

(2013) 05 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1545 of 2010

S.K. Prasad and Another

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Factories Act, 1948 — Section 105, 105(1), 2(1)
Penal Code, 1860 (IPC) — Section 21

Citation : (2013) 138 FLR 559 : (2013) ILR (MP) 2480

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Anil Khare and Ms. Namrata Keshewani, for the Appellant; S.K. Kashyap, Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

N.K. Gupta, J.—The applicant has challenged the order dated 28.6.2010 passed by the learned JMFC, Bhopal (Shri Hemant Savita) in R.T. No. 23511/2006, whereby the application filed by the applicants relating to the provisions of section 197 of the Cr.P.C. was dismissed. The facts of the case, in short, are that, the applicants are Chief Workshop Manager and Deputy Chief Workshop Manager in the factory of Coach Rehabilitation Workshop, Nishatpura, Bhopal. On 26.6.2006, repairing work of roof was being done by various labourers namely Ashok, Bir Singh, Brijesh and Jagdish on behalf of a contractor M/s. O.P. Meghani. In that factory, asbestos cement sheets of roofs of various sheds were to be changed and therefore, a contract was given to M/s. O.P. Meghani. On 26.6.2006 during removal of the AC sheets, one labourer Bir Singh fell from the roof and during his treatment, he succumbed to the injuries. After due enquiry, the factory inspector, Bhopal has lodged a criminal complaint against the applicants. The applicants have moved some applications before the trial Court as objections. Out of them, one application was moved u/s 197 of the Cr.P.C. that the applicants were public servants as defined u/s 21 of the IPC and therefore,

without getting sanction u/s 197 of the Cr.P.C., no complaint could be prosecuted against them.

2. The learned JMFC after considering the submissions made by the learned counsel for the parties, dismissed the application.

3. I have heard the learned counsel for the parties.

4. The learned Senior Advocate has submitted that sanction u/s 197 of the Cr.P.C. was necessary because the applicants were the employees of the Central Government and therefore, they were public servants. The learned senior Advocate has placed his reliance upon the order passed by the single Bench of Karnataka High Court in case of General Manager, Wheel and Axle Plant Vs. State of Karnataka, , the learned Senior Advocate has also submitted the copy of the orders passed by the Metropolitan Magistrate, Dadar, Mumbai. Similarly, reliance was placed upon the order dated 3.9.2009 in criminal petition No. 7386/2008 passed by the single Bench of the Karnataka High Court in case of "D. Ghosh Rai and another Vs. Assistant Director of Factories".

5. On the other hand, the learned Public Prosecutor has submitted that the applicants violated the rule 73 (B) of the M.P. Factories Rules, 1962 (hereinafter it will be referred to as "The Rules") and therefore, according to the definition of a "Worker" given in section 2(1) of the Factories Act (hereinafter it will be referred to as "The Act"), the occupier and Manager of the factory can be prosecuted.

6. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the applicants were the public servants at the time of the incident and secondly, whether a sanction was required u/s 197 of the Cr.P.C. before prosecuting them. The first objection raised by the learned senior Advocate from the side of the applicants is that the work was not being done in the factory itself. It was not a regular work of the factory but, for changing the AC sheets on the roof of various sheds, a contract was given to the contractor and therefore, the applicants were not responsible for the safety of such employees of the contractor. In this context, if definition of a "Worker" is perused in section 2(1) of the Act then, it would be apparent that worker directly engaged by the employer or by a contractor is included in the definition of a "Worker", when he was involved in cleaning of any part of machinery or he was engaged for any other kind of work, instantly or connected with the manufacturing process or the subject of manufacturing process. The AC sheets of roof was to be changed within the premises for the subject of the manufacturing process and therefore, the employees of the contractor were included in the definition of "Worker" related to the applicants and therefore, the objection raised by the learned senior Advocate for the applicants cannot be accepted that no prosecution could be done for the death of a worker, engaged by the contractor.

