

(2023) 12 JH CK 0021

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1758 Of 2015

Sanjeev Shinde @ Sanjeev Dattatray Shinde

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Contract Labour (Regulation And Abolition) Act, 1970 — Section 2(g)(iii), 25, 28(1)
Indian Penal Code, 1860 — Section 406

Citation : (2023) 12 JH CK 0021

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Manish Kumar, Fahad Allam

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Manish Kumar, learned counsel for the petitioner and Mr. Fahad Allam, learned counsel for the State.

2. This petition has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 30.09.2011 in CL Case No.160 of 2011, pending in the Court of the learned Judicial Magistrate, 1st Class, Dhanbad.

3. The complaint case was filed alleging therein that the complainant is the Labour Enforcement Officer (Central), Dhanbad-III and an Inspector under Sub-section (1) of Section 28 of the Contract Labour (Regulation and Abolition) Act, 1970 having jurisdiction over the establishment of the accused persons. Opposite party no.2 inspected the establishment of the accused persons on 22.06.2011 and observed that in contravention of the notification No. S.O. 2063 dated 21.06.1988 issued by the Ministry of Labour and Employment, Government of India, the employer has engaged 36 Contract Labourer by M/s Vin Balajee JTT (JV) Contractor for executing the contract work of removal of overburden and extraction of coal at Sendra Bansjora Project, M/s BCCL, Dhanbad. The above

offences were recorded in the inspection report cum showcause notice dated 03.08.2011 and were sent to the accused persons by registered A/D post and the same has been served upon them. The accused persons were aware that the notification prohibiting the employment of Contract Labour has been issued. The accused-petitioner and the contractor have conjointly committed the offence.

4. Mr. Kumar, learned counsel for the petitioner submits that at the relevant time, the petitioner was the General Manager of Sijua Area of BCCL and he is not the principal employer as defined in Section 2(g)(iii) of the Contract Labour (Regulation and Abolition) Act, 1970. He further submits that in view of Section 25 of the Act, the persons who are responsible for day-to-day affairs of the company can only be prosecuted, that too if the company is made accused. To buttress this argument, he relied upon paragraph 19 of the judgment passed by the Hon'ble Supreme Court in the case of S.K. Alagh v. State of Uttar Pradesh and others, reported in (2008) 5 SCC 662, which is quoted hereinbelow:

"19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offense committed by the Company itself."

5. Mr. Allam, learned counsel for the State submits that violation is there and that is why, the case has been rightly registered.

6. Looking into the complaint, the Court finds that there is no averment that the petitioner was looking day-to-day affairs of the company and if such a situation is there, the petitioner is not responsible. In this regard, there are series of judgments passed by the Hon'ble Supreme Court as well as the High Courts. In view of that, to allow to continue the proceeding will amount to abuse of process of law.

7. In view of the above facts, reasons and analysis, the entire criminal proceeding including the order taking cognizance dated 30.09.2011 in CL Case No.160 of 2011, pending in the Court of the learned Judicial Magistrate, 1st Class, Dhanbad are quashed.

8. Accordingly, this petition is allowed and disposed of.