

(2017) 10 JH CK 0001
In the Jharkhand High Court
Case No : 433 of 2010

Salim Lakra @ Selem Lakra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 468](#), [Section 208](#), [Section 469](#), [Section 473](#), [Section 258](#), [Section 470](#)

Citation : (2017) 10 JH CK 0001

Hon'ble Judges : Anant Bijay Singh

Bench : SINGLE BENCH

Advocate : K. K. Ojha, Rakesh Kumar, Sahja Nand Sarswati

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Respondents.

2. This Criminal Writ bearing No.433 of 2010 has been filed by the petitioner with a prayer for quashing the entire prosecution case being OCR Case No.185 of 2009/ T.R. Case No.682 of 2009, pending in the court of learned C.J.M., Pakur, initiated upon the written complaint made by the Labour Enforcement Officer cum Inspector, Minimum Wages Act, 1948 against the petitioner for committing the offence punishable under Section 22(A), 22(a) of the Minimum Wages Act, 1948, for committing irregularities as mentioned in the prosecution report and further to quash the order dated 22.12.2009, passed by the learned C.J.M., Pakur, whereunder on the basis of the complaint, cognizance has been taken against the petitioner and summons was issued to the petitioner.

3. The fact giving rise to the present case is as follows :-

That one Kameshwar Prasad, the Labour Enforcement Officer, Pakur Sadar

Anchal, Pakur, gave a written report (official complaint) before the court of learned CJM, Pakur, alleging therein that the petitioner (Mustak Ahmad) is the proprietor of Stone Crusher situated in Village :- Ranipur, Mauza :- Ramchandrapur and he was directed to produce the register appertaining to minimum wages, attendance register and muster rolls maintained under the provisions of the Minimum Wages Act .

4. Vide office Memo No.52, dated 25.02.2009, the petitioner failed to produce the aforesaid documents which amounts to contravention of Provisions of Section 22(A) and 22(a) of the Minimum Wages Act, so cognizance be taken.

5. Perused the prosecution report, it appears that on the aforesaid petition/complaint made on 30.10.2009, cognizance of the offence was taken by the learned CJM, Pakur under the aforesaid Sections of the Minimum Wages Act.

6. This Criminal Writ was filed on 08.10.2010. Thereafter under order dated 19.11.2011, learned counsel for the State sought time to file counter-affidavit. It further appears that under order dated 17.06.2016, the matter was released to be put up before another Bench and under order dated 29.06.2016, Hon"ble the Chief Justice directed it to be listed on 09.09.2016 before this Bench. Vide order dated 21.10.2016, Lower court records was called for and thereafter counter-affidavit was filed on 16.12.2011 on behalf of the State through J.C. to S.C.II and the matter was heard on 25.08.2017 and the order was reserved.

7. Learned counsel while assailing the impugned order submitted that the entire prosecution as well as the order taking cognizance is fit to be quashed. He further submitted that the inspection was made by the Labour Enforcement Officer on 23.02.2009 at 3.10 p.m. and during which the following irregularities were found :-"The payment Register under "Jharkhand Minimum Wages Rules, 2000, and Muster Roll/Attendance Register were not produced and at the same time, the Paschim Patra of Labour and Employees were not produced, which are in violation of Rule 26(1) 26(5) & 26(5)(A) of the "Jharkhand Minimum Wages Rules, 2000 and accordingly, vide Letter No.175 dated 05.07.2009, the aforesaid Labour Enforcement Officer, Pakur Sadar Circle, Pakur, sought sanction from the Labour Superintendent (Agriculture- Labour), Sahibganj, for prosecuting the petitioner and other employers for contravening Section 18 of the Minimum Wages Act, 1948 as well as Rule 26(1) 26(5) & 26(5) (A) of the "Jharkhand Minimum Wages Rules, 2000".

8. It has further been submitted that on the basis of the aforesaid letter of request of the Labour Enforcement Officer, Pakur Circle, Pakur, the Respondent - Labour Superintendent forwarded the matter to the Assistant Commissioner, Santhal Pargana Division, Dumka who in its turn vide official order No.25, Dumka dated 10.10.2009 accorded sanction for prosecuting the petitioner for the offences punishable under Sections 22(A), 22(a) of the Minimum Wages Act, 1948.

