

(2007) 11 JH CK 0023
In the Jharkhand High Court

Sri B. Sri Kumar and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Factories Act, 1948 — Section 105, 106, 8, 92

Citation : (2008) 116 FLR 1179 : (2008) 2 JCR 187 : (2008) 2 KarLJ 935

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioners have invoked the inherent Jurisdiction of this Court u/s 482 of the Cr PC. praying for quashing the order dated 7.5.2005 passed by the Chief Judicial Magistrate, Jamshedpur in C/2 Case No. 1621 of 2005. whereby cognizance of the offences u/s 92 of the Factories Act was taken and summons were ordered to be issued against the petitioners directing them to appear and face trial for the said offence.

2. The case was registered before the Court below on the basis of a petition of complaint dated 6.5.2005 filed by the Inspector of Factories on 7.5.2005. The complainant has sought to prosecute the petitioners for the offence u/s 92 of the Factories Act, 1948 on the accusation that the petitioner Nos. 1 and 2 being the occupier and manager respectively of the factory, namely, M/s. S.T.P. Limited, carrying out the work of Tar Distillation, and the contractor, namely, petitioner No. 3 had violated Rule 95(xii) and Rule 55-A(2) of the Jharkhand Factories Rules, 1950 by failing to provide for safety measures to the labourers at the works site. It is alleged that two workers employed in the Establishment had suffered death on account of failure of the occupier/manager and the contractor to provide safety measures for the workmen while engaging them in hazardous works. On receipts of information about the accident, the complainant/Inspector of Factories conducted an inquiry and had found that the accidental death of the

workers had occurred on account of the lapses on the part of the present petitioners to provide safety measures as required under Rule 95(xii) and Rule 55-A(2) of the Jharkhand Factories Rules, 1950.

3. On receipt of the complaint on 7.5.2005. learned Chief Judicial Magistrate took cognizance of the offence u/s 92 of the Factories Act against the petitioners and transferred the case to the Court of Smt. Kusum Kumari, Judicial Magistrate, Jamshedpur for trial and disposal.

4. Petitioners have challenged the order of cognizance on the ground that the learned Court below could not have taken cognizance of the offence beyond the period of limitation prescribed u/s 106 of the Factories Act and continuation of the proceeding against the petitioners therefore, is bad in law.

Shri T.R. Bajaj, learned senior counsel, arguing on behalf of the petitioners, explains that even according to the averments in the complaint petition, information of the alleged offence was communicated to and received by the complainant Inspector of Factories on 31.1.2005. The complaint, according to the learned Counsel, should have been filed thereafter within a period of three months from the date when the alleged commission of the offence came to the knowledge of the complainant, but the complaint was filed beyond the period of limitation of three months on 7.5.2005. The complainant has neither offered any explanation for the delay in lodging the complaint, nor has invited attention of the learned Court below with his prayer for condoning the delay. Learned Counsel explains further that according to Section 105 of the Factories Act, the complainant who is the Inspector of factories, was himself competent to lodge the complaint and also to accord sanction for prosecution. Learned Counsel explains further that the Factories Act, 1948 being a special Act, contains provisions relating to the cognizance and trial for the offence and for limitation of prosecution and therefore, the provisions of Section 468 of the Cr PC can not be applied for computing the period of limitation in the instant case.

5. A counter-affidavit has been filed by the complainant/opposite-party No. 2 wherein while acknowledging delay in lodging the complaint, he has sought to explain that the delay was caused on account of delay in obtaining internal administrative instructions and guidelines and was not intentional. Opposite-party No. 2 has further sought to explain that appropriate sanction from the State Government was required according to the Rules under in the Act and though, offences alleged in the inquiry report was communicated to the concerned department of the State Government for sanction, the letter of sanction was received on 3.5.2005 and thereafter, the complaint petition was filed in the Court below on 7.5.2005. It has also been pointed out that delay has been explained in the petition of complaint at paragraphs 13 to 16 and prayer was made for condoning the delay in filing the complaint. Counsel for the opposite-party No. 2 explains that the learned Court below had perused the complaint and the entire averments contained therein, whereafter proceeded to take cognizance of the offences and, therefore, it is deemed that while passing

the order of cognizance, the learned Court below had condoned the delay.

