

(2009) 07 JH CK 0079

In the Jharkhand High Court

Case No : Criminal M.P. No. 1080 of 2006

Sanjay Kumar Agarwal

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 14, 3
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2009) 57 BLJR 2733 : (2009) 122 FLR 1029 : (2010) 1 LLJ 343 :
(2010) 5 RCR(Criminal) 654

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : R.S. Mazumdar, for the Appellant; I.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This is an application for quashing of order dated 4.7.2005 passed by Chief Judicial Magistrate, Dhanbad in C.L.A. Case No. 262(A)/2005 whereby and whereunder he took cognizance of the offence u/s 14 of the Child Labour (Prohibition and Regulation) Act, (hereinafter referred to as the "Act").

2. It appears that an official complaint was filed in the court of learned Chief Judicial Magistrate, Dhanbad by the Labour Superintendent, Dhanbad alleging therein that on 25.2.2005 at about 2.20 p.m. the Brick-kiln of the petitioner, namely, M/s. G.K.A. Itta Bhatta was inspected by the Labour Superintendent as per the provisions of the Act and found that in the aforesaid Brick-kiln one child labour, namely, Lalan Manjhi, was present. It is stated that the working of a child labour in Brick-kiln is contravention of Section 3 of the Act. It is also stated that as per Rules framed under the Act the register and notice board was not maintained by the establishment. It is also alleged that the Labour Inspector was also not given any notice regarding the employment of child labour. It is stated that after the inspection, show cause notice was given to the petitions for removing the defect and also for production of papers and registers for

inspection, but the petitioner has not complied the director given in the said show cause notice and his reply is unsatisfactory. Accordingly the present complaint was filed in the court of CJM with request to take cognizance of the offence u/s 14 of the Act.

3. It appears that learned CJM Dhanbad vide order-dated 4.7.2005 took cognizance of the offence u/s 14 of the Act against that the present application has been filed.

4. It is submitted that in response to the show cause notice the petitioner filed a show cause, wherein he had stated that the said child labour, namely, Lalan Manjhi, was not working in his Brick-kiln. It is stated that the said child labour is the brother-in-law of one. Lito Manjhi, who is working in his Brick-kiln and the said Lalan Manjhi was residing with him. It is further stated that father of Lalan Manjhi and said Lito Manjhi had sworn an affidavit that Lalan Manjhi is residing with Lito Manjhi and not working in brick-kiln. It is also submitted that the said Lalan Manjhi was a student of Siksha Abhiyan Vidaylaya, Bathanbari, Nirsa. It is submitted that in proof of aforesaid contention, a certificate issued by Siksha Mitra of the school and also the result of the said Lalan Manjhi has been filed for perusal of this Court. It is also submitted that from the perusal of aforesaid document, it is clear that the said Lalan Manjhi was not working in the Brick-kiln of the petitioner and therefore the inspection report of the concerned Labour Superintendent is against the fact of the case. Accordingly, it is submitted that in view of the documents submitted by the petitioner, no offence u/s 14 of the Act is made out. Accordingly, it is submitted that the order taking cognizance is bad.

5. On the other hand, learned Additional P.P. opposed the prayer of petitioner and submits that while exercising the jurisdiction u/s 482 of the Cr.P.C., it is not open for this Court to make an enquiry and take into consideration the defence of the accused for coming to the conclusion that the offence is made out or not. It is submitted that from the perusal of complaint and prosecution report, prima-facie an offence u/s 14 of the Act is made out. Therefore, the court has rightly taken cognizance against the accused petitioner which does not require any interference by this Court.

6. Having heard the submission, I have gone through the record of the case. From perusal of the complaint petition, I find that the Labour Superintendent has inspected the Brick-kiln of the petitioner and found that a child labour, namely, Lalan Manjhi, was working there. It further appears that as per the provisions of the Act and Rule, the petitioner has not maintained the notice board as well as the register. It is not in dispute that working of a child labour in a Brick-kiln is prohibited u/s 3 of the aforesaid Act. It is stated in the complaint petition that the show cause filed by the petitioner is not satisfactory and therefore the present complaint has been filed. After going through the complaint petition. I find that if allegation made therein remain un-rebutted then a case u/s 14 of the Act is made out against petitioner.

7. Submission of learned Counsel for the petitioner, to the effect that affidavit filed by the father and brother-in-law of Lalan Manjhi and also the certificate given by Siksha Mitra of Siksha Abhiyan Vidaylaya, Bathanbari, Nirsa show that aforesaid Lalan Manjhi was not working in the Brick-kiln, can not be accepted at this stage. It has been held by their Lordships of Supreme Court in M. Narayandas Vs. State of Karnataka and Others, that

it is settled law that the power to quash must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare case. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The Court also cannot enquire whether the allegation in the complaint are likely to be established or not.

8. Thus, in view of the aforesaid law laid down by their Lordships of Supreme Court while exercising power u/s 482 of the Cr.P.C., it is not open for this Court to consider defence of accused and come to the conclusion that no offence is made out. It is well settled that from the materials, made available by the prosecution, if the court come to the conclusion that prima facie offence is made out, then the court is justified in taking cognizance of the offence.

9. As noticed above, from the facts stated in the complaint petition prima-facie and offence u/s 14 of the Act is made out. Thus, I am of the view that learned C.J.M., Dhanbad had rightly taken cognizance of the offence and issued process against the petitioner. Thus in view of the discussion made above, I find no illegality and/or irregularity in the impugned order.

10. In the result, I find no merit in this application, the same is accordingly dismissed.