
(2015) 03 JH CK 0122

In the Jharkhand High Court

Case No : Criminal M.P. Nos. 1975 and 1987 of 2014

Rupam Bhaduri

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Factories Act, 1948 — Section 105, 106, 87, 92, 93

Citation : (2015) 146 FLR 861 : (2015) 4 LLN 406 : (2015) LLR 1264

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; Hardeo Prasad Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J—Both the applications arose from the same complaint case, thus are heard together and disposed of by this order.

In these applications petitioners prayed for quashing the entire criminal proceedings in connection with G.O. Case No. 252 of 2013 including the order dated 11.12.2013 passed by learned Judicial Magistrate, 1st Class, Seraikella, whereby and whereunder, he took cognizance of the offence under section 92 of the Factories Act, 1948.

It appears that an inspection carried out in the Growth Shop of M/s. Tata Steel Limited on 14.9.2013 and in course of inspection, it was found that in Fabrication Yard No. 1 about 100 numbers of contract labourers engaged. However, on inquiry, it came to the notice of the Inspecting Team that though the Management took overtime service from them, but in terms of Factories Rule, 1950 (Form-10-A) overtime slip not provided to them, which is violative of Rule 103A of the Factories Rule, 1950. The Inspecting Team further found that the contract labourers were not provided with leave book in Form-15 of the Factories Rule, which is violative of Rule 88 of Jharkhand Factories Rules, 1950. It is

further alleged that on inspection of canteen, the following shortcomings defected:

"(a) There is no partition for the female workers in the dining hall and service counter.

(b) Doors and windows of the canteen are not fly proof.

(c) Menu Chart, rate and the names of members Canteen Managing Committee has not disclosed on the board.

(d) For washing of utensils no arrangement of hot water has been made."

2. It appears that the Factory Inspector filed a complaint in the Court of C.J.M. Seraikella on 11.12.2013, which was registered as G.O. Case No. 252 of 2013. It further appears that on 11.12.2013, Judicial Magistrate, Ist Class Seraikella took cognizance of the offence under section 92 of the Factories Act and issued summons to the petitioners, who were occupier and manager of the factory.

3. It is submitted by Sri Indrajit Sinha, learned Counsel for the petitioners that under the law, the Factory Inspector is duty bound to point out the defects and irregularities found in the factory in course of his inspection and afford an opportunity to the management to cure all such defects and irregularities. In this connection, Sri Sinha relied upon a judgment of Hon"ble Supreme Court in The Delhi Cloth and General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi and Others, AIR 1971 SC 344 : (1970) 20 FLR 33 : (1969) 3 SCC 925 : (1970) 2 SCR 348 It is submitted that in the instant case, the Inspector of Factories without giving any opportunity to the petitioner had filed the complaint, therefore, the entire criminal proceeding, arising from the aforesaid complaint (G.O. No. 252/2013) including order dated 11.12.2013 by which cognizance was taken, is liable to be quashed.

4. On the other hand, learned Addl. P.P submits that under section 92 of the Factories Act, if learned Magistrate finds that there is contravention of the provision of Factories Act and/or Rule framed thereunder, then the Magistrate can take cognizance of the offence. However, aforesaid power of the Magistrate is only subject to prohibition expressly provided under the Act. There is no provision in the Factories Act, which prohibits the Magistrate from taking cognizance of an offence under section 92 of the Act, if the Inspector of Factories has not communicated the defects and irregularities detected during the course of inspection and afforded an opportunity to the management to rectify the same. Accordingly, it is submitted that there is no illegality in the order taking cognizance, hence this application is liable to be dismissed.

5. Having heard the submissions, I have gone through the records of the case and the relevant laws.

6. Section 92 of the Factories Act reads as under:

"92. General penalty for offences.--Save as is otherwise expressly provided in

this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and the manager of the factory shall each be guilty of the offence and punishable with imprisonment for a term which may be extend to [two years] or with fine which may be extend for [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may be extend to [one thousand rupees] for each day on which the contravention is so continued:

[Provided that where contravention of any of the provisions of the Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury."

7. From plain reading of section 92 of the Act, it is clear that once a complaint filed before the Judicial Magistrate and the Judicial Magistrate after perusing the same, came to the conclusion that there is violation of terms and conditions of provisions of Factories Act and/or any Rule framed thereunder, then he has no option but to take cognizance of the offence unless the Act expressly prohibits him from doing so. Such prohibition enumerated under sections 105 and 106 of the Factories Act. From perusal of record, I find that the prohibition prescribed under sections 105 and 106 of the Factories Act have no application in the facts of this case.

8. However, Sri Sinha submits that the Hon"ble Supreme Court in *The Delhi Cloth and General Mills Co. Ltd. v. The Chief Commissioner, Delhi and others*" (supra) has held that it is the duty and obligation of the Factory Inspector to give proper opportunity to the management, so that they may do compliance with the provisions of the Act and it is not only the duty of the Inspector of Factories to file prosecution against the management. Accordingly, he submits that since in this case, the Inspector of Factories had not intimated to the petitioners that during inspection, the Inspecting Team had found various irregularities in the factory and had not given any opportunity to cure the same, the order of cognizance is liable to be quashed in view of aforesaid judgment. The aforesaid submissions of learned Counsel for the petitioners cannot be accepted in the facts of this case.

9. From perusal of complaint petition, I find that after the inspection, the Inspector of Factories had brought to the notice of petitioners, the various irregularities detected during inspection vide memo No. 344 dated 28.9.2013. It is worth mentioning that the complaint was filed on 11.12.2013 i.e. after more than two months from the date of communication of aforesaid irregularities. There is no averments in this connection to show that after receiving the said memo, petitioners cured aforesaid irregularities. Thus, the statement and submissions of the petitioners that defects and irregularities detected during the inspection had not been communicated to the petitioners is against the record,

therefore, liable to be rejected.

10. As noticed above, since the law does not prohibits Judicial Magistrate from taking cognizance of the offence, therefore, I am of the view that he rightly passed the order, because from perusal of the complaint petition, prima facie, I find that certain irregularities were committed in the factory, which is violative of various provisions of factory rules. In view of discussions made above, I find no merit in these applications, accordingly, these applications are dismissed.