

(2017) 12 GAU CK 0021
In the Gauhati High Court
Case No : 790 of 2015

State of Assam

APPELLANT

Vs

Rajeev Takru & Anr.

RESPONDENT

Date of Decision : 22-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 397](#), [Section 401](#) - Saving of inherent powers of High Court - Calling for records to exercise powers of revision - Hi

Citation : (2017) 12 GAU CK 0021

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : S Jahan, D Baruah, B Das, N Upadhyay

Judgement

Criminal Petition No. 790 of 2015

1. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 08-06-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 47(2) of 2015, setting aside the order, dated 20-04-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the order, dated 30-04-2015, passed by the learned Judicial Magistrate, Tinsukia, in CR Case No. 33C/2015, for violation of various provisions under the Labour Plantation Act, 1951 and the Labour Plantation Rules, 1956 (hereinafter referred to as "P.L. Act" and "P.L. Rules" respectively).

2. The opposite party No. 2 in this case, Labour Inspector, filed a complaint, being CR Case No. 33C/2015, before the Court of learned Chief Judicial Magistrate, Tinsukia against the Manager of Samdang Tea Estate and the Director of Mcleod Russel India Ltd. For violation of Sections 14 and 15 of the P.L. Act, read with Rules 55 and 59 of the P.L. Rules.

3. The learned Chief Judicial Magistrate, Tinsukia took cognizance of the offence

and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate (S), Tinsukia, for disposal, who, in turn, issued summons against both the accused.

4. The opposite party No. 1, the Director of M/S Mcleod Russel India Ltd., filed a criminal revision before the Court of learned Sessions Judge, Tinsukia, vide CrI. Rev. No. 47(2)/2015, for setting aside the order, 20-04-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 33C/2015 aforesaid, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate. Therefore, he could not be prosecuted.

5. The criminal Revision was disposed of by the learned Sessions Judge, Tinsukia, holding that the petitioner was the Director of the Tea Estate and was stationed at Kolkata and as such, he had no control over the day-to-day affairs of the plantation and remanded the case to the learned trial Court with directions to the complainant to implead the proper person, who looks after the day to day affairs and management of the concerned Tea Garden and to proceed in accordance with law. Criminal Petition No. 828 of 2015

6. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 30-05-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 38(2) of 2015, setting aside the order, dated 21-04-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the order, dated 21-04-2015, passed by the learned Sub-Divisional Judicial Magistrate, Tinsukia, in CR Case No. 35C/2015, for violation of various provisions under the P.L. Act and P.L. Rules.

7. The opposite party No. 2, is the Labour Inspector filed a complaint, being CR Case No. 35C/2015, before the Court of learned Chief Judicial Magistrate, Tinsukia, against the Manager of Mahakali Tea Estate and the Director of Mcleod Russel India Ltd. For violation of Sections 14 and 15 of the PL Act, read with Rules 55 and 59 of the PL Rules. The learned Chief Judicial Magistrate, Tinsukia took cognizance of the offence under Section 36 of the P.L. Act and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate (S), Tinsukia, for disposal, who, in turn, issued summons against both the accused-opposite parties.

8. The accused-opposite party No. 1, the Director of M/S Mcleod Russel India Ltd., filed a criminal revision before the Court of learned Sessions Judge, Tinsukia, vide CrI. Rev. No. 38(2)/2015, for setting aside the order, 21-04-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 35C/2015 aforesaid, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate.

9. The criminal Revision was disposed of by the learned Sessions Judge,

Tinsukia, holding that the petitioner was the Director of the Tea Estate and was stationed at Kolkata and as such, he had no control over the day-to-day affairs of the plantation. Therefore, the opposite party No. 1 cannot be prosecuted and remanded the case to the learned trial Court with directions to the complainant to implead the proper person, who looks after the day to day affairs and management of the concerned tea garden and to proceed in accordance with law. Criminal Petition No. 831 of 2015

10. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 22-06-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 52(2) of 2015, setting aside the order, dated 21-05-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the orders, dated 21-04-2015 & 28-04-2015, passed by the learned Judicial Magistrate, First Class, Tinsukia, in CR Case No. 28C/2015, for violation of various provisions under P.L. Act and P.L. Rules.

