
(2014) 10 JH CK 0004
In the Jharkhand High Court
Case No : Cr. M.P. No. 4878 of 2001

S. Aikat

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines Act, 1952 — Section 18, 18(5), 2(1)(c), 2(1)(j), 2(c)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2015) 1 AJR 599 : (2015) 5 FLT 29 : (2015) 1 JLJR 60

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : A.K. Mehta, Advocate for the Appellant; P.K. Appu, A.P.P., Advocate for the Respondent;

Final Decision : Allowed

Judgement

P.P. Bhatt, J.—The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding initiated against the petitioner in connection with C.M.A. Case No. 359/2001 including the order taking cognizance dated 16.4.2001 passed by learned Chief Judicial Magistrate, Dhanbad for the offence under Sections 72(A), 72(C)(1)(a), 72(C)(1)(b) of the Mines Act 1952 against the petitioner and others and also all subsequent proceedings against the petitioner, presently pending in the court of learned Chief Judicial Magistrate, Dhanbad.

2. The brief facts of the case is that Opp. Party Mo. 2 filed a complaint dated 12.4.2001 in the court of the learned Chief Judicial Magistrate, Dhanbad on 16.4.2001 against the petitioner and 11 others for the alleged offence under Sections 72(A), 72(C)(1)(a), 72(C)(1)(b) of the Mines Act 1952. The particular of the offence as narrated by the Opposite party No. 2 is that an information about occurrence of accident at Dabari Colliery was received on 3.11.2000. An enquiry/ inspection was made by the Director of Mines and Safety with other officials who

are also inspector of mines under Section 5(1) of the Mines Act, 1952. During course of inquiry, it was revealed that three workers were engaged in drilling and three other workers were engaged in charging of short holes simultaneously at the development face beneath the unsupported roof. Suddenly, a mass of the roof of the description detailed in the complaint fell down inflicting fatal injuries to four persons apart from injuries to the other persons. In the complaint, it is alleged that there is contravention of the provisions of the Mines Act, 1952 as well as the Coal Mines Regulations, 1957. On the basis of the said complaint, the learned CJM, Dhanbad, by order dated 16.4.2001 took cognizance against the petitioner including other persons for an offence as alleged under Sections 72(A), 72(C)(1)(a), 72(C)(1)(b) of the Mines Act 1952.

3. Learned counsel for the petitioner, by referring the complaint, submitted that the present petitioner is shown as accused No. 5 and has been described as deemed agent. In this context, learned counsel for the petitioner has referred Section 18 of the Mines Act 1952, which deals with the duties and responsibilities of owners, agents and managers. It is submitted that the present petitioner does not fall in description of Section 18 of the Mines Act. Learned counsel for the petitioner has also referred to and relied upon Regulation 8A of the Coal Mines Regulations, 1957 which provides the method and procedure for appointment of agent as well as deemed agent and as per the said provision, the statement in the prescribed format in Form No. 1 is required to be made within one month specifying the name of agent. By referring Annexures-2 and 3 to this petition, which are the Form No. 1 under Regulation 3, 6, 7 and 8 of the Coal Mines Regulations, 1954, it is submitted that nowhere the name of the petitioner has been indicated. Learned counsel for the petitioner has also referred to and relied upon the judgment dated 6.3.2014 passed by the Hon'ble Supreme Court in Criminal Appeal No. 122 of 2004 (G.N. Verma Vs. State of Jharkhand and Anr.) and submitted that the facts are almost similar and the said decision is applicable to the instant case. By referring paragraph No. 7, 11 to 19 and 22 to 26 to the said judgment it is submitted that the petitioner cannot be held responsible in any manner and therefore, the cognizance taken by the learned court below may be quashed and set aside.

