
(2015) 04 JH CK 0047

In the Jharkhand High Court

Case No : Criminal M.P. Nos. 918, 1078, 1149, 1150 and 1151 of 2003

S.H.A. Kazmi and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 3, 3-A, 3-B
Forest Act, 1927 — Section 30, 32, 33, 63
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 192, 199, 34, 406

Citation : (2015) 2 JLJR 647

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : A. Sen, S.P. Roy and Arun Kumar, for the Appellant; Shekhar Sinha and Awanikant Prasad, Advocates for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Since the common questions of law are involved in all these applications, they were heard together, and are disposed of by this common order.

2. Heard the learned counsel for the petitioners and learned counsel for the opposite parties.

3. The petitioners herein, at the relevant time, were posted as senior officials in the Central Coalfields Ltd., a Government Company, and the cases in which they have been made accused and the reliefs prayed for by them, are detailed hereunder:--

"(a) Cr.M.P. No. 918 of 2003

This application has been filed by the petitioners for quashing the entire criminal proceeding in connection with Forest Case No. 42 of 2003, for the offence under Sections 33 and 63 of the Indian Forest Act and Sections 2 and 3 of the Forest

(Conservation) Act, including the order dated 2.7.2003 passed therein, by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance for the aforesaid offences against the petitioners. In this case there is allegation against the petitioners, being the officials of the Central Coalfields Ltd., to be involved in illegal mining of coal in Karo, Vaidkaro and Kargali protected forests, without prior permission of the Central Government.

(b) Cr.M.P. No. 1078 of 2003

This application has been filed for quashing the entire criminal proceeding instituted against the petitioners, in connection with Forest Case No. 40 of 2003, for the offence under Section 33 of the Indian Forest Act and Sections 2 and 3 of the Forest (Conservation) Act, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance for the said offences. In this case there is allegation against the petitioners, being the officials of the Central Coalfields Ltd., to be involved in illegal mining of coal in Gobindpur and Armo protected forests, without prior permission of the Central Government.

(c) Cr.M.P. No. 1149 of 2003

This application has been filed for quashing the entire criminal proceeding against the petitioners in connection with forest Case No. 41 of 2003, for the offence under Sections 33 and 63 of the Indian Forest Act and Sections 2 and 3 of the Forest (Conservation) Act, including the order dated 2.7.2013 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance against the petitioners for the said offences. In this case there is allegation against the petitioners, being the officials of the Central Coalfields Ltd., to be involved in illegal mining of coal in Bermo and Kudpania protected forests, without prior permission of the Central Government.

(d) Cr.M.P. No. 1150 of 2003

This application has been filed for quashing the entire criminal proceeding against the petitioners in Forest Case No. 20 of 2003, for the offence under Sections 2 and 3 of the Forest (Conservation) Act and Section 33 of the Indian Forest Act, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance for the aforesaid offences. In this case there is allegation against the petitioners, being the officials of the Central Coalfields Ltd., to be involved in illegal mining of coal in Dhori protected forest, without prior permission of the Central Government.

(e) Cr.M.P. No. 1151 of 2003

This application has been filed for quashing the entire criminal proceeding against the petitioners in forest Case No. 39 of 2003, for the offence under Sections 33 and 63 of the Indian Forest Act and Sections 2 and 3 of the Forest (Conservation) Act, including the order dated 2.7.2013 passed therein by the

learned Additional Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance against the petitioners for the said offences. In this case there is allegation against the petitioners, being the officials of the Central Coalfields Ltd., to be involved in illegal mining of coal in Gobindpur protected forest, without prior permission of the Central Government."

