

(1982) 03 MP CK 0046

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 366 of 1980

State (Govt. of India)

APPELLANT

Vs

J. N Uppal and others

RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 5
Mines Act, 1952 — Section 18, 18(2), 22, 63, 64

Citation : (1983) JLJ 681 : (1983) MPLJ 635

Hon'ble Judges : G.P. Singh, C.J;K.K. Dube, J

Bench : Division Bench

Advocate : N.C. Jain, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Bhatt, J.

This is the revision against the trial Court's Order deleting the names of the non-applicants-accused Nos 1, 4, 5, 6 and 7 from the complaint, filed by duly authorised Inspector of Mines, for prosecution of the non-applicants-accused under the provisions of the Mines Act, 1952.

On 8-5-1979, accident had occurred in Shivpuri Mines, resulting in the death of a tripman viz. Shri Tarendra Kumar. It was alleged in the complaint that due to the negligence of these non-applicants-accused, proper precautions, as enjoined by the provisions of the Mines Act and the Rules and Regulations made thereunder, had not been taken in the matter of shotfiring. Objection was taken in the trial Court that u/s 18(2) of the Mines Act, only the "owner", "agent" and "Manager" of the Mine could be held guilty of any contravention of the provisions of the Act, the non-applicants-accused Nos. 1, 4, 5, 6 and 7 could not be held liable for prosecution, and as such, the names of these non-applicants-accused were liable to be deleted. The trial Court, relying on this Court's earlier decision in R. R. Sharma and two others v. The State¹ (Record of the Misc. Case placed below),

held that the complaint, in the present case, could be filed only against the "owner", "agent" and the "manager", and since, the non-applicants-accused Nos. 4 to 7 and 1, were not covered under the definitions of either "owner" or "agent" or "manager", their names were liable to be deleted from the complaint; and as such, were ordered to be deleted. Hence now, the present revision preferred by the State (Government of India).

It has been argued before me that this Court's earlier decision viz. R. R. Sharma and two others v. The State (supra), relied on by the trial Court, does not propound the correct view of the law and the word "whoever", as used in section 72C(1), is wide in its import, covering not only the "owner", "agent" and "manager" but also, any other person, whosoever he be, who might have contravened the provisions of the Act and Rules and Regulations made thereunder. In support of this argument, copy of the Order dated 1-3-1980 of Revision Petition No. 30 of 1980 of the High Court of Bombay (Nagpur Bench), has been placed before me. This decision of the Bombay High Court is found to have considered this Court's earlier decision (Misc. Cr. Case No. 423 of 1975) dated 16-10-1978 decided by Hon'ble Shri Chandra Pal Singh, J. (supra), and has expressed its disagreement with the interpretation of the word "whoever" as mentioned in section 72C(1) of the Mines Act.

I have given my thoughtful consideration to both these earlier decisions, one of this Court and the other, of the Bombay High Court, and am inclined to agree with the view of the Bombay High Court. Considering the scheme of the various provisions of the Mines Act, 1952, it may be noticed that in various provisions thereof, the words "whoever" or "by any person whosoever" have been used [See sections 18(2), 63, 64, 65, 67, 69, 70, 72A, 72B, 72C and 73]. Uses of these words are found to be separate and independent of the words "owner", "agent" and "manager" wherever they have been used. Chapter IV of the Mines Act deals with "Penalties and Procedures". Sections 63, 64, 65 and 70 and some other sections, as they are, clearly show that the particular contraventions as mentioned therein, do not relate to the contraventions merely by the "owner", "manager" or "agent", but, by any other person whosoever he be, employed in the mine or otherwise. Section 73 *ibid*, is a general provision for "Disobedience of vorders" covering any person whatsoever, who may contravene the provisions of the Act, Regulations, Rules or Bye-laws or Orders made thereunder. Section 75 *ibid* is a provision prescribing the procedure, when "owner", "agent " or "manager" is to be prosecuted. Section 77 *ibid*, deserves close scrutiny. It clearly shows that if any other person (actual offender), apart from "owner", "agent" or "manager" is proved to the satisfaction of the Court, to have committed the offence, such other person has to be convicted of the offence and has to be made liable to the like punishment "as if he were the "owner", "agent" or "manager" of the Mine", and in such a case, the actual owner, agent or manager, as the case may be, has to be acquitted. This provision clearly shows that under the provisions of the Mines Act, not only the "owner", "agent" or "manager" can be prosecuted but other persons, actually contravening the provisions, can

equally be prosecuted. It, therefore, follows that the word "whoever" as used in sections 72A, 72B, 72C and in other sections, brings within its sweep, not only owner, agent or manager, but also any person whatsoever who may be found to be contravening the provisions of the Act. Prosecution, thus, could well be of any other actual offender besides owner, agent or manager; and the owner, agent or manager could, in particular circumstances of the case, be entitled to acquittal, on proof of certain facts as required by section 77 *ibid*.