4. Learned counsel for the State as well as Opp. Party No. 2 opposed the submission made by the learned counsel for the petitioner and have referred Section 2(c) of the Mines Act, 1952 as well as Section 18(5) of the Mines Act, 1952 and submitted that in view of Section 18(5) of the Mines Act, 1952, the present petitioner can also be held responsible and therefore, the learned court below has rightly and properly after careful consideration of the facts and circumstances of the present case, took the cognizance against the accused persons including the petitioner. Learned counsel for Opp. Party No. 2 has also pointed out Paragraph No. 9 of the petition and submitted that the present petitioner was deputed for the purpose of dealing with issues relating to industrial relation, which includes the safety of workers. Learned counsel for Opp. Party No. 2 in support of this submission has also referred to paragraph 9 of the

counter affidavit as well as Para 5 of the complaint and submitted that the petitioner who has been made accused No. 5 is also equally responsible like other persons in view of Section 18(5) of the Mines Act, 1952.

5. Considering the aforesaid rival submissions of the parties and having regard to the facts and circumstances of the present case, it appears that the present petitioner has been made accused No. 5 in the complaint case being C.M.A. Case No. 359/2001 in the capacity of deemed agent. In this context, the learned counsel for the petitioner has referred to and relied upon Regulation No. 8A of the Coal Mines Regulations, 1957 which provides for appointment of an agent in prescribed format i.e. Form No. 1 and such form is required to be submitted within a period of one month specifying the name of agent as well as deemed agent as the case may be. Regulation No. 8A of the Coal Mines Regulations, 1957 reads as under:-

[8A. Appointment of Agent-(1) the owner of a mine shall submit in writing to the Chief Inspector and the Regional Inspector, a statement showing name and designation of every person authorized to act on behalf of the owner in respect of management, control, supervision or direction of the mine.

(2) The statement shall also show the responsibilities of every such person and the matters in respect of which he is authorized to act on behalf of the owner.

(3) Every such person shall be deemed to be agent for the mine or group of mines, as the case may be, in respect of the responsibilities as specified in such statement.

(4) The statement aforesaid shall be submitted within one month from the date of coming into force of the Coal Mines (Amendment) Regulations, 1985, in the case of mines already opened, or reopened as the case may be, and in other cases within one month from the date of opening or reopening of the mine.

(5) Any change, addition or alternation in the names of other particulars of the aforesaid statement shall be reported in writing to the Chief Inspector and the Regional Inspector within Seven days from the date of such change, addition or alternation.]

The relevant statement of Form No. 1 under Regulations 3, 6, 7, 8 have been annexed as Annexures-2 and 3 to this petition. On perusal of the same, it appears that nowhere the name of present petitioner has been indicated. The arguments advanced by the learned counsel appearing for Opp. Party No. 2 as well as the State cannot be accepted in view of provisions as contained in Regulation 8A of Regulations, 1957.

6. The relevant regulations and the provisions of law as applicable in this case have also been considered by the Hon'ble Supreme Court in its recent decision/judgment dated 6.3.2014 given in Cr. Appeal No. 122 of 2004 (G.N. Verma Vs. State of Jharkhand and Anr.) and the said decision has been referred to and relied upon by the learned counsel for the petitioner. The ratio laid down in the

aforesaid case is also applicable to the facts and circumstances of the present case and accordingly this case is squarely covered by the above rendered judgment. Paragraph Nos. 6 to 26 read as under:

"6. The principal question for consideration is whether cognizance of the criminal complaint taken by the Chief Judicial Magistrate against the appellant G.N. Verma deserves to be set aside in the absence of any allegation made against him in the complaint A related question is whether the appellant G.N. Verma could be described as a "deemed Agent" of the owner of the Karkata Colliery in which an unfortunate fatal incident took place on or about 9th March, 2000. In our opinion, the answer to the first question must be in the affirmative, while the related question must be answered in the negative.

The facts

7. On 15-12-1999 an order was issued by the Director of Mines Safety, Ranchi Region in Ranchi under Section 22-A(2) of the Mines Act, 1952 (for short "the Act"). The order related to the failure of the Agent, Karkata Colliery to rectify certain defects, despite time having been granted, in the Bishrampur and Bukbuka seams. Accordingly, by virtue of the order the Chief Inspector of Mines prohibited the employment of persons for extraction of coal from the extended Block B of the Bukbuka seam till the defects were rectified.