7. The learned senior Advocate has also placed his reliance on the order passed

by the single Bench of Karnataka High Court in case of D. Ghosh Rai (supra) and that order emphasises the provisions of section 105 of the Factories Act and it appears that the learned senior Advocate has raised the objection u/s 105 of the Factories Act. In the present case, the complaint is filed by the factory inspector directly and therefore, no sanction was required for filing of such a complaint u/s 105 of the Act. The provision of section 105 of the Act are as under :-

105. Cognizance of offences -

(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

In section 105(1) of the Act, it is mentioned that if any other complainant files a complaint in the case then, prosecution sanction in writing is required from the inspector of Factories but, the present complaint is filed by the Factory Inspector himself and therefore, no such sanction was required to prosecute the present complaint. Under such circumstances, the order passed by the single Bench of Karnataka High Court in case of D. Ghosh Rai (supra) is not at all relevant in the present case.

8. The main objection raised by the senior Advocate was that a sanction u/s 197 of the Cr.P.C. was required. In support of his contention, the appointment and recruitment orders of the applicants were produced as Annexure P/5 to Annexure P/6 by which it would be apparent that the applicants were recruited and appointed by the Ministry of Railways, Government of India. They were superior officers of the Central Government. In this context, a letter dated 15.9.2010 written by Shri Sanjeev Handa is also produced as Annexure P/9, in which a letter was written by Shri Sanjeev Handa, Principal Staff, Railway Board and Ex-officio Secretary, Government of India, Ministries of Railways to Shri Chaturvedi, Secretary, Ministry of Labour and Employment, New Delhi, in which an objection was raised to the concerned Secretary that without getting a sanction u/s 197 of the Cr.P.C., the applicants were prosecuted, who are the employees of the Central Government. By perusal of such documents, it would be apparent that it was written by Principal Staff of the Railway Board, Ex-officio Secretary of Government of India and therefore, it is apparent that the applicants were employees of the Central Government. For considering the provision of section 197 of the Cr.P.C., it is necessary to consider that the concerned accused was in service of the Government and he was entrusted to do his work which falls in the category of the public duty.

9. Looking to the appointment orders and letter issued by the Secretary, Ministry of Railways, Government of India, it is apparent that the applicants were the employees of the Central Government and they were assigned to do the public duty as prescribed u/s 21 of the IPC and therefore, they were the public servants at the time of the incident, where they were working in the capacity of occupier

and Manager of the factory. In case of State of Maharashtra Vs. Dr. Budhikota Subbarao, it is laid by Hon''ble the Apex Court that once it is held that the accused is a public servant then, the prosecution lodged against him, without obtaining a permission as stated u/s 197 of the Cr.P.C. cannot be sustained. Under such circumstances, where it was found that the applicants were the public servants at the time of the incident, therefore, it was necessary for the Factory Inspector to get sanction u/s 197 of the Cr.P.C. from the Central Government before launching prosecution against the applicants.

10. In the light of the order passed by the single Bench of Karnataka High Court in case of Chief Manager Wheel and Axle Plant (supra), it would be proper that trial proceeded without a sanction u/s 197 of the Cr.P.C. should be stopped.

11. On the basis of the aforesaid discussion, it is apparent that a sanction u/s 197 of the Cr.P.C. was needed and the respondent had initiated a prosecution without such a sanction and therefore, prosecution is not maintainable. The learned JMFC has committed an error of law in passing the impugned order and it is a fit case, in which an interference can be done from the side of this Court, by way of a revision. Consequently, the revision filed by the applicants is hereby allowed. The order dated 28.6.2010 is hereby set aside and in consequence, it is directed that the trial shall not proceed against the applicants further. The applicants shall be deemed discharged from the charges framed against them. The respondent is permitted to obtain a prosecution sanction u/s 197 of the Cr.P.C. If such sanction is produced before the trial Court within one year from today then, the respondent may proceed with the instant complaint case against the applicants. Till then, the applicants are deemed discharged and they are not required to attend the trial Court any more. A copy of the order be sent to the trial Court for information and compliance.