11. The fact giving rise to this criminal petition is that the Government of Assam, Labour and Employment Department, vide notification, dated 10-12-2014, requested the Deputy Commissioners of all districts of the State to constitute a team of officers from Labour Department, Revenue Department, Education Department, PHED and Health Department for inspection of the Tea Estates and thereafter to submit reports. Accordingly, inspection was carried out and report was submitted. As per the said report, the management have failed to provide 118 numbers of standard quarters to the workers family as required under Sections 14 and 15 of the P.L. Act, read with Rules 55 and 59 of the P.L. Rules.

12. The report also revealed that the management also failed to provide 501 numbers of latrines to the resident worker families, the management further failed to maintain the student teacher ratio in the said garden and also failed to appoint whole time Medical Officer as per the said P.L. Rules.

13. On the basis of the above facts, the opposite party No. 2, Labour Officer, filed a complaint being CR Case No. 28C/2015, before the learned Chief Judicial Magistrate, Tinsukia against the Manager and the Director of Ledo Tea Estate for violation of Sections 15 and 16 of the P.L. Act, read with Rules 58 and 59 of the PL Rules. The learned Chief Judicial Magistrate took cognizance of the offence under Section 36 of the PL Act and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate, First Class, Tinsukia, for disposal, who, in turn, issued summons against both the accused-opposite parties vide order, dated 21-05-2015.

14. The opposite party No. 1, the Director of the Tea Estate, filed a criminal revision before the Court of learned Sessions Judge, Tinsukia, vide CrI. Rev. No. 52(2)/2015, for setting aside the order, 21-04-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 28C/2015 aforesaid and the order, dated 21-05-2015, issuing summons by the learned Sub-

Divisional Judicial Magistrate, First Class, Tinsukia, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate.

15. The criminal Revision was disposed of by the learned Sessions Judge, Tinsukia, on 22-06-2015, holding that the petitioner was the Director of the Tea Estate and was stationed at Kolkata and as such, he had no control over the day-to-day affairs of the plantation. Thus, he cannot be prosecuted and remanded the case to the learned trial Court with directions to the complainant to implead the proper person, who looks after the day to day affairs and management of the concerned tea garden and to proceed in accordance with law. Criminal Petition No. 832 of 2015

16. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 30-05-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 41(2) of 2015, setting aside the order, dated 21-04-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the order, dated 21-04-2015, passed by the learned Sub-Divisional Judicial Magistrate, Tinsukia, in CR Case No. 34C/2015, for violation of various provisions under the P.L. Act and P.L. Rules.

17. The fact in this criminal petition is that the Government of Assam, Labour and Employment Department, vide notification, dated 10-12-2014, requested the Deputy Commissioners of all districts of the State to constitute a team of officers from Labour Department, Revenue Department, Education Department, PHED and Health Department for inspection of the Tea Estates and thereafter to submit reports. Accordingly, inspection was carried out and report was submitted. As per the said report, the management have failed to provide 40 numbers of standard quarters to the workers family as required under Sections 14 and 15 of the P.L. Act, read with Rules 55 and 59 of the P.L. Rules.

18. The report also revealed that the management also failed to provide 73 numbers of latrines to the resident worker families, the management further failed to maintain the student teacher ratio in the said garden as per the said P.L. Rules.

19. On the basis of the above facts, the opposite party No. 2, Labour Inspector, filed a complaint being CR Case No. 34C/2015, before the learned Chief Judicial Magistrate, Tinsukia against the Manager and the Director of Dhelakhat Tea Estate for violation of Sections 15 and 16 of the P.L. Act, read with Rules 58 and 59 of the P.L. Rules. The learned Chief Judicial Magistrate took cognizance of the offence under Section 36 of the PL Act and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate, First Class, Tinsukia, for disposal, who, in turn, issued summons against both the accused-opposite parties vide order, dated 21-04-2015.

20. The opposite party No. 1, the Director of the Tea Estate, filed a criminal

revision before the Court of learned Sessions Judge, Tinsukia, vide CrI. Rev. No. 41(2)/2015, for setting aside the order, 21-04-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 34C/2015 aforesaid and the order, dated 21-04-2015, issuing summons by the learned Sub-Divisional Judicial Magistrate, First Class, Tinsukia, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate.