4. In all the aforesaid cases, the case of the petitioners is that the mining operations were being carried out by the Central Coalfields Ltd. According to the petitioners' case, the lands in question had been acquired in phase wise manner under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, for mining operations and other ancillary activities, and were also published in the Gazette of India, and the same were transferred to M/s. Central Coalfields Ltd. Subsequently, the Central Government enacted the Forest (Conservation) Act, 1980. There was dispute whether in view of the fact that the lands being acquired under the Coal Bearing Areas (Acquisition and Development) Act, 1957, the provision of Forest (Conservation) Act, 1980 were applicable or not, and the matter went up to the Hon'ble Supreme Court of India in Cr. Appeal No. 70 of 1998, against the similar prosecution against the officials of Central Coal Fields Ltd. In the said Cr. Appeal, the state of Jharkhand agreed that it shall not pursue the prosecution till the final orders are made on the application filed by the Central Coalfields Ltd., under Section 2 of the Forest (Conservation) Act, and in view of the stand of the State of Jharkhand before the Apex Court, the appeal was withdrawn by Central Coalfields Ltd., reserving the liberty to challenge any adverse order made under Section 2 of the Forest (Conservation) Act, as also to raise all such pleas in appropriate proceedings. The said criminal appeal was accordingly, disposed of with the liberty as aforesaid. The order passed by the Apex Court has been brought on record in all these applications. It is the case of the petitioners that no final order had been passed under Section 2 of the Forest (Conservation) Act, till the launching of the prosecution against the petitioners. It is also the case of the petitioners that demand notice for payment of compensation had been received from the forest department and the said payments have been made by the Central Coalfields Ltd., still the prosecutions have been lodged against the petitioners, being the Senior Officials of the Central Coalfields Ltd.

5. Learned counsel for the petitioners have submitted that the aforesaid prosecutions are absolutely illegal and in teeth of the undertaking given before the Hon'ble Supreme Court in criminal appeal No. 70 of 1998, as no final order had been passed on the application of the Central Coalfields Ltd., submitted under Section 2 of the Forest (Conservation) Act. Learned counsel has also submitted that in any view of the matter, since the mining operations were being carried out by the Central Coalfields Ltd., which is a Government company within the meaning of the Companies Act, no mens rea can be attached showing any criminal intention on the part of the petitioners for committing the offence. Learned counsel accordingly, submitted that the criminal proceedings cannot be sustained in the eyes of law.

6. It is further submitted by the learned counsel for the petitioners that it is apparent from the prosecution reports in all these cases that the mining operations were being carried out by the Central Coalfields Ltd., and the petitioners are only the officials of the said Company. It is submitted that the offence, if any, has been committed by the Company and accordingly, the petitioners cannot be made vicariously liable for the offence under the Indian Forest Act, as there is no provision for any vicarious liability in the said Act. It is also submitted that though there is provision of vicarious liability in the Forest (Conservation) Act, but in none of the aforesaid cases, the Company has been made accused and accordingly, in absence of the Company, the officials of the Company cannot be held responsible for any action of the Company. Learned counsel accordingly, submitted that on this score also, the criminal proceedings against the petitioners, as also the orders taking cognizance, are fit to be quashed.

7. Learned counsel for the opposite parties has opposed the prayer, submitting that law has been laid down by the Hon"ble Supreme Court of India in T.N. Godavarman Thirumulkpad Vs. Union of India and others, AIR 1997 SC 1228 : (1997) 10 JT 377 : (1996) 9 SCALE 269 : (1997) 2 SCC 267 : (1996) 9 SCR 982 Supp : (1997) 1 UJ 290 : (1997) AIRSCW 1263 : (1997) 2 Supreme 221 , that for doing the non-forest activities in the protected forest, prior permission of the Central Government is necessary, and accordingly, the offence is made out against the petitioners.

8. Having heard learned counsels for both the sides and from perusal of the provisions of the Act, it is apparent that though Sections 33 and 63 of the Indian Forest Act are penal provisions, but there is no provision for any vicarious liability in the said sections. Section 33 of the Indian Forest Act reads as follows:--

"33. Penalties for acts in contravention of notification under Section 30 or rules under Section 32.--(1) Any person who commits any of the following offences, namely:--

(a) -----;

(b) contrary to any prohibition under Section 30, quarries any stone, or burns any lime or charcoal; or collects, subjects to any manufacturing process, or removes any forest-produce;

(c) -----;

(d) -----;

(e) -----;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) -----;

(h) -----;

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.