6. Rule 13(1)(c) of the Jharkhand Factories Rules enables the Inspector of Factories to file a complaint in the Court against the manager or the occupier of a factory or against both or against any other person liable to be punished under the Act and to prosecute, conduct or defend before a Court any complaint or other proceeding arising under the Act or in discharge of his duties as an Inspector.

7. Section 105 of the Factories Act, 1948 reads as follows:

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.

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

The basic principle underlying provisions of Section 105 is that before cognizance is taken under the Factories Act, the alleged offence must be thoroughly investigated or inquired into by a competent person such as Inspector. An ordinary person, though he may be a police officer may not have an expertise like the Inspector of Factories. Section 105 of the Act therefore provides safeguards in order to prevent lodging false and vexatious criminal proceeding against the managers of the Factories.

8. From the above provisions, it is manifest that the Inspector of Factories appointed by the State Government u/s 8 of the Act is competent to file a complaint in the Court and to prosecute the offender under the Act. Counsel for the opposite-party No. 2 has not pointed out any provision either in the Act or the Rules framed therein to indicate that prior sanction of the State Government for prosecuting the offender under the Act is necessary.

9. Section 106 of the Factories Act reads as follows:

106. Limitation of prosecution.--No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation.--For the purposes of this section-

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation

shall be computed from the date on which the time so granted or extended expires.

A mere perusal of the above provision makes it abundantly clear that the complaint must be filed within three months of the date on which commission of offence came to the knowledge of the Inspector. The period three months referred in Section 106 of the Act means three calendar months i.e. 90 days calculated at the rate of 30 days per month. This view finds support from the judgment of the Division Bench of the Andhra Pradesh High Court in the case of *In Re: V.S. Metha and Others*, .

10. In the instant case, even as admitted by the complainant/Inspector of Factories in his report of inquiry annexed to the petition of complaint, the Information about the occurrence relating to the death of two workers in the factory premises of the petitioners was received by him in the night of 31.1.2005. The Inspector thereafter proceeded on 1.2.2005 to inquire into the incident and in course of which, he had come to the finding that the occupier and manager of the factory had violated the specific provisions of the Rules and thereby, they had committed offences punishable under the Act. Even if the date of knowledge of the commission of the alleged offence is taken to be 1.2.2005 for the purpose of computing the period of limitation, complaint should have been filed within 90 days thereafter and therefore the complaint ought to have been filed by 3.5.2005 whereas the instant, case was filed on 7.5.2005 and cognizance was taken of the offences on the same day by the learned Chief Judicial Magistrate. Apparently, there is a delay of four days in filing of the complaint. An explanation has been sought to be given for the delay in filing of the complaint petition claiming that the delay was occasioned on account of time consumed for obtaining sanction from the State Government for prosecuting the petitioners for the offences under the Act. From perusal of the impugned order, it does not appear that the learned Court below had considered the explanation for the delay or was even conscious of the delay in filing the complaint nor does it appear that the prosecution has invited attention of the Court below on this issue. The impugned order appears to have been recorded on a printed proforma and the blanks relating to the penal section for which cognizance was taken and names of the accused persons against whom offence under penal section in respect of which case was filed and the word "cognizance has been filed.

11. As observed herein above, neither the Act nor the Rules framed thereunder provide for previous sanction of the State Government for prosecuting the offender under the Act. The Inspector of Factories, who in the instant case, is the complainant himself, was competent to file complaint and to prosecute the offenders. The explanation offered that the delay was occasioned on account of time consumed for obtaining sanction for prosecution from the State Government, is without basis. Section 106 of the Factories Act is a special Act and it provides specific period of limitation within which complaint should be filed. The nature of offence as alleged in the Instant case, confines the period of

limitation to three months. Since this is specific provision under the special Act, the provisions of Chapter-XXXVI of the Cr PC will not apply.

12. In the light of the above discussions, I find merit in this application. Accordingly, the same is allowed. The impugned order of cognizance dated 7.5.2005 passed by the Chief Judicial Magistrate, Jamshedpur in C/2 Case No. 1621 of 2005, is hereby quashed.