21. The criminal Revision was disposed of by the learned Sessions Judge, Tinsukia, on 30-05-2015, holding that the petitioner was the Director of the Tea Estate and was stationed at Kolkata and as such, he had no control over the day-to-day affairs of the plantation. Thus, he cannot be prosecuted and remanded the case to the learned trial Court with directions to the complainant to implead the proper person, who looks after the day to day affairs and management of the concerned tea garden and to proceed in accordance with law. Criminal Petition No. 833 of 2015

22. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 20-06-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 53(2) of 2015, setting aside the order, dated 21-04-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the order, dated 30-04-2015, passed by the learned Judicial Magistrate, Tinsukia, in CR Case No. 37C/2015, for violation of various provisions under the P.L. Act and P.L. Rules.

23. The opposite party No. 2 in this case, Labour Inspector, filed a complaint, being CR Case No. 37C/2015, before the Court of learned Chief Judicial Magistrate, Tinsukia against the Manager of Samdang Tea Estate and the Director of Mcleod Russel India Ltd. For violation of Sections 14 and 15 of the P.L. Act, read with P.L. Rules 55 and 59 of the Rules. The learned Chief Judicial Magistrate, Tinsukia took cognizance of the offence and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate (S), Tinsukia, for disposal, who, in turn, issued summons against both the accused-opposite parties.

24. The opposite party No. 1, Senior Managing Director of Assam Company Ltd., filed a criminal revision before the Court of learned Sessions Judge, Tinsukia, vide CrI. Rev. No. 53(2)/2015, for setting aside the order, 21-04-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 37C/2015 aforesaid and the order, dated 30-04-2015, passed by learned Sub-Divisional Judicial Magistrate (S), Tinsukia, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate.

25. The criminal Revision was disposed of by the learned Sessions Judge, Tinsukia, holding that the petitioner was the Senior Managing Director of the Tea Estate and was stationed at Kolkata and as such, he had no control over the day-

to-day affairs of the plantation and remanded the case to the learned trial Court with directions to the complainant to implead the proper person, who looks after the day to day affairs and management of the concerned tea garden and to proceed in accordance with law. Criminal Petition No. 834 of 2015

26. This criminal petition has been preferred, under Section 482, read with Sections 397/401 of the Cr.P.C., for setting aside and quashing the judgment and order, dated 18-05-2015, passed by the learned Sessions Judge, Tinsukia, in Criminal Revision No. 30(2) of 2015, setting aside the order, dated 10-02-2015, passed by the learned Chief Judicial Magistrate, Tinsukia as well as the orders, dated 11-02-2015 and 11-03-2015, passed by the learned Sub-Divisional Judicial Magistrate, Tinsukia, in CR Case No. 05C/2015, for violation of various provisions under the P.L. Act and P.L. Rules.

27. The fact leading to this criminal petition is that the Government of Assam, Labour and Employment Department, vide notification, dated 10-12-2014, requested the Deputy Commissioners of all districts of the State to constitute a team of officers from Labour Department, Revenue Department, Education Department, PHED and Health Department for inspection of the Tea Estates and thereafter to submit reports. Accordingly, inspection was carried out and report was submitted. As per the said report, the management have failed to provide standard quarters and latrines for the workers family as required under Sections 14 and 15 of the P.L. Act, read with Rules 55 and 59 of the P.L. Rules.

28. On the basis of the above facts, the opposite party No. 2, Labour Officer, filed a complaint being CR Case No. 05C/2015, before the learned Chief Judicial Magistrate, Tinsukia against the Manager and the Manager and the Managing Director of Hapjan Tea Estate for violation of Sections 15 and 16 of the P.L. Act, read with Rules 58 and 59 of the P.L. Rules.

29. The learned Chief Judicial Magistrate took cognizance of the offence under Section 36 of the PL Act and transferred the case to the Court of learned Sub-Divisional Judicial Magistrate, First Class, Tinsukia, for disposal, who, in turn, issued summons against both the accused-opposite parties vide order, dated 11-02-2015.

30. The opposite party No. 1, Managing Director of the Tea Estate, filed a criminal revision before the Court of learned Sessions Judge, Tinsukia, vide CrL. Rev. No. 30(2)/2015, for setting aside the order, 10-02-2015, passed by learned Chief Judicial Magistrate, Tinsukia, taking cognizance of CR Case No. 05C/2015 aforesaid and the order, dated 11-02-2015, issuing summons by the learned Sub-Divisional Judicial Magistrate, First Class, Tinsukia, on the ground that he is not an "employer" as defined under Section 2(e) of the P.L. Act; rather, the Manager looks after the day-to-day affairs of the Tea Estate.