8. Notwithstanding the prohibitory order, extraction of coal was apparently carried out at the Karkata Colliery and on or about 9th March 2000 there was an unfortunate fatal accident. The cause and circumstances leading to the accident were investigated by an inspection of the mines on several dates in March and April 2000. The inquiry and inspection of the site of accident revealed that extraction of coal was being carried out in Block B of Bukbuka seam at Karkata Colliery in violation of the prohibitory order.

9. Consequent to the inquiry report suggesting a violation of the prohibitory order, the Inspector of Mines filed case No. 323 of 2000 before the Chief Judicial Magistrate at Ranchi on 30th August 2000. The events leading to the filing of the complaint were stated and it was alleged that since there were signs of engagement of persons forming operations and coal production in contravention of the prohibitory order, the three accused persons, G.N. Verma who was the Chief General Manager (North Karanpura Area) and deemed Agent, Karkata Colliery, B.K. Sinha, Agent, Karkata Colliery and B.K. Ghosh, Manager, Karkata Colliery had contravened the provisions of Section 72-B of the Act and were liable to be punished under the provisions of that section.

10. On 31st August 2000 the Chief Judicial Magistrate took cognizance of the complaint and issued summons to the accused persons, including the appellant G.N. Verma.

Proceedings in the High Court

11. Upon receipt of the summons, G.N. Verma preferred a petition under Section

482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings and the summons issued to him. The petition filed by G.N. Verma being Criminal Misc. No. 8331 of 2000 R was taken up for hearing by a learned Single Judge of the High Court of Jharkhand who noted that the question before him was whether a person, other than an agent, could be fastened with criminal liability for an offence under the Act on the ground that he is a deemed agent. The learned Single Judge noted the decision of the Division Bench of the Patna High Court in R.J. Sinha v. State and observed that the definition of agent in the Act had been amended since the decision rendered in Sinha and sub-section (5) had also been introduced in Section 18 of the Act. Accordingly, he was of the view that the import of Section 18(5) of the Act required further consideration and, therefore, referred the matter to the Division Bench for further consideration.

12. The Division Bench took up the matter for hearing and by its judgment and order dated 19-9-2002 (impugned) came to the conclusion that the definition of agent as occurring in the Act prior to its amendment in 1983 had been substantially widened to include every person acting or purporting to act on behalf of the owner of a mine and taking part in the management, control, supervision or direction of any mine or any part thereof. Consequently, the law laid down in Sinha was no longer applicable.

13. The definition of agent appearing in Section 2(1)(c) of the Act prior to its amendment and subsequent to its amendment reads as follows:

"2. (1)(c) "agent", when used in relation to a mine, means any individual, whether appointed as such or not, who acts as the representative of the owner in respect of the management, control and direction of the mine or of any part thereof and as such is superior to a manager under this Act;"

After its amendment, Section 2(1)(c) of the Act reads as follows:

"2. (1)(c) "agent" when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof;"

14. The Division Bench also took into consideration the amendment to Section 18 of the Act and the introduction of sub-section (5) therein. This sub-section reads as follows:

"18. (5) In the event of any contravention by any person whosoever of any of the provisions of this Act or of the Regulations, Rules, Bye-laws or Orders made thereunder except those which specifically require any person to do any act or thing or prohibit any person from doing an act or thing, besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such

contravention--

- (i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;
- (ii) the manager of the mine;
- (iii) the owner and agent of the mine;
- (iv) the person appointed, if any, to carry out the responsibility under sub-section (2):

Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not prima facie liable."

15. The High Court was of the opinion that in view of the extended definition of agent read with Section 18(5) of the Act, the Chief General Manager of a mine would be a deemed agent responsible for the management, control, supervision or direction of a mine or a part thereof. On this basis it was held that the Chief Judicial Magistrate rightly took cognizance of the complaint against G.N. Verma and that there was, therefore, no merit in the petition filed by him for quashing the proceedings.

16. It may be noticed that neither the definition of agent nor Section 18(5) of the Act refer to a deemed agent. This expression is to be found in Regulation 8-A of the Coal Mines Regulations, 1957 dealing with the appointment of an agent. Regulation 8-A reads as follows:

"8-A. Appointment of agent--(1) The owner of a mine shall submit in writing to the Chief Inspector and the Regional Inspector, a statement showing name and designation of every person authorised to act on behalf of the owner in respect of management, control, supervision or direction of the mine.