9. It was further submitted that after grant of sanction for prosecuting the

petitioner under the alleged offences, the Labour Enforcement Officer filed a complaint before the Court of learned Chief Judicial Magistrate, Pakur, on 28.10.2009, alleging therein that in course of his inspection as made on 23.02.2009 at 3.10 p.m., several irregularities were found in the establishment of the petitioner and the petitioner was also show caused, but neither the petitioner submitted reply to the show-cause, nor he submitted any documents and accordingly, the petitioner has committed the offence under Section 22(A), 22(a) of the Minimum Wages Act, 1948, and requested the said Court to take cognizance against the petitioner.

10. On the basis of the aforesaid complaint of the Labour Enforcement Officer, Pakur, OCR Case No.185 of 2009/ T.R. Case No.682 of 2009 was instituted and subsequently, vide order dated 22.12.2009, cognizance was taken against the petitioner for the offence punishable under Section 22(A), 22(a) of the Minimum Wages Act, 1948 and the petitioner was summoned for his appearance.

11. It was submitted that cognizance was taken against the petitioner on 22.12.2009, but the Labour Enforcement Officer, Pakur by his Letter No.311 addressing to the said Court requested not to take cognizance against the petitioner, rather to take cognizance against one Akbar Hussain since inadvertently the name of the petitioner was incorporated in the prosecution report on the wrong information gathered in course of the investigation made by him, but no heed was paid upon the said letter of request, rather the Court below proceeded in accordance with law and took cognizance.

12. It was further mentioned that the complainant is in habit of filing false prosecution against the owners of the Stone industry, Pakur for his vested interest and earlier in a similarly situated matter, one of the owners of the Stone Industry namely, Prem Kumar Bhagat was exonerated from the charges as leveled against him under Section 22(A), 22(a) of the Minimum Wages Act, 1948 in OCR Case No.185 of 2009/ T.R. Case No.682 of 2009 vide judgment and order dated 05.04.2010, passed by the Court of the learned Chief Judicial Magistrate, Pakur.

13. In support of the aforesaid contention, the petitioner referred the copy of the Letter dated 311 dated 22.12.2009 as well as the copy of the judgment dated 05.04.2010, passed in OCR Case No.185 of 2009/ T.R. Case No.682 of 2009 for kind consideration of this Hon"ble Court.

14. In view of the aforesaid submissions, prayer was made to quash the entire criminal proceeding and in alternative, to set aside the order taking cognizance and to allow the instant application.

15. A counter-affidavit has been filed on behalf of the respondent nos.1 to 4 and during course of arguments, the learned counsel for the State has relied upon the following submissions :-

(a) It was submitted that the respondent no.4 is the Labour Enforcement Officer,

(Central), Sadar Circle. If it so, the entire Writ Petition is liable to be dismissed for the reason that the Labour Enforcement Officer, (Central) can take action in the matter only when the appropriate Government is the Central Government. In that situation, the State of Jharkhand will have no concern with the case. Therefore, the Writ Petition suffers from the vice of wrong insertion of parties. Unless the parties are properly impleaded, the Writ Petition can not be heard in the present form.

16. The following facts which form the basis of the initiation of the present Criminal proceeding against the petitioner :-