My view, thus, on the question of interpretation of the word "whoever", being in conflict with the earlier view of the Single Bench of this Court (Misc. Cr. Case No. 423 of 1975); and the question of interpretation, being of considerable importance and of frequent occurrence, the following question is, hence, referred for consideration by a larger Bench :-

Whether the term "whoever", employed in section 72C(1) and in other sections of the Mines Act, is restricted, in its interpretation to mean only "owner", "agent" or "manager" or, is wide enough to cover any other persons whatsoever, be they employees of the Mines or be they some others?

Opinion The opinion of the Division Bench of G. P. Singh C. J. and K. K. Dube J., delivered by :-

K. K. Dube, J.-The question referred to us for decision by a larger Bench is as under :-

Whether the term "whoever", employed in section 72C(1) and in other sections of the Mines Act, is restricted in its interpretation to mean only "owner", "agent" or "manager", or, is wide enough to cover any other person whatsoever, be they employees of the Mines or be they some others ?" 2. During the course of the trial of the respondents, who are charged of offences punishable under the Mines Act, 1952 (Act XXXV of 1953), (hereinafter referred to as the Act) for an incident in a mine in Shivpuri resulting in the death of Trip Man, an objection was raised as to the tenability of the prosecution against J. N. Uppal, General Manager, R. L. Singh, Safety Officer, Buxi Dhurve, Senior Overman and Swamicharan Rai, Shotfirer of the said Shivpuri Mine. The mine is owned by Western Coal Fields Limited. The prosecutions are directed against the owner, agent and the manager of the mine and also the above respondents. It was contended that for the offences under Chapter IX of the Act, the prosecutions of the owner, agent and/or manager alone were contemplated and, therefore, the prosecutions could not be sustained against the objectors who did not fall under the category of owner, agent or manager as defined under the Act. Decision of this Court in *R. R. Sharma and two others v. The State* M.Cr. C No. 423 of 1975, decided on the 16th October 1978 was relied on. The trial Court upheld the objection as the above ruling clearly supported the contention of the accused persons. The State came up in revision before the High Court and Bhatt J., who heard the revision, expressed doubt regarding the correctness of the view taken in *R. R. Sharma* (*supra*) and has accordingly referred the above question for the opinion of a

larger Bench.

The Mining Act makes punishable contravention of its provisions or rules or regulations or bye-laws made thereunder. By section 18, owner, agent and manager of the mine are deemed guilty of such contravention. Sub-section (1) of section 18 of the Act casts responsibility on the owner, agent and the manager of a mine for due conduct of the operation in accordance with the provisions of the Act, regulations, rules and bye-laws and any order made thereunder, in a mine. Sub-section (2) lays down that in the event of any contravention of the Act, rules, regulations, etc., the owner, agent or the manager of the mine shall be deemed also to be guilty of such contravention, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing those provisions to prevent such contravention. The word "also" employed in the section indicated that the owner, agent and manager would be guilty in addition to the offender who actually committed the offence. It would appear that when the owner, agent and manager are sought to be held vicariously guilty, the actual offender was not intended to escape the liability. The penal provisions of the Act are to be read with section 18. We may, however, refer to the various provisions of the Act to find out if there is anything in the Act as restricts the liability only upon the owner, agent or manager.

