
(2000) 11 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Revision No. 554 of 1993

R.L. Rikhye

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Assam Plantation Labour Rules, 1956 — Rule 76
Criminal Procedure Code, 1973 (CrPC) — Section 482
Plantations Labour Act, 1951 — Section 2, 26, 27, 36, 39

Citation : (2001) 1 GLT 425

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Mr. S.N. Sarma and Mr. S.S. Goswami, for the Appellant; Mr. J. Singh, PP, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application u/s 482 Cr.P.C. for setting aside and quashing the proceedings in CR Case No. 514/92 pending in the court of SDJM, Biswanath Chariali and the impugned order dated 26.8.1992 passed therein as against the accused petitioner No. 1 Shri R.L. Rikhye, Director, George Williamson (Assam) Ltd.

2. I have heard Mr. S.N. Sarma, learned counsel appearing for the petitioner and Mr. J. Singh, learned PP, Assam appearing for the State Respondents.

3. This case arose out of a complaint filed by the Respondent No. 2 Medical Inspector under the Plantation Labour Act. 1951 before the SDJM. Biswanath Chariali on 25.8.1992 stating, inter alia, that on 5.6.1992 he inspected Boro Tea Estate and found that the petitioner Sri R. L. Rikhye along with Mr. B.C. Saikia, Manager, Boro Tea Estate violated Sections 26 and 27 of the Plantation Labour Act. 1951 by failing to produce certificate of fitness for non-adult worker of the plantation and also violated the provisions of Rule 76 of the Assam Plantation Labour Rules, 1956 by not maintaining the Register of non-adult workers in Form

No. 9 properly. Having obtained the sanction from the Chief Inspector of Plantations u/s 39 of the Act, the complaint was filed against the present petitioner and the Manager of the Tea Estate. On receipt of the complaint, learned SDJM, Biswanath Chariali by his order dated 26.8.1992 took cognizance of offence and issued summons to the present petitioner and the Manager. Being aggrieved, the accused petitioner, R.L. Rikhye Director, George Williamson (Assam), Ltd. has filed this Revision petition for quashing the aforesaid proceedings and the order dated 26.8.1992 issuing process against him. 4. Mr. S. N. Sarma, learned counsel for the petitioner submits that in view of the definition of "employer" in Section 2(e) of the Plantations Labour Act, the petitioner in the facts and circumstances of the case, is not employer and no complaint against him could have been filed. Section 2(e) of the Act defines the expression "employer" under :

"2(e) "employer" when used in relation to a plantation means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, a manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation ;"

It is submitted that no allegation whatsoever has been annexed with the complaint petition to the effect that the present petitioner in the capacity of the Director has the ultimate control over the affairs of the plantation and that the complaint has been filed against the present petitioner on the wrong assumption that he is the employer. In the instant case the affairs of the plantation are entrusted to the Manager and hence such Manager shall be deemed to be the employer in relation to that plantation within the meaning of Section 2(e) of the Act, and the present petitioner being the Director only could not have been prosecuted. Mr. S.N. Sarma, learned counsel for the petitioner has referred to a decision in S.K. Mehra v. State of Assam and another (1991) 2 GLR 356 in support of this contention. In the said case, according to the Inspector, the employer was liable to be prosecuted u/s 36 of the Plantation Labour Act, 1951. He obtained sanction for prosecution as contemplated by Section 39 of the Act from the Chief Inspector of Plantation and filed a complaint before the Chief Judicial Magistrate. Darrang naming the petitioner and one Mr. Kalid L. Alimed, the Manager of the Tea Estate as accused persons. The Chief Judicial Magistrate took cognizance of the case and issued process against both the accused persons. Aggrieved by the issue of process against the President of the Company. He approached this court on the ground, inter alia, that the prosecution can be launched only against an employee and the petitioner being a President of the Board of Directors of the company did not fall within the definition of employer. This Court held -

"I have heard Mr. P.K. Goswami, learned counsel for the petitioner. Mr. Goswami submits that for violation of the provisions of the Act the employer can be prosecuted. An employers has been defined in section 2(e) of the Act. According

to Mr. Goswami, from the terms of section 2(e), it is clear that only such person who has ultimate control over the affairs of the plantation is an employer except in case of affairs of any plantation are entrusted to any other person where such other person may be deemed to be the employer in relation to the plantation. According to the Labour Inspector as well as the sanctioning authority there was a Manager of the Tea Estate. Admittedly, he was looking after the affairs of the Plantation. He may be termed as a person to whom affairs of the plantation were entrusted, and as such, deemed to be an employer ; but the term the President of the Company as an employer or to bring him under the definition of "employer", the prosecution must have materials on record to show that the President "had the ultimate control over the affairs of the plantation." Simply because a person happens to be President of the Company, it cannot be said that he is also in the control of the affairs of the plantation, more so in case of companies owning a large number of plantations (tea gardens) spread all over the country. In the instant case, the learned counsel for the petitioner submits that there is not even a word in the complaint or in the , sanction to show that the petitioner, who was the President of the company, was having any control over the affairs of the plantation. In the absence of any such allegation on record, not to speak of evidence, it is difficult to term the President of the company as an employer."

The facts in this case are also quite similar. Here also the company own a large number of plantations spread all over the country and there is also nothing in the complaint or in the sanction to show that the present petitioner, who is the Director of Company, was having any control over the affairs of the plantation and it is clear that in the instant case the Manager is looking after the affairs of the plantation. That being so, the present petitioner who is only a Director of the Company cannot be prosecuted under the Plantations Labour Act for the alleged violation of Sections 26 and 27 of the Act and Rule 76 of the Assam Plantations Labour Rules, 1956.

5. The proceedings in case No. C R 514/92 pending in the court of learned SDJM, Biswanath Chariali and the impugned order dated 26.8.1992 therein are set aside and quashed as against the present petitioner Sri R.L. Rikhye, Director George Williamson (Assam) Ltd.

6.This Criminal Revision is allowed accordingly. Send down immediately the L.C.R. along with a copy of the judgment and order of this court.