(i) The Labour Enforcement Officer, Pakur (L.E.O. For short) had inspected the employees of place of business on 23.02.2009, and had demanded the relevant documents in terms of the provisions contained in Rule 26(1), 26(5A) of the "Jharkhand Minimum Wages Rules, 2000". (ii) Since the aforesaid documents were not presented before the L.E.O., he issued notice under Memo No.52 dated 25.02.2009, calling upon Md. Mushtaque Sheikh, the known proprietor of the stone crusher, Ramchandrapur, Pakur, calling upon him to appear before him on 07.03.2009, at 1:25 p.m. with the relevant documents mentioned in the notice. (iii) On the aforesaid date, neither the employer, nor any of his representatives appeared before the L.E.O., and so, he issued another notice under Memo No.140 dated 18.05.2009, by way of reminder. (iv) In spite of the aforesaid reminder, no body appeared before him. (v) Since non-compliance of the direction, as contained in the aforementioned notices amounted to violation of Section 18 of the Minimum Wages Act, 1948, read with Rules 26(1), 26(5) and 26(5A) of the "Jharkhand Minimum Wages Rules, 2000, the L.E.O. Submitted his report to the Labour Superintendent (Agriculture Labour), with proposal to take steps to initiate criminal proceedings against the persons named in the proposal issued under Memo No.175 dated 05.07.2009, (Annexure-1 to the Writ Petition). (vi) By virtue of office order No.25, Dumka, dated 10.10.2009, (Annexure-2 to the Writ Petition), the proposal for prosecution was approved by the Deputy Labour Commissioner, Dumka. (vii) By virtue of the Letter No.287 dated 28.10.2009, the L.E.O. Submitted prosecution report before the Chief Judicial Magistrate, Pakur. (viii) On 20.12.2009, Sri Mustak Sheikh along with two witnesses came in the office of the L.E.O. and got him received a letter whereby he was requested to inspect the stone crusher. In the said application, he stated that a stone crusher existed just adjacent to his mines which belonged to some one else. Sri Mustak Sheikh was falsely implicated. His request, therefore, was to get the matter verified so that his name may be removed from the prosecution list. (ix) Based on the aforesaid application filed by Md. Mushtaque Sheikh, the L.E.O., again visited the place on 21.12.2009, for the purpose of inspection. In course of inspection, he found that the statement made in the aforesaid application dated 20.12.2009, was correct. He found that the real owner of the stone crusher was Akbar Hussain, son of Anisul Rahman. (x) In course of inspection, he prepared his inspection report on which he procured signature of Akbar Hussain who signed in Bengali

language. Akbar Hussain gave wrong information that the real owner was Nazrul Islam. (xi) The aforesaid contradictory statements of Akbar Hussain arose doubt in the mind of the L.E.O., and hence, he visited the office of Mining Department on the same date and procured relevant information. According to the information, the area on which the stone crusher situated was allotted as Dag No.202, area 01 Bigha and 10 Kathas, Licence No.89 /07. The ownership of the said area was shown to be of Akbar Hussain, son of Anishul Rahman, The L.E.O. mentioned those facts at the bottom of his inspection report. (xii) By virtue of Letter No.311, dated 22.12.2009, the L.E.O. Informed the Chief Judicial Magistrate, Pakur, about the latest information he received as stated on 22.12.2009, in course of the inspection (Annexure-3 to the Writ Petition). 17. On the basis of the aforesaid submissions, it was submitted that there is no merit in the instant Writ Petition (Crl.) and the same is fit to be dismissed by this Hon"ble Court.

18. It was further submitted that in course of investigation, it transpires that an inspection report was prepared on 21.12.2009 on the signature of one Akbar Hussain who signed in Bengali lanugage. Shri Akbar Hussain gave wrong information to the effect that the real owner was Nazrul Islam. The aforesaid contradictory statements of Shri Akbar Hussain arose doubt in the mind of the L.E.O. and hence, he visited the office of Mining Department on the same date and procured relevant information. According to the information, the area on which the stone crusher situated was allotted as Dag No.202, area being 01 Bigha, 10 Katha, Licence No.89 /07. The ownership of the said area was shown to be of Shri Akbar Hussain, Son of Shri Anisul Rahman. The L.E.O.mentioned those facts at the bottom of his inspection report.

19. It has been submitted that as a result of the inspection made by the L.E.O. on 21.12.2009, when he found that wrong person was named in the prosecution report, he thought it necessary to get the name corrected, so that the prosecution report may be corrected accordingly. Therefore, by virtue of Letter No.311 dated 22.12.2009, the L.E.O. Informed the Chief Judicial Magistrate, Pakur, about the latest information he received, as stated, in the inspection report on 21.12.2009 in the course of the inspection (Annexure-3 to the Writ Petition).