31. The criminal Revision was disposed of by the learned Sessions Judge, Tinsukia, on 18-05-2015, holding that the petitioner was the Managing Director of the Tea Estate and was stationed at Kolkata and as such, he had no control

over the day-to-day affairs of the plantation. Thus, he cannot be prosecuted under the P.L. Act.

32. The issue raised in these criminal petitions being identical, arising out of the judgments and orders of the learned Sessions Judge, Tinsukia, in the criminal revisions, remanding the respective complaint case to the trial Court with direction to the Labour Inspector to implead proper person, who looks after the day to day affairs and management of the concerned tea garden. Further, referring to the submission of the revision petitioners that Garden Manager is to look after the day-to-day affairs of the garden and as such the Director is not responsible and cannot be prosecuted under the P.L. Act, the learned Sessions Judge held that in view of the decision of our own Hon'ble High Court, referred to above, the learned trial Magistrate committed error in passing those orders taking cognizance against the respective accused-Director/Managing Director and subsequent order issuing summon to them and thus set aside those orders and remanded the case to the trial Court as indicated.

33. In all these criminal revision petitions, preferred by the Directors/Managing Directors of the Tea Estate concerned, the learned Sessions Judge, Tinsukia, set aside the orders passed by the learned Sub-Divisional Judicial Magistrate (S), Tinsukia, in the complaint cases, taking cognizance of the offences as well as the order for issuance of summon to the Director, whereas the orders of taking cognizance as well as issuance of summon were passed in respect of both the revisionist as well as the non-revisionist/accused. It deserves to be mentioned here that the non-revisionist accused did not file the revision petition against the orders taking cognizance and issuance of summon, yet the orders taking cognizance as well as issuing summon in respect of him also set aside.

34. It is contended that the Director as well as the Manager both comes well within the purview of Section 2(e) of the P.L. Act. It is further contended that the precedent that the Sessions Judge relied upon in his order was delivered much before the amendment was brought in the P.L. Act. As by the amendment, substantial change in the definition of the "employer" was made to the effect that if a plantation is owned by a company, then each one of its Directors would be the person having the ultimate control over the affairs of the Tea Estate and that he would be the concerned employer. As such, the concerned Tea Estate being owned by Companies, its Directors/Managing Directors would be the "employer".

35. In all the petitions, the State Government/petitioner contended that the learned Sessions Judge relied upon the decision of our own High Court in R. L. Rikhye vs State of Assam, reported in 2001 (1) GLT 425 and the provisions of Section 2(e) of the PL Act without considering the amendment made in the definition of "employer" by way of explanation in the year 2010, vide Plantation Labour (Amendment) Act, 2010. According to the State petitioner, the Director/Managing Director is an employer within the meaning of Section 2(e) of the PL Act.

36. I have perused the petitions including the annexures furnished therewith along with the impugned judgments and orders. I have also heard the learned counsel for the parties.

37. The moot questions, which falls for determination in these cases are: Whether the learned Sessions Judge had rightly allowed the revision petitions in view of the precedent ?

38. Section 2(e) of the Plantation Labour Act, 1951, underwent an amendment in the year 2010 and now provides the definition of employer as follows; "employer" when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;

Explanation.-For the purposes of this clause, "the person who has the ultimate control over the affairs of the plantation" means in the case of a plantation owned or controlled by-

(i) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual;

(ii) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and

(iii) a lessee, the lessee;]

39. As per the definition employer has two distinct meaning within the ambit of Section 2(e); Firstly, a person having the ultimate control over the affairs of the plantation, and

Secondly, where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation.

40. After the 2010 amendments to the Plantation Labour Act, 1951, an explanation has been added to Section 2(e). As to what the explanation conveys has been a subject of argument and Mr. Baruah, learned Counsel for the respondents has placed reliance on the case of Zakiya Begum vs Shanaz Ali, reported in (2010) 9 SCC 280, Before, however, analyzing the transition of law, if any, on the definition of employer, it would be proper to deal with other legal arguments of the petitioners regarding absence of their culpability.

41. The learned Sessions Judge, while deciding the revision petition, followed the precedent in R. L. Rikhye vs State of Assam reported in 2001 (1) GLT 425. It appears from a reading of the judgment in R. L. Rikhye (supra) that it had followed the ratio laid down in the case of S.K. Mehra vs State of Assam, reported in (1991) 2 GLR 356. It would be necessary therefore to analyze the

background preceding the decision in S.K. Mehra (supra).

