

(1980) 02 PAT CK 0010

In the Patna High Court

Case No : Criminal Miscellaneous No. 919 of 1979 (R)

S.K. Choudhary

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 07-02-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Mines Act, 1952 — Section 2, 24, 72C

Citation : (1982) 30 BLJR 362

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—The petitioner is one of the accused persons against whom the learned Chief Judicial Magistrate Dhanbad in C. M.A. Case No. 5 of 1978 by order dated 9-8-78 directed to issue summons for standing trial for an offence alleged to have been committed u/s 72C(i) (a) and (b) of the Mines Act 1952 (hereinafter referred to as "the Act").

2. On 4-10-1977 at about 8.40 A.M. an accident took place at Sudamdih Shaft mine Steam 15.43 workmen were killed and a large number of workmen were injured due to accident. u/s 24 of the Act, a Court of Enquiry was constituted by the Central Government. After receipt of the report of the Court of enquiry, complaint was filed by the opposite party in the department of Mines (Safety) Dhanbad. By the impugned order, the learned Chief Judicial Magistrate, Dhanbad took cognizance of an offence as stated above and also directed for issuing summons against the petitioner and the other accused persons named in the complaint petition.

3. Mr. S.C. Banerjee, learned Counsel appearing on behalf of the petitioner has challenged the legality of the impugned order on the ground that the order for issuance of summons against the petitioner was an abuse of the process of the Court. In support of this contention he submitted that during the period

29-9-1963 to 3-10-1976 the petitioner was on leave. He joined on 4-10-1976 at about 12-20 P.M. when the measure was sent to him about the accident that took place in the colliery. On the basis of this he submitted that he was on leave he cannot be held responsible for the accident that took place before he assumed duty. In my opinion, this is a question of fact and this Court at this stage cannot interfere.

4. The other point urged by Mr. Banerjee is that the facts alleged in the complaint petition so far as the petitioner is concerned do not show that the petitioner was agent at the relevant time u/s 2(c) of the Act. In developing this point, Mr. Banerjee took me through the petition of the complaint which is annexure 1 to the application. In paragraph 5 of the annexure 1, all the accused persons including the petitioner, their description and nature of duty have been stated. So far as the petitioner is concerned in paragraph 5 of annexure 1 the statements relevant for this application are as follows:-

(a) Sri S.K. Choudhury was the General Manager of the aforesaid mine having overall control and management of the mine and as such he was an agent u/s 2(c) of the Mines Act, 1952; (b) Sri B.K. Singh was the Agent of Sudamdih Shaft Mine u/s 2(c) of the Mines Act, 1952.

On the basis of the statements quoted above he submitted that the allegations made in annexure 1 is that the petitioner was in over all control and management of the mine. On the basis of this submissions the petitioner has been said to be the agent u/s 2(c) of the Act at the relevant time. He urged that there is no allegation any where in annexure 1 that the petitioner was acting as representative of the owner in respect of the management, control and direction of the Mines or any part thereof. Submitted that the description of the petitioner as given in annexure 1 on its face value does not disclose that he was agent as defined u/s 2(c) of the Act, and, therefore order of issuance of summons against him amounts to abuse of the process of the Court.

5. A large number of decisions of the Supreme Court has been cited at the Bar on the question whether the Court at this stage can interfere u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter called "the Code"). The cases cited are R.P. Kapur Vs. The State of Punjab, . Union of India (UOI) Vs. Prafulla Kumar Samal and Another, . Madhu Limaye Vs. The State of Maharashtra, . Dr. Sharda Prasad Sinha Vs. State of Bihar, , and Raj Kapoor and Others Vs. State and Others, .

6. So far as the case of Union of India (supra) is. concerned it appears that the Union of India had filed an appeal to the Supreme Court against the order of the High Court which upheld the order of discharge passed u/s 227 of the Code of respondent Nos. 1 and 2. In my opinion, the ratio of that case has no application to the present case. So far as other Supreme Court cases referred to above are concerned it has been held that the High Court in exercise of its inherent powers can and should interfere in the allegations in the complaint even if they are taken

on their face value and accepted in their entirety do not constitute the offence as alleged. It has been further laid down that in such cases no question of appreciating the evidence arises. It is a matter merely on looking at the complaint to decide whether the offence alleged is disclosed or not. Therefore, it is necessary to look to the complaint to ascertain if the allegations made against the petitioner in the complaint. Section 2(c) of the Act reads as follows:

"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 directions of the mine or of any part thereof and as such superior to a manager under this act.

According to the definition of agent as given in that section a person may be treated as an agent whether appointed as such or not, if that person acts as representative of the owner. The crucial word, therefore, not merely the management, control and direction of the mine but the person must do that as representative of the owner. From the allegations made, against the petitioner in paragraph 5 of annexure 1 it will appear that there is no allegation that he was exercising over all control and management of the mine as the representative of the owner. In absence of that allegation, taking on the face value annexure 1, and accepting it in entirety in my opinion, offence alleged to have been committed by the petitioner has not been made out for which he could have been summoned by the impugned order.

7. Mr. Ram Nandan Sahai Sinha, learned Counsel appearing on behalf of opposite parties submitted that in a similar situation when accident took place in Chasnala mine, a complaint was filed against the officers of the mine including the agent. The agent filed an application u/s 482 of the Code for quashing the order by which summonses were directed to be issued against him, that prayer was refused. The decision relied on by Mr. Sahai Sinha in the case of J.N. Ohri v. State of Bihar through the Government of India represented by Shri A.B. Singh, Inspector of Mines in Cr. Misc. No. 387 of 1979 (R) decided by V, Mishra, J. on 28-8-1979. It appears from the judgment of that case that in the complaint against the petitioner of that case, the allegation, inter alia, was that the petitioner of that case was acting as representative of the owner in respect of the mine. On the basis of that allegation V. Mishra, J. held that since there was allegation in the complaint that the petitioner of that case was acting as representative of the owner, he can not interfere and he held that the order of issuance of summons against the petitioner of that case did not amount to abuse of the process of the Court. In my opinion, that case has no application to the case in question.

8. In the result, the application is allowed and that part of the order by which the learned Chief Judicial Magistrate Dhanbad, has directed for issuance of summons against the petitioner is quashed.