Judicial Magistrate of the same place.

3. Section 31 of the Industrial Disputes Act makes every employer punishable with imprisonment for a term which may extend up to six months or with fine up to Rs. 1,000/- or with both, if he contravenes the provisions of Section 33.

4. After stating the facts leading to the suspension of the nine workmen and failure of the conciliation proceeding, the petition of complaint further states, that the nine workmen were dismissed by the petitioner while the second conciliation proceeding at the instance of the Joint Commissioner of Labour and Conciliation Officer, Bihar, was still pending, and that the above act of the petitioner was in violation of the provisions of Section 33(1) of the Act. The complaint was, accordingly, filed after obtaining the necessary sanction of the State Government, upon which, as already seen, cognizance was taken by the Chief Judicial Magistrate, Ranchi, which has been impugned by the present application.

5. Mr. K. D. Chatterji, learned Counsel appearing in support of this application, has raised the following points:

(i) After the submission of the failure report by the Assistant Commissioner of Labour and Conciliation Officer, Ranchi, the conciliation proceeding would be deemed to have concluded as prescribed u/s 20(2) of the Act and, therefore, the second conciliation proceeding started by the Joint Labour Commissioner and Conciliation Officer, Bihar, was without jurisdiction ;

(ii) The order of suspension pending inquiry was not an - "industrial dispute" within the meaning of Section 2(k) of the Act;

(iii) An application for approval of the dismissal of the workmen in question was already made before the Industrial Tribunal in some other reference cases which were then pending ; and in any event;

(iv) There was no mens rea on the part of the petitioner inasmuch as the

petitioner has not contravened the provisions of Section 33(1) of the Act.

6. Some arguments were also advanced in support of the above contentions and to bring home to us that the contentions had force. It is, however, not necessary to discuss the merits of any of these points for the view that I propose to take in the matter and also for the reason that the matter is pending before a subordinate Court and any observation by this Court may prejudice the mind of that Court.

7. Section 33(1) of the Act lays down that during the pendency of any conciliation proceeding before a Conciliation Officer, etc. in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding ; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

8. I am afraid, none of the grounds urged by Mr. Chatterji for quashing the proceeding in question would be relevant at this stage. The allegation made against the petitioner in the petition of complaint is that during the pendency of a conciliation proceeding started by the Joint Labour Commissioner-cum-Conciliation Officer, he had dismissed the nine workmen who were earlier suspended, an action apparently prohibited by Section 33(1) of the Act. At the stage of taking cognizance u/s 190 of the Code of Criminal Procedure a Magistrate has simply to be satisfied as to whether the allegations made against the accused prima facie make out a case for trial or not, and nothing beyond that. The questions that have been mooted before us on behalf of the petitioner are vexed question of law and a Court of a Magistrate who has been empowered to take cognizance is not required to examine the matter and the facts alleged by a complaint in such an extended detail and the niceties of the questions of law that may ultimately be raised by the accused, or may arise during the course of the trial. The proposition, if I may so with great respect, has been very succinctly laid down by Gajendragadkhar, J. in the after cited case of R.P. Kapur Vs. The State of Punjab, . It was observed by the learned Judge in the said case that ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code of Criminal Procedure and the High Court would be reluctant to interference with the said proceedings at an interlocutory stage. While enumerating some of the cotegories of cases where the inherent jurisdiction to quash such a criminal proceeding can be exercised, one category that was enumerated is (a) whether the allegations in the First Information Report or the complaint, even if they are taken at their face value (emphasis of mine) and accepted in their entirety, do not constitute the offence alleged. In a

recent decision in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . the Supreme Court again observed that at this initial stage and for coming to a decision as to whether a process should be issued against an accused or not, the Magistrate's inquiry is very limited and that is to find out whether a prima facie case for issue of process has been made out, and for deciding this question, he has simply to examine from the point of view of the complainant without at all advert to any defence that the accused may have. It is, no doubt, true that a Magistrate even at this stage may take into consideration any inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. It was very clearly observed that "The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204."

9. It is, therefore, manifest that at the stage at which the petitioner has come to this court for quashing the proceeding in question, the only thing that has to be seen by this Court, or that was required to be seen by the Magistrate while taking cognizance, was as to whether the allegations made in the complaint petition taken at their face value did or did not constitute the offence alleged. All that the Magistrate in taking cognizance at the initial stage is required with is his satisfaction that on the allegations in the petition of complaint, a prima facie case in law was made out against the accused, which has no reason to distrust at that moment, and as soon as he feels satisfied, he has but to take cognizance in the matter. It is not the case of the petitioner that the allegations made in the complaint "are patently absurd and inherently improbable so that no prudent persona can ever reach a conclusion that there is sufficient ground for proceeding against the accused." The argument advanced before this Court in essence amounts to this that if those facts were examined in the context of the submissions advanced before us, then no cognizance could have been taken by the learned Magistrate. I am afraid, the argument is untenable and must be rejected. What Mr. Chatterji wants this Court to do is not permissible at this stage and is directly opposed to the decisions just noticed. If the Magistrate taking cognizance is required to examine the allegations in a petition of complaint in such a critical and objective manner, then it may become very difficult for him to take action in any matter. The points raised by Mr. Chatterji are obviously the pleas of defence of the petitioner and the stage for their consideration would arise in course of the trial if properly raised.

10. I would, accordingly, dismiss this application.

Satyeshwar Roy, J.

11. I agree.