
(1986) 01 RAJ CK 0032
In the Rajasthan High Court
Case No : Criminal Revision No. 223 of 1985

R.B. Harlalka

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-01-1986

Acts Referred:

Citation : (1986) RLW 359 : (1986) 2 WLN 528

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahendra Bhushan Sharma, J.—This revision petition is directed against the order dated April 15, 1985 of the learned Additional Chief Judicial Magistrate, Rajsamand, who dismissed the various objections raised before him with regard to the maintainability of the complaint. It arises in the following circumstances.

2. Shri O.N. Saxena, Dy. Inspector of Mines Safety, Udaipur region riled a complaint against the petitioner No. 1 R.B. Harlalka and B.N. Chouhan, petitioner No. 2, the agent Dhan Laxmi Soap Stone Mine, Khetan Business Corporation (P) Ltd. Nathdwara, Udaipur. It was stated in the complaint that during the inspection of the Dhan Laxmi Soap Stone Mines by the complainant on 6-2-3 980 it was found that creche was not provided as required by letter No. UR/J141 dated 26-2-1979 and that inspite of being given sufficient time to provide the same, the accused thus contravened Rule 2(I) of the Mines Creche Rules. It was also stated in the complaint that the accused petitioners have contravened Rule 62 read with Rule 63, Rule 33 and Rule 43 of the Mines Rules. The various contraventions constituted the offence punishable u/s 73 of the Act. The complaint was signed by O.N. Saxena, Dy. Director of the Mines Safety, Udaipur region but it was presented in the court of the learned Chief Judicial Magistrate, Udaipur through Shri Javeria advocate whose power has also been filed.

3. An application was filed on behalf of the accused petitioners on September 21,

1984 wherein various objections were raised with regard to the maintainability of the complaint and it was prayed that the complaint be dismissed. The objections inter alia raised in the said application were, that the complaint could not be presented in the court of Chief Judicial Magistrate, Udaipur as it has been addressed to the CJM, Nathdwara where no such court exists; the complainant was not authorised to file the complaint; the complaint was not presented personally by the complainant and was only presented through an advocate and the Advocate Shri Javeria was not properly authorised; that the presence of the complainant was not exempted till this date and the complainant has not appeared and, therefore, the complaint should be dismissed; that the complainant is not present even this day and that O.N. Saxena who has filed the complaint has no authority to file the same. The learned Magistrate heard arguments and under the impugned order the application filed before him was dismissed.

4. I have gone through the order of the learned Magistrate as well as the relevant provisions of the Rules. The learned Magistrate has dealt with each and every objection separately and has given reasons for repelling each and every contentions raised before him. Shri O.N. Saxena, Dy. Director was authorised by the Chief Inspector of Mines under his order dated 19-10-1962 published in the Gazette of India dated 19-7-1970, a look to the aforesaid Gazette notification a copy of which was filed at page A/16 of the file of the trial court, which shows that the Chief Inspector of Mines now designated as Director General of Mines Safety, by virtue of the powers conferred on him u/s 75 of the Act authorised all officers of his directorate who are subordinate to the Chief Inspector and who have been appointed as Inspectors of Mines u/s 5(1) of the Act to institute prosecutions for any offence under the Act against the Owner, Agent or Manager of any mine situated within their respective inspection jurisdiction as declared under Sub-section (3) of Section 6 of the Act.

5. The only argument advanced by the learned advocate for the petitioner is that the complaint must have been presented by Shri O.N. Saxena, Dy. Director, Mines Safety but it was not presented by him and was presented by the advocate. In this connection he has referred to Section 75 of the Act. What Section 75 of the Act provides is that no prosecution shall be instituted against any agent or Manager for any offence under the Act except at the instance of the Chief Inspector or of the District Inspector or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector. "At the instance" does not mean that the complaint should be presented by the persons named above. It appears from the perusal of the complaint that it is signed by O.N. Saxena who had been authorised by the Chief Inspector in writing. It was presented by the advocate who was duly authorised by the said O.N. Saxena, there appears to be no contravention of Section 75 of the Act.

6. There is no force in this revision petition and it is hereby dismissed.