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Similarly, Section 63 of the Indian Forest Act reads as follows:--

"63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.--Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code --

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer;

or

(e) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

9. Thus from the plain reading of Sections 33 and 63 of this Act, it is apparent that there is no provision for any vicarious liability under these Sections. In *Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others*, (2010) 159 CompCas 545 : (2011) CriLJ 8 : (2010) 11 JT 252 : (2010) 10 SCC 479 : (2011) 1 SCC(Cri) 68 : (2011) 105 SCL 223 : (2010) 9 UJ 4480 , wherein, the Chairman of the Maharashtra State Electricity Board was made an accused for the offence under Sections 192 and 199 read with Section 34 of the Indian Penal Code, the Supreme Court took note of its earlier decision in *S.K. Alagh Vs. State of U.P. and Others*, AIR 2008 SC 1731 : (2008) 4 BC 622 : (2008) 142 CompCas 228 : (2008) CriLJ 2256 : (2008) 2 JT 540 : (2008) 2 SCALE 523 : (2008) 5 SCC 662 : (2008) AIRSCW 2389 : (2008) 2 Supreme 152 , and has laid down, the law as follows:--

"30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following

observations made in S.K. Alagh: (SCC p.667, para 19)

"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 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 offence committed by the company itself."

(Emphasis supplied).

10. Thus, so far as the cognizance against these petitioners of the offence under Sections 33 and 63 of the Indian Forest Act is concerned, the case is fully covered by the aforementioned decisions of the Supreme Court, wherein, it has been specifically held that wherever by legal fiction the principle of the vicarious liability is attracted and a person, who is otherwise not personally involved in the commission of the offence, is made liable for the same, it has to be specifically provided in the Statute concerned. In Sections 33 and 63 of the Indian Forest Act, there is no provision for any vicarious liability and accordingly, in absence of any specific averment/allegation against the petitioners in the prosecution reports, the institution of the cases against these petitioners for the offences under Sections 33 and 63 of the Indian Forest Act, and the cognizance taken against them for the said offences, are absolutely illegal and the same cannot be sustained in the eyes of law.

11. So far the prosecution of the petitioners under the Forest (Conservation) Act is concerned, Section 2 of the Forest (Conservation) Act is not a penal provision, which merely makes provision for restriction on the dereservation of forest or use of the forest land for non-forest purpose. The penal provision is Section 3-A of the said Act. Section 3-B of this Act lays down the provision of vicarious liability of the persons directly in-charge and responsible to the authority committing offence. Sections 3-A and 3-B of the Forest (Conservation) Act, read as follows:--

"3-A. Penalty for contravention of the provisions of the Act. Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

3-B. Offences by authorities and Government departments.--(1) Where any offences under this Act has been committed-

(a) by any department of Government, the head of the department; or

(b) by any authority, every person, who at the time the offence was committed, was directly in charge, of and was responsible to, the authority for the conduct of the business of the authority as well as the authority; shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the department, or in the case of any authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

(Emphasis supplied).

12. Thus, so far as cognizance taken under the provisions of Section 2 of the Forest (Conservation) Act is concerned, which should actually be Section 3-A read with Section 3-B of the said Act, there is provision under Section 3-B of this Act for vicarious liability stating that in case of offence committed by any authority, every person, who at the time the offence was directly in charge of, and was responsible to, the authority for the conduct of business of the authority, as well as the authority, shall be deemed to be guilty of the offences. Similar provision is there in Section 141 of the N.I. Act, which reads as follows:--

"141. Offences by companies.--(1) if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

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(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