42. In the case of S.K. Mehra (supra), the Labour Inspector, Mangaldoi, inspected the Tea Estate 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. According to the Inspector, the employer was liable to be prosecuted under section 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 S.K. Mehra 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 S.K. Mehra approached this Hon''ble court on the ground, among others, 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.

43. This Hon''ble Court in S.K. Mehra (supra), held that 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 plantations-(tea gardens) spread all over the country. It was further held that there must be specific averments in the complaint petition that the President of the company, was having 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.

44. In the case of R. L. Rikhye vs State of Assam reported in 2001 (1) GLT 425 the case arose out of a complaint filed by the Medical Inspector under the Plantation Labour Act, 1951 before the SDJM, Biswanath Chariali on 25.8.1992 stating, inter alia, that on 5.6.1992 he inspected Boro Tea Estate and found that the petitioner Sri R.L. Rikhye along with Mr. B.C. Saikia, Manager, Boro Tea Estate violated Sections 26 and 27 of the Plantation Labour Act, 1951 by failing to produce certificate of fitness for non-adult worker of the plantation and also violated the provisions of Rule 76 of the Assam Plantation Labour Rules, 1956 by not maintaining the Register of non-adult workers in Form No. 9 properly. Having obtained the sanction from the Chief Inspector of Plantations under Section 39 of the Act, the complaint was filed against the present petitioner and the Manager of the Tea Estate.

45. This Hon''ble Court, in R.L. Likhiye (supra), placing reliance on the case of S.K. Mehra (supra), held that since the facts of the case are similar the ratio laid down in the case of S.K. Mehra (supra) is applicable and accordingly the Director who was looking after various tea plantations could not be prosecuted on the ground that he has ultimate control over the plantation and accordingly the

prosecution against the Director was quashed.

46. On close scrutiny of the judgment of S.K. Mehra (supra), it does not appear that a ratio was laid down that in no circumstances a Director/President of the plantation can be said to be a person having ultimate control over the affairs of the plantation rather; what was laid down was with respect to the peculiar facts of that case since there was no specific averments, not to speak of evidence, that in the complaint petition that the President of the company, was having control over the affairs of the plantation the process issued against the President terming him as employer was held to be unjustified.

47. The relevant observation of S.K. Mehra (supra), is reproduced below; Para 5... .I have perused the complaint as well as the order of the sanctioning authority granting sanction for prosecution 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 order to sustain prosecution against a person there must be at least allegation which, if accepted to be correct, may justify prosecution. In the instant case even allegation is missing not to speak of any material or evidence.

48. Now, it appears from the reading of the judgment in R. L. Rikhye (supra), that factual position in R. L. Rikhye (supra), with that of S.K. Mehra (supra), was perhaps, similar meaning that there was no averment in the complaint petition that Director was having any control over the affairs of plantation. Hence, this Hon"ble Court applied the ratio of S.K. Mehra (supra), in R. L. Rikhye (supra).

49. It is thus found that the cases of S.K. Mehra (supra), in R. L. Rikhye (supra) would be applicable as ratio only when no averments, far less evidence, are made in the complaint petition that Director is responsible for the affairs of the plantation.

50. In the case of Mridul Kumar Bhattacharjee vs State of Assam reported in 2010 (4) GLT 136, the petitioners were Managing Director and Directors of MKB Asia (P.) Ltd., a company registered under the Indian Companies Act, 1956 and the company owned, and managed Rani Tea Estates. The petitioner No. 1 was the Managing Director and the petitioner Nos. 2 and 3 were Directors of the said company. The Labour Inspector and Inspector under the P.L. Act, in exercise of his power vested under the Act visited the Rani Tea Estate and detected certain deficiencies with regard to welfare of the labourers engaged in the said tea estate. Noticing such deficiencies, a complaint was filed before the learned CJM, Kamrup, by the Inspector as complainant against the petitioners. Upon receipt of the said complaint, the learned CJM, Kamrup endorsed the same to the court of the learned Additional CJM, Kamrup, for disposal wherein the said complaint was registered as Complaint Case No. 7624c/2007 under section 36 of the Act. In the said complaint, the complainant alleged that the accused persons being the employers of the labourers engaged in the said tea estate are fully responsible

for proper implementation of the provisions of the Act and the Rules made there under but they have failed to do so.