20. In the facts and circumstances, it is wrong to contend that the proceeding was vexatious. Now the only matter to be considered is that the name of wrong person mentioned in the first prosecution report requires correction as per the second inspection report based on correct information.

21. In order to appreciate the submissions made on behalf of the parties, the provisions of Section 22 of the Minimum Wages Act, is quoted herein-below :-

22. Penalties for certain offences :- Any employer who - (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or

(b) contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both; Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 20 . 22-A. General provision for punishment of other offences :-Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees. 22-B. Cognizance of offences :- (1) No Court shall take cognizance of a complaint against any person for an offence-- (a) under clause (a) of Section 22 unless an application in respect of the facts constituting such offence has been presented under Section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorized by it in this behalf has sanctioned the making of the complaint; (b) Under clause (b) of Section 22 or under Section 22-A, except on a complaint made by, or with the sanction of, an Inspector. (2) No Court shall take cognizance of an offence :--

(a) under clause (a) or clause (b) of Section 22, unless complaint thereof is made within one month of the grant of sanction under this section; (b) under Section 22-A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

22. On perusal of Section 22-B which relates to the cognizance, reveals that for the offences punishable under Clause (a) and (b) of Section 22, the complaint is to be made within one month of sanction and further under Section 22(A), the complaint is to be made within six months from the date of offence alleged to have been committed.

23. As per the case of the prosecution, the prosecution report itself reveals that inspection of the establishment of the petitioner was made on 23.02.2009 at 3.10 p.m, but the prosecution report was filed on 30.10.2009 i.e. after more than six months.

24. From the perusal of the impugned order dated 22.12.2009, it appears that the respondent no.4 had filed the prosecution report and had made the prayer for taking cognizance, but no order has been passed as the Presiding officer (learned CJM) was on leave and subsequent orders dated 19.01.2010, 24.02.2010 reveals that an application under Section 258 Cr.P.C. was filed on behalf of the petitioner which was directed to be kept on record and the matter was adjourned from time to time and subsequently, on 01.02.2011, bailable warrant of arrest was ordered to be issued. On 25.07.2011, non-bailable warrant of arrest was ordered to be issued. Further on 27.08.2011 in absence of service report, permanent warrant of arrest was ordered to be issued against the petitioner.

25. The law regarding limitation for taking cognizance is contemplated under Sections 468 to 473 Cr.P.C. was considered by the Hon"ble Supreme Court in the judgment passed in the case of Sarath Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr. K. M. Cherian and Ors., reported in AIR 2014 SC 448, it has been held that there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences- As taking cognizance is application of mind by the Magistrate to the suspected offence, a subjective element comes in- It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case could deny justice to a diligent complainant- Such an interpretation of S. 468 Cr.P.C. would be unsustainable and would render it unconstitutional - Furthermore, an anomalous situation would arise if date of taking cognizance is considered to be relevant as cognizance may be taken by Magistrate after the limitation period though the complaint is filed within time- Hence, only harmonious construction which can be placed on Ss. 468, 469 and 470 CrPC is that Magistrate can take cognizance of an offence only if the complaint in respect of it is filed/prosecution/criminal proceedings instituted within prescribed limitation period- Furthermore, complainant or prosecution are entitled to exclude such time as is legally excludable

B. Criminal Procedure Code 1973 - S.473 -Delay- Use of disjunctive word "or" in S.473 -Whether suggests that for the first part of the provision i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the latter part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued - No opinion expressed

C.Criminal Trial -Cognizance - What is - Reiterated, taking cognizance is application of mind by the Magistrate/court to the suspected offence - Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case (see in detail Shortnotes H and I, below)- Words and Phrases - "cognizance" - Criminal Procedure Code, 1973, Ss.190, 193, 200 to 204, 467 and 468

D. Interpretation of Statutes - Basic Rules -Reasonable construction/ interpretation - Application of doctrine of - Held, a court of law would interpret a provision which would held in sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the applying a doctrine which would make the provision unsustainable and ultra vires the Constitution