13. The Supreme Court of India has considered the matter in Central Bank of

India Vs. Asian Global Ltd. and Others, AIR 2010 SC 2835 : (2010) 3 BC 597 : (2011) 163 CompCas 398 : (2010) CriLJ 4420 : (2010) 7 JT 88 : (2010) 11 SCC 203 : (2011) 1 SCC(Cri) 167 : (2011) 105 SCL 363 : (2010) AIRSCW 4671 , while deciding the vicarious liability of the Directors of the company under the N.I. Act. Taking into consideration its earlier decisions in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, AIR 2005 SC 3512 : (2005) 4 BC 425 : (2005) 127 CompCas 563 : (2005) 6 ComplJ 144 : (2005) CriLJ 4140 : (2005) 5 CTC 65 : (2005) 8 JT 450 : (2006) 142 PLR 689 : (2005) 7 SCALE 397 : (2005) 8 SCC 89 : (2005) 63 SCL 93 : (2005) 3 SCR 371 Supp : (2005) AIRSCW 4740 : (2005) 6 Supreme 442 , and in N.K. Wahi Vs. Shekhar Singh and Others, AIR 2007 SC 1454 : (2007) 2 BC 438 : (2007) 137 CompCas 939 : (2007) 4 SCALE 188 : (2007) 9 SCC 481 : (2007) 4 SCR 883 : (2007) AIRSCW 1880 : (2007) 2 Supreme 811 , the law has been laid down as follows:--

"17. The law as laid down in S.M.S. Pharmaceuticals Ltd. case has been consistently followed and as late as in 2007, this Court in N.K. Wahi case, while considering the question of vicarious liability of a Director of a company, reiterated the sentiments expressed in S.M.S. Pharmaceuticals Ltd. case that merely being a Director would not make a person liable for an offence that may have been committed by the company. For launching a prosecution against the Directors of a company under Section 138 read with Section 141 of the 1881 Act, there had to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It was also laid down that the allegations had to be clear and unambiguous showing that the Directors were in charge of and responsible for the business of the company. This was done to discourage frivolous litigation and to prevent abuse of the process of court and from embarking on a fishing expedition to try and unearth material against the Director concerned."

(Emphasis supplied).

14. In the present cases also, I find that though there is provision as regards vicarious liability under Section 3-B of the Forest (Conservation) Act, but the fact remains that in all these cases, the petitioners have been made accused only being the Senior Officials of Central Coalfields Ltd., without making any specific allegation against the petitioners as to the part played by them in the mining operations, and without stating that they were in charge of and responsible for the business of the Company. Even the Central Coalfields Ltd., which admittedly was carrying on the mining operations, has not been made accused in these cases. I am of the considered view that in the facts of these cases, no prosecution could be launched against these petitioners, without specifically disclosing the part played by each of them in the alleged offence. I also find force in the submission of the learned counsel for the petitioners that the prosecution launched in these cases are in teeth of the undertaking given by the State of Jharkhand before the Supreme Court of India, in Cr. Appeal No. 70 of 1998, wherein it was undertaken not to pursue the prosecutions till the final decision

was taken on the application made by the Central Coalfields Ltd., under Section 2 of the Forest (Conservation) Act, 1980, which according to the petitioners, on the date of lodging of the cases, the same was still pending and this fact is not controverted by the learned counsel for the opposite parties.

15. For the aforementioned reasons, I find that the institution of the criminal proceedings in all of the aforementioned cases, are absolutely illegal and bad in the eyes of law, and the same cannot be sustained. Accordingly, the proceedings against the petitioners in the following cases, viz:--

"(a) Forest Case No. 42 of 2003, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat;

(b) Forest Case No. 40 of 2003, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat;

(c) Forest Case No. 41 of 2003, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat;

(d) Forest Case No. 20 of 2003, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat;

(e) Forest Case No. 39 of 2003, including the order dated 2.7.2003 passed therein by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat;"

Are hereby, quashed. Accordingly, all the aforesaid applications are allowed.