51. The cases of S.K. Mehra (supra), and R.L. Likhiye (supra), were considered by this Hon''ble Court in Mridul Kumar Bhattacharjee (supra). This Hon''ble Court, in Mridul Kumar Bhattacharjee (supra), held that a close scrutiny of the word "employer" as defined in section 2(e) of the Act disclose that in order to become "employer", the concerned person should have ultimate control over the affairs of the plantation. There is nothing on record to show that the Manager has the ultimate control over the affairs of the plantation. He may take certain decisions as regards implementation of various schemes, but that must have final nod from the Managing Director/Director of the company.

52. It was further held in Mridul Kumar Bhattacharjee (supra) that in the case of R.L. Rikhye (supra), the affairs of the plantation was entrusted to the Manager. Accordingly, the Manager was held deemed to be the "employer" in relation to the Act. However, since no such entrustment of the responsibilities upon the Manager could be established in the case of Mridul Kumar Bhattacharjee (supra), the case of R.L. Likhiye (supra) was distinguished on facts.

53. Again, referring to the case of S.K. Mehra (supra), it was held in Mridul Kumar Bhattacharjee (supra), that there was a Manager of the tea estate who was looking after the affairs of the plantation and as such he was termed as a person to whom the affairs of the plantation were entrusted and, as such, was deemed to be an "employer" in the said case. Thus, the case of S.K. Mehra (supra), was also distinguished on facts.

54. This Hon''ble Court in Mridul Kumar Bhattacharjee (supra), finally held that since there was no material to hold that the Assistant Manager of the garden has/had the ultimate control over the affairs of the plantation and the materials rather suggested that the Managing Director and the Directors have retained the ultimate control over the affairs of the plantation, the contention that petitioners were not employers within the meaning of Section 2(e) was not accepted.

55. In the case of Rajiv Takru -vs- R.L Sahu reported in 2014 (3) GLT 96, this Hon''ble Court while re-iterating the law laid down in R.L. Likhiye (supra), and S.K. Mehra (supra) held that Since there is no averment/averments in the complaint, or sanction order or in other related documents that petitioner, being the Director of Mclaid Ltd. is also responsible for day-to-day administration of the Garden in question, it is not possible on the part of this court to come to a clear conclusion that the accused/petitioner is an employer within the meaning of section 2(e) of the Act.

56. This Hon''ble Court in Rajiv Takru (supra), further held that vague and unclear statements cannot make the employer or the owner of business establishment, responsible for the lapse on part of such establishment/firm/company and this observation was made with reference to provisions of Section 141 of Negotiable Instrument Act and the ratio laid down in the case of S.M.S

Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89. It is respectfully submitted that scope of Section 141 of Negotiable Instrument Act and scope of Section 2 (e) of P.L Act are not similar. Infact, even with reference to 141 of Negotiable Instrument Act, the Hon''ble Supreme Court in S.M.S Pharmaceuticals Ltd (supra), held that the criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of an were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. Factually, it was further observed in S.M.S Pharmaceuticals Ltd (supra), in the case in question there was total absence of requisite averments in the complaint. The relevant paragraph in S.M.S Pharmaceuticals Ltd (supra), is reproduced as follows; "6... . The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of an were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint."

57. It would be now necessary to appreciate the meaning of employer as defined in Section 2(e) and precisely with reference to the Explanation added in the year 2010.

58. Referring to the case of Zakiya Begum (supra), Mr. Baruah, learned Counsel for the respondents, argues that an Explanation to a section should normally be read to "harmonise with and clear up any ambiguity in the main section" and normally not to widen its ambit.

59. Indeed, the argument is appreciable in the light of the present definition of employer in Section 2(e). Section 2(e) of the Plantation Labour Act, 1951, underwent an amendment in the year 2010 and now provides the definition of

employer as indicated in Paragraph-38 of this judgment.

60. In Section 2(e) defining employer, prior to Amendment, there used to be a clause "the person who has the ultimate control over the affairs of the plantation". Such a clause continues to remain in the definition but now an explanation has been added to remove the ambiguity with respect to the meaning of clause "the person who has the ultimate control over the affairs of the plantation". The Explanation, now provides that "the person who has the ultimate control over the affairs of the plantation" means in the case of a plantation owned or controlled