
(1991) 08 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Revision No. 178 of 1985

S.K. Mehra

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 16-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Plantations Labour Act, 1951 — Section 2, 36, 39

Citation : (1991) 2 GLR 356

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : P.K. Goswami and S.N. Sarma, for the Appellant; A.R. Paul Mazumdar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 filed by one Sri S.K. Mehra, President of M/S. Tata Tea Limited, having its office at Bishop Lefray Read, Calcutta-10, for quashing the complaint against him made by the Labour Inspector u/s 36 of the Plantation Labour Act, 1951 hereinafter referred to as "the Act" and the proceedings in C.R. Case No. 372 of 1985 in the court of Chief Judicial Magistrate, Darrang Mangaldoi initiated on the basis thereof.

2. The facts relevant for the purpose of deciding the present petition may be briefly stated as under. M/S. Tata Tea Ltd. is a company having a number of Tea Estates in the State of Assam Including one known as Majuli Tea Estate situated at Hattigarh, Darrang, The Labour Inspector, Mangaldoi inspected the said Tea state and found that the houses provided for the residence of the labourers in the garden were not upto the standard, the labour quarters had not been repaired as contemplated by law and there were not sufficient number of latrines of prescribed type, and community bathing enclosures separately for male and female workers etc.

3. According to the Inspector, the employer was liable to be prosecuted u/s 36 of the Plantation Labour Act, 1951. He obtained sanction for prosecution as contemplated by Section 39 of the Act from the Chief Inspector of Plantation, Assam, Gauhati and filed a complaint in the court of the Chief Judicial Magistrate, Darrang, Mangaldoi naming the Petitioner and one Mr. Kalid L. Ahmed, the Manager of the Tea Estate as accused persons. The Chief Judicial Magistrate took cognizance of the case and issued bailable warrants of arrest against both the accused persons. Aggrieved by the issue of process against him, the Petitioner approached this Court on the ground, inter-alia, that prosecution can be launched only against an employer and the Petitioner being a President of the Board of Directors of the company did not fall within the definition of employer.

4. I have heard Mr. P.K. Goswami, learned Counsel for the Petitioner. Mr. Goswami submits that for violation of the provision of the Act the employer can be prosecuted. An employer has been defined in Section 2(e) of the Act. According to Mr. Goswami, from the terms of Section 2(c), it is clear that only such person who has ultimate control over the affairs of the plantation is an employer except in case the affairs of any plantation are entrusted to any other person where such other person may be deemed to be the employer in relation to the plantation. According to the Labour Inspector as well as the sanctioning authority there was a Manager of the Tea Estate. Admittedly, he was looking after the affairs of the plantation. He may be termed as a person to whom affairs of the plantation were entrusted, and as such, deemed to be an employer; but to term the President of the Company as an employer or to bring him under the definition of "employer", the prosecution must have materials on record to show that the President "had the ultimate control over the affairs of the plantation." Simply because a person happens to be President of the Company, it cannot be said that he is also in the Control of the affairs of the plantation, more so in case of companies owning a large number of plantation (tea gardens) spread all over the country. In the instant case, the learned Counsel for the Petitioner, submits that there is not even a word in the complaint or in the sanction to show that the Petitioner who was the President of the company, was having any control over the affairs of the plantation. In the absence of any such allegation on record, not to speak of evidence, it is difficult to term the President of the company as an employer.

5. Mr. Goswami, in this connection, relies on the decision of the Superintendent And Remembrancer Of Legal Affairs Vs. Balai Chand Saha, , more particularly on the following passage at page 761:

Where a person has been made the employer by a deeming provision he excludes persons, who have ultimate control over the affairs of the plantation, for the purpose of duties and liabilities required to be performed by the employer under the Act or the Rules. In that view of the matter, the opposite parties Nos. 1 to 7 cannot be said to be "employers" under the definition in Section 2(e) as Manager entrusted with the affairs of the company is there. The opposite parties

are not, therefore, liable to be prosecuted u/s 36 of the Act.

Mr. Goswami submits that the above decision squarely applies the instant case also. Admittedly, in this case there is a Manager who has also been made an accused in the complaint filed by deeming him as employer u/s 2(e) of the Act. In that view, of the matter, the learned Counsel for the Petitioner submits that the President cannot be said to be an "employer". Reliance is also placed on the decision of the Supreme Court in the case of Delhi Municipality v. Ram Kishan AIR 1083 SC 67 wherein dealing with the provisions of the Food Adulteration Act it was held at page as follows:

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence not anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex-facie on the allegations made in the complaint and the proceeding against them were rightly quashed.

I have carefully consider the submissions of the learned Counsel the Petitioner, and also heard Mr. A.R. Paul Mazumdar, learned Public Prosecutor. I have perused the complaint as well as the order of the sanctioning authority granting sanction for prosecutions of the Manager and the present Petitioner. In this case also, as in the case before the Supreme Court, not even a word is to be found in the complaint alleging that the Petitioner, who is the president of the company, was having ultimate control on the affairs of the Plantation. In such a situation, the Petitioner does not even fall in the main part of the definition of "employer". In order to sustain prosecution against a person there must be at least allegation which if accepted to be correct, may justify the prosecution. In the instant case even allegation is missing not to speak of any material or evidence.

In view of the aforesaid factual and legal position, the prosecution of the Petitioner cannot be sustained. Accordingly, the complaint in question and the proceedings initiated on the basis thereof by the Chief Judicial Magistrate, Darrang, Mangaldoi in C.R. case No. 372 of 1985 are quashed so far as they relate to the Petitioner.

In the result, this revision petition is allowed.