
(1989) 11 RAJ CK 0021

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 190 of 1986

R.C. Bahree and Others

APPELLANT

Vs

State (Government of India) and Another

RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Factories Act, 1948 — Section 60, 71

Mines Act, 1952 — Section 22, 71, 72, 72C, 77

Citation : (1989) 2 RLW 207 : (1989) 2 RLW 130 : (1990) 1 WLN 554

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—It is yet another criminal revision petition filed by the accused petitioner in Criminal case No. 83/75 Union of India v. Bahree and Ors. which is pending trial in the court of Magistrate since the date of its institution. Earlier revision petitions were filed and one was taken even upto Supreme Court but the petitioners or some of them did not succeed.

2. The present revision petition has been filed against the order dated July 11, 1986 of the learned Munsif and Judicial Magistrate Khetri. Under the aforesaid order the learned Magistrate dismissed the application dated July 3, 1986 filed on behalf of the petitioners that there is no case against them and therefore they should be discharged or acquitted. The revision petition arises in the following circumstances.

3. One M.L. Mukherjee, Joint Director, Mines safety filed a complaint in the court of Mansif and Judicial Magistrate Khetri u/s 72 of the Mines Act, 1955 (for short, the Mines Act) an it was mentioned in the aforesaid complaint that R.C. Bahree petitioner No. 1 was Dy. General Manager when the offence was committed. Accused petitioner No. 2 Balbir Singh was officially appointed Agent. Accused Petitioner No. 3 Mahipal Singh Yadav was acting as Manager in the absence on

leave of Shri H.S. Arora, accused-petitioner No. 4. On February 1, 1975 at about 3.30 p.m. four workers came to the zero level landing where the East side cage in the service shaft was lying suspended. The cage instead of going up began going down and ultimately went down the pump, provided below the zero level landing. It was about 18 metres deep and which contained water up to the level of about 13 metres from its bottom. Three of the workers died as a result of drowning. An inquiry was conducted and results have been mentioned in the complaint.

4. An offence u/s 72(1)(a) of the Mines Act contains special provisions for contravention of law with dangerous results and it provides that who ever contravenes any provision of the Mines Act or of any regulation rule of bye-law or of any order made thereunder, other than an order made under Sub-section (1A) or subsection (2) or subsection (3) of Section 22, shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees or with both. The offence was therefore triable as a summons case. The substance of accusation was read-over to each of the accused petitioners by the learned Magistrate and each of them pleaded not guilty and claimed to be tried. The statement of M.L. Mukhrejee was recorded on April 17, 1986, and yet another witness Govind Vallabh Sharma was examined as PW 2 on June 11, 1986 R.L. Arora was examined as PW 3 on June 11, 1986 and other witnesses were also examined. In all four witnesses were examined for the prosecution. The evidence of prosecution witnesses was closed on June 11, 1986 and the case was adjourned for recording the statements u/s 313 Cr.PC of the accused persons on July 3, 1986 and it was on July 3, 1986 that an application was filed on behalf of the petitioners wherein it was prayed that no case against the accused-petitioner against the Mines Act is made out and therefore the accused-petitioner should be discharged or acquitted. This application was contested and the learned Magistrate after hearing arguments, dismissed the application and as stated earlier it is that order which is under challenge in this revision petition.

5. The contention of the learned Counsel for the petitioners is that the Procedure prescribed u/s 77 of the Mines Act has not been followed in this case. The question therefore is as to what is the procedure prescribed u/s 77 of the Mines Act? Whether under it after closing the prosecution evidence, the statement of the accused u/s 313, Cr. PC is to be recorded or not and they can be called upon to lead evidence in so far as the commission of offence is concerned. The question is also as to whether it is after the conclusion of the prosecution evidence and before the statement of the accused persons u/s 313 Cr. PC is recorded a finding should be recorded whether an offence is made out or not and only then the accused-persons can be called upon to lead evidence in defence.

6. A look at Section 77 of the Mines Act is necessary which is extracted here and read as under:

77. Exemption of owner, agent or manager for liability in certain case--where the

owner agent or manager of a mine accused of an offence under Mines Act, alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf and on furnishing the known address of the actual offender and on giving to the prosecutor not less than three clear days notice in writing of his intention so to do, to have the other person brought before the court on the date appointed for the hearing of the case and, if after the commission of the offence has been proved the owner agent or manager of mine as the case may be, proves to the satisfaction of the Court

(a) that he has used due diligence to enforce the execution of the relevant provisions of this Act, and

(b) that the other person committed the offence in question without his knowledge consent or connivance the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the owner, agent or manager of the mine, and the owner, agent or manager, as the case may be, shall be acquitted.

Provided that

(a) the owner agent or manager of the mine as the case may be, may be examined on oath and his evidence and that of any witness whom he calls in support shall be subject to cross examination by or on behalf of the person he alleges as the actual offender and by the prosecutor;

(b) if in spite of due diligence the person alleged as the actual offender cannot be brought before the court on the date appointed for the hearing of the case, the court shall adjourn the hearing thereof from time to time so how ever that the total period of such adjournment does not exceed three months, and if by the end of the said period the person alleged as the actual offender cannot be brought before the court, the court shall proceed to hear the case against the owner agent or manager, as the case may be.