(2) The statement shall also show the responsibilities of every such person and the matters in respect of which he is authorised to act on behalf of the owner.

(3) Every such person shall be deemed to be an agent for the mine or group of mines, as the case may be, in respect of the responsibilities as specified in such statement.

(4) The statement aforesaid shall be submitted within one month from the date of coming into force of the Coal Mines (Amendment) Regulations, 1985, in the case of mines already opened, or reopened as the case may be, and in other cases within one month from the date of opening or reopening of the mine.

(5) Any change, addition or alteration in the names or other particulars of the aforesaid statement shall be reported in writing to the Chief Inspector and the Regional Inspector within seven days from the date of such change, addition or alteration."

Discussion

17. It is true that "agent" has an extended meaning in the Act. It not only brings within its fold a person who is appointed as an agent in relation to a mine but also brings within its fold a person not appointed as an agent but who acts or purports to act on behalf of the owner of the mine and takes part in the management, control, supervision or direction of the mine or any part thereof.

18. It is nobody's case that G.N. Verma was appointed as an agent of any mine. Also, the complaint does not allege or state anywhere that G.N. Verma acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. In fact his duties and responsibilities have not been described in the complaint. In the absence of G.N. Verma's duties having been spelt out in the complaint, it is not possible to say whether he was merely an administrative head of Karkata Colliery being its Chief General Manager or was he required to be involved in technical issues relating to the management, control, supervision or direction of any mine in Karkata Colliery. The averment in the complaint is bald and vague and is to the effect that at the relevant time G.N. Verma was the Chief General Manager/deemed agent and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder.

19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in National Small Industries Corpn. Ltd. v. Harmeet Singh Painted that Section 141 is a penal provision creating a vicarious liability. It was held as follows: (SCC p. 336, para 13)

"13. ...It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability."

(emphasis in original)

It was then concluded: (SCC p. 345, para 39)

"39. (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction."

20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed agent of the mine and was exercising supervision, management and control of the mine and in that capacity was

bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in Harmeet Singh Paintal (though in another context) would be squarely applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.

21. The other remaining question would be whether G.N. Verma could be deemed to be an Agent of the mine.

22. Regulation 8-A of the Coal Mines Regulations requires the owner of a mine to submit in writing a statement showing the name and designation of every person authorised to act on behalf of the owner in respect of the management, control, supervision or direction of a mine. There is nothing on record to show that any such statement was furnished by the owner of the mine to the Chief Inspector or the Regional Inspector appointed under the Act. Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an agent. In the absence of any statement having been made or any indication having been given by the owner enabling G.N. Verma to act or purport to act on his behalf, it cannot be said that he was a deemed agent for the mine.

23. The word "mine" has been defined in Section 2(1)(j) of the Act and it has no reference to any administrative functions in relation to a mine but only technical matters related thereto. G.N. Verma was the Chief General Manager of Karkata Colliery and it is not possible to assume that apart from performing administrative duties, he was also involved in technical matters related to the mine having the Bukbuka seam.

24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in W.H. King v. Republic of India that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. This view has been consistently adopted by this Court over the last, more than sixty years.

25. On the facts of this case, we would need to unreasonably stretch the law to include G.N. Verma as a person vicariously responsible for the lapse that occurred in the mine resulting in a fatal accident. We are of the view that under these circumstances, there is no basis for proceeding under Section 72-B of the Act against G.N. Verma.

Conclusion

26. The appeal is allowed, the judgment and order of the High Court is set aside and the complaint against G.N. Verma is quashed."

7. In the instant case also the petitioner has not been nominated as an agent or deemed agent under Regulation 8-A of the Coal Mines Regulation 1957. Thus present case is squarely covered by the above referred decision/judgment dated 6.3.2014 passed by the Hon"ble Supreme Court in Cr. Appeal No. 122 of 2004. Accordingly, the order taking cognizance dated 16.4.2001 passed in C.M.A. Case No. 359/2001 by the court of learned Chief Judicial Magistrate, Dhanbad is ordered to be quashed and set aside in respect of this petitioner only.

With the aforesaid observations and directions, this petition stand allowed.