Answering the reference in the terms below, the Supreme Court Held :

if the date on which the complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time-barred. If it is filed after period of limitation, the complainant can make an application for condonation of delay under Section 473 Cr.P.C. The court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is

considered to be relevant the, if the court taken cognizance within the period of limitation, there is no question of the complaint being time-barred. If the court takes cognizance after the period of limitation then, the question is how will Section 473 Cr.P.C. work? The complainant will be interested in having the delay condoned]. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. It was submitted that use of disjunctive "or" in Section 473 CrPC suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issue to the accused and for the latter part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before the Court. Therefore, no opinion is expressed whether for the purpose of notice, Section 473 CrPC has to be bifurcated or not. However, clearly it would be absurd to hold that the court should issue notice to the accused for condonation of delay caused by the court, explain the delay caused at its end and then pass an order condoning or not condoning the delay. The law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469, and 470 CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed or the prosecution/criminal proceedings initiated within the prescribed limitation period. The Magistrate would, however, be entitled to exclude such time as is legally excludable. (Para 35)

For the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. In reaching this conclusion light can be drawn from legal maxims. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxims *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim *vigilantibus et non dormientibus, jura subveniunt*. Chapter XXXVI Cr.P.C . which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 Cr.P.C. is supported by the legal maxim *actus curiae neminem gravabit* which means that the act of court

shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles. (Para 39)

To address the questions which arise in this reference, it is necessary to have a look at the legislative history of Chapter XXXVI Cr.P.C . The Criminal Procedure Code, 1898 contained no general provision for limitation. Though under certain special laws like the Negotiable instruments Act, 1881, the Trade and Merchandise Marks Act, 1958, the Police Act, 1861, the Factories Act, 1948 and the Army Act, 1950, there are provisions prescribing period of limitation for prosecution of offences, there was no general law of limitation for prosecution of other offences. (Para 19)

"Cognizance" is an act of the court. The term "cognizance" has not been defined in CrPC . To understand this term means certain provisions of the Criminal Procedure Code need to be looked at. Chapter XIV CrPC deals with "Conditions" requisite for initiation of proceedings". Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) a police report of such facts ; (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

Chapter XV relates to "Complaints to Magistrate". Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue or process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI. (Para 31)

Thus, a Magistrate or Judge takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term "cognizance" and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking

cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons. (para 34)

It is true that there is no ambiguity in the relevant provisions. But, it must be borne in mind that the word "cognizance" has not been defined in CrPC . The Supreme Court has to therefore interpret this word. This reference has been answered on the basis of that interpretation and keeping in mind the special connotation acquired by the word "cognizance". Once that interpretation is accepted. Chapter XXXVI along with the heading has to be understood in that light. The rule of purposive constitution can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. If in the instant case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted. (para 41)

The observation in *Japani Sahoo*, (2007) 7 SCC 394, where the Court has examined this issue in the context of Article 14 of the Constitution and adopted for reasonable construction rather than literal construction, are affirmed. (Para 46)

26. It appears that the order dated 22.12.2009 and all subsequent orders passed by learned CJM are not in accordance with law and hence, the order dated 22.12.2009 and all subsequent orders passed in OCR Case No.185 of 2009/ T.R. Case No.682 of 2009 are hereby set aside.

27. Be that as it may, the court below is directed to pass an appropriate order on the application, if any, filed by the petitioner under Section 473 Cr.P.C. and also under Section 208 Cr.P.C. after hearing the petitioner as also the respondents, in accordance with law, within 16 weeks from the date of receipt of a copy of this order.

28. Further, after hearing the parties, learned CJM, Pakur, is directed to pass a fresh order on the point of cognizance of the offences under Sections 22(A), 22(a) of the Minimum Wages Act in the case.

29. The prayer for quashing the entire prosecution is hereby rejected. However, the instant Criminal Writ Petition stands allowed in part.

30. Let the entire records as well as a copy of this order be sent to the trial court at once.