A bare reading of the aforesaid extracted Section will show that as and when a complaint is made by the owner, agent or manager accused of an offence under the Mines Act that another person is the actual offender, then the aforesaid person or either of them shall be entitled to have that person brought before the court on the date of hearing of case. It thereafter the commission of offence has been proved the owner, agent or manager of the Mines as the case may be, can bring his case under any of the exceptions u/s 77 of the Mines Act. It will therefore be clear that the question whether an offence is proved or not, whether the commission of an offence is proved or not, can only come not only after the statements of the prosecution witnesses are recorded but even the statement of the accused persons u/s 313 Cr. PC are recorded. Can any criminal court record a finding that the commission of offence has been proved whether by "X" or "Y" or by both without an opportunity to the accused persons to produce defence evidence in so far as the commission of offence is concerned. In my opinion the answer will have to be in the negative because a finding whether the commission

of offence has been proved by "X" or "Y" or by both, can only be recorded after the trial concludes and not at an earlier stage of the case. If the commission of offence is not proved a finding can only be recorded not only after the prosecution evidence is recorded but after the statements of the accused persons u/s 313 Cr. PC are recorded and opportunity to lead evidence for defence is also provided to them, whether or not they avail the same. u/s 77 of the Mines Act also all that is required is that after the conclusion of the trial the court has to first record a finding whether the commission of offence has been proved or not and if the commission of offence is not proved, then there is no option left with the court but to acquit the accused and if the commission of offence is proved further opportunity will have to be provided to the owner, agent or manager as the case may be for bringing their case under any of the exception u/s 77 of the Mines Act In other words in a case u/s 72C(1)(a) of the Mines Act which is triable as a summons case as stated earlier, there have to be two stages, one trial of the case then the finding whether an offence under the aforesaid section has been committed or not and after that an opportunity will have to be granted to the owner, agent or manager of the mines as the case may be to prove by leading defence evidence that his case is covered under the exception as contained in the mines Act. Learned Counsel in support of his contention that u/s 77 of the Mines Act the accused person cannot be asked to enter into his defence, has placed reliance on *Legal Remembrancer Bengal v. L.N. Birla and Anr.* AIR 1039 Calcutta 724. In that case the provisions of Section 71(1) of the Factories Act (1948) were under consideration which section is *pari materia* with Section 77 of the Mines Act The court said that the primary responsibility is laid upon the person in ultimate control and he can only avoid liability by giving the proof required by Section 71 and that section requires proof not only of the actual offender but proof that the controlling authority has not shirked his responsibility. The court instance case referring to Section 71(1) of the Factories Act said that:

The complaint is made in the first instance by the Inspector of Factories against the manager or occupier u/s 60, Factories Act. The manager or occupier is then entitled u/s 71 to complain against the actual offender and if he does so, the actual offender is given notice and brought before the Court and the trial proceeds as against both persons complained against, for as stated in 56 Cal 400 at p. 405 the Section contemplates both sets of complainants and accused being before the court at the same time. The carriage of proceedings is with the original complainant on whom the onus lies of proving that the offence has been committed. Both parties complained against are concerned with the finding on this issue and both are entitled to cross-examine the prosecution witness at this stage, and to lead evidence to disprove the charge, but being accused persons they would not be entitled to give evidence themselves.

The interpretation which the learned Counsel for the petitioner wants to make of Section 77 on the aforesaid extracted portion of *L N. Birla's* case (*supra*) is not correct interpretation. A bare reading of the aforesaid extracted portion will show that both sets of accused persons have to be before the court have a right to

cross examine the prosecution witnesses and to lead evidence to disprove the charge, but would not be entitled to give evidence themselves. A question of disproving the charge can only arise after the prosecution evidence concludes and the evidence of the accused person is recorded u/s 313 Cr PC. It is not that the accused-person cannot be examined u/s 313 Cr PC or have no right to lead evidence to disprove the charge levelled against them. While referring to Section 77 of the Mines Act it has been said earlier that after the evidence of prosecution and defence is recorded the court will record the finding that the offence has been committed or not and will have to give opportunity to the accused person at that stage, if the accused person did not avail that opportunity earlier, to prove that their case falls under any of the exceptions contained in Section 77 of the Act. In the instant case it may be stated that cognizance offence was taken by the learned Magistrate, that order was challenged upto Supreme Court and all that was ordered, that P.L. Rai who according to the accused persons was the real person, should be brought before the court and is also an accused in the trial court. The petitioners, for one reason or the other are delaying the trial of the case which is pending since 1975. They came to this Court more than and once and when upto Supreme Court, but did not succeed.

7. Consequently I find no merit in this revision petition. It is hereby dismissed. The learned Magistrate is directed to take the case day to day and dispose it of as early as possible in accordance with Rules without any delay. The accused-petitioners are directed to present themselves in the court of the learned Magistrate on December 18, 1989. Learned Counsel for the petitioners shall inform the petitioners to present in the trial court on that day.