Section 75 provides that a prosecution against the owner, agent and manager, for any offence under the Act, shall not be instituted unless it is at the instance of Chief Inspector or the District Magistrate or an inspector authorised in this behalf by a general or special order in writing by the Chief Inspector. It is intended by this section that the prosecution to be initiated against the owner, agent or manager for offences under the Act must be on a complaint by persons indicated in the section. If it is not provided as to who should file the complaint in respect of other persons, it cannot be said that the Act did not contemplate that other offenders should not be prosecuted. Under sub-section (2) of section 5 of the Code of Criminal Procedure, all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with, according to the Code of Criminal Procedure, but subject to a special enactment for the time being in force, regulating the manner or place of investigating into, enquiring into, trying or otherwise dealt with offences. Therefore, if there is no special provision in the Mining Act for making a complaint against offenders other than owner, agent or manager, resort has to be taken to the provisions of the Code of Criminal Procedure. In cases of offences under the Mining Act, the special provisions under the Act became applicable to the owner, agent and the manager for prosecution and for avoiding liability, but the general law became applicable when the field was not occupied by the special law. As regards prosecution of the owner, agent and manager in relation to offence under the Mining Act, special provisions contained under the Act were applicable and they could avoid the liability as provided under the Act. It would be seen that the Act created a special type of liability on the owner, agent and the manager, and, therefore, it has been especially dealt with under the Act. However, from this, it cannot be said that the

Act does not contemplate prosecution of other persons.

Section 77 provides the circumstances under which the liability could be avoided by the owner, agent or the manager. The section permits the owner, agent or the manager to file a complaint against the actual offender and to have him produced before the Court. Though, by section 18, the owner, agent or the manager is deemed the person who contravened the provisions, there may be cases where such persons directly commit offences to which section 77 applies. If the actual offender is found to be guilty and other conditions mentioned in section 77 are satisfied, the owner, agent or manager escapes the liability and such other person found guilty of the offence becomes liable "to punishment as if he were the owner, agent or the manager of the mine." These words that such person becomes liable to punishment as if he were the owner, agent or manager of the mine have been used because in those cases the owner, agent and manager are primarily liable. These words are intended to describe the extent of punishment which could be imposed on such other person convicted on complaint u/s 77. It was contended that the language of section 77 indicated that the criminal liability under the Act was confined to the owner, agent or manager. We do not see that such an inference could be legitimately drawn. Section 77 pertains to special cases where owner, agent or manager is primarily liable. As already pointed out, section 18(2) casts a vicarious liability on the owner, agent or manager for contraventions of the provisions of the Act, rules, regulations and orders made thereunder. Section 18 also provides how such constructive liability could be avoided. There are numerous provisions under the Act when the contemplated non-compliance is by the owner, agent or the manager and here the non-compliance being on the owner, agent or manager, the incidence is not constructive but direct. Now it is not difficult to envisage a modern undertaking where scores of top executives discharge duties and responsibilities which may overlap with the duties of the agent or the manager and similarly, though for the purposes of the Act, only certain person fell under the definition of the owner, agent or manager. Such owner, agent or manager may have been prevented from discharging his function resulting in a contravention of the provisions of the Act, regulations, rules, etc. punishable under the Act without any fault on his part. But even then he cannot escape the liability as the liability cast under the Act is absolute. It is for softening the rigour of such provisions that section 77 provides how the owner, agent or manager could avoid the liability which was primarily cast on him under the Act. This liability is avoided by complying with the conditions contained u/s 77 and when the owner, agent or manager successfully proves that he used due diligence to enforce the execution of the relevant provisions of the Act (a) that the person who actually committed the offence did so without his knowledge, consent and connivance and (b) that when the actual offender is thus brought to book, the liability of the owner, agent or manager is avoided. Therefore, the language used in section 77 of the words "like punishment as if he were the owner, agent or manager of the mine" was clearly to provide for the extent of punishment to be

given.

It would be seen that some of the contraventions under the Act are such which could be committed by any person whatsoever, while there may be some which concerns only the owner, agent or manager. The word "whoever" is to be construed accordingly. For example, the contraventions under sections 63, 64, 65, 66 and 67 may be committed by any one other than the owner, agent or manager. Offence u/s 69 could be committed only by the owner or agent subject to such exceptions as are envisaged u/s 77 and the use of "whoever" employed in the section has naturally to be restricted to the owner and the agent. Section 72A provides for punishment for contravention of certain regulations and section 72B provides for contravention of orders u/s 22. Section 72C provides for contravention of law with dangerous result. The word "whoever" occurring in these sections is wide enough to cover any person whatsoever. It is not necessary to take each offence separately for the purposes of this reference, suffice it to say that the Act does not restrict the liability for prosecution of contraventions to owner, agent or manager. We answer the question as under:-

The term "whoever" employed in section 72C(1) and in other sections of the Mining Act is not restricted in its interpretation to mean only the owner, agent or manager and is wide enough to cover any other person whatsoever.

The case may now go back for decision of the revision.

ORDER

M. D. Bhatt J.-This is the revision against the trial Court's Order deleting the names of the non-applicants-accused No. 1, 4, 5, 6 and 7 from the complaint, filed by the duly authorised Inspector of Mines, for prosecution of the non-applicants-accused under the provisions of the Mines Act, 1952.

On 8-5-1979, accident had occurred in Shivpuri Mines,-resulting in the death of a tripman viz. Shri Tarendra Kumar. It was alleged in the complaint that due to the negligence of these non-applicants-accused, proper precautions, as enjoined by the provisions of the Mines Act and the Rules and Regulations made thereunder, had not been taken in the matter of shotfiring. Objection was taken in the trial Court that u/s 18(2) of the Mines Act, only the "owner", "agent" and "Manager" of the Mine could be held guilty of any contravention of the provisions of the Act, the non-applicants-accused Nos. 1, 4, 5, 6 and 7 Sarvashri J. N. Uppal, General Manager, R. L. Singh, Safety Officer, Buxi Dhurve, Sr. Overman, Sheikh Haider, Mining Sardar, Swamicharan Rai, Shotfirer, could not be held liable for prosecution; and as such, the names of these non-applicants-accused were liable to be deleted. The trial Court, relying on this Court's earlier decision dated 16-10-1978 in Misc. Criminal case No. 423 of 1975, R. R. Sharma and two others v. The State, held that the complaint, in the present case, could be filed only against the "owner", "agent" and the "manager"; and since, the non-applicants-accused Nos. 4 to 7 and I, were not covered under the definitions of either "owner" or "agent" or "manager", their names were liable to be deleted from the

complaint; and as such, were ordered to be deleted. Hence now the present revision preferred by the State (Government of India).

It had been argued before me that this Court's earlier decision viz. Misc. Cr. Case No. 423 of 1975 (supra), relied on by the trial Court, did not propound the correct view of the law; and the word "whoever", as used in section 72C(1), was wide in its import, covering not only the "owner", "agent" and "manager", but also, "any other person" whosoever he be, who might have contravened the provisions of the Act and Rules and Regulations made thereunder. In support of this argument, copy of the order dated 1-3-1980 in Revision Petition No. 30 of 80 of the High Court of Bombay (Nagpur Bench), had been placed before me. This decision of the Bombay High Court was found to have considered this Court's earlier decision (Misc. Cr. Case No. 423 of 1975) dated 16-10-1978, decided by Hon"ble Shri Chandra Pal Singh J. (supra), and had expressed its disagreement with the interpretation of the word "whoever", as mentioned in section 72C(1) of the Mines Act.

After considering the earlier decision of this Court and also the one, of the Bombay High Court referred to above, I was of the view that the word "whoever" as used in sections 72A, 72B and 72C and in other sections of the Mines Act, 1952, did bring, within its sweep, not only owner, agent and manager, "but also any person whatsoever", who may be found to be contravening the provisions of the Act; and that as such, prosecution could well be launched against any other offender besides owner, agent and manager. My view on the question of interpretation of the word "whoever", being, thus, in conflict with the earlier view of the Single Bench of this Court in Misc. Cr. Case No. 423 of 1975 (supra), the following question was accordingly referred to the larger Bench for consideration:

Whether the term "whoever", employed in section 72C(1) and in other Sections of the Mines Act, is restricted, in its interpretation, to mean only "owner", "agent" or "manager"; or, is wide enough to cover any other person whatsoever, - be they employees of the Mines or be they some others?" The Division Bench of this Court comprising of Hon"ble the Chief Justice Shri G. P. Singh and Hon"ble Shri Justice K. K. Dube, has answered the question as under:

The term "whoever" employed in section 72C(1) and in other sections of the Mining Act is not restricted in its interpretation to mean only the owner, agent or manager and is wide enough to cover any other person whatsoever.

In view of the above decision, it is obvious that the trial Court is found to be wrong in deleting the names of the non-applicants accused Nos. 1 and 4 to 7 from the complaint, inasmuch as, the prosecution against them could well be sustained along with the rest. The impugned order of the trial Court, therefore, deserves to be quashed.

In the result, thus, the revision preferred by the State is allowed. Setting aside the impugned Order of the trial Court, it is ordered and directed instead that, the trial Court do proceed with the prosecution and trial of these non-applicants-

accused Nos. 1 and 4 to 7 along with the others, in accordance with the special provisions of the Mines Act, 1952.

Parties are directed to appear in the trial Court on 29-3-82 for further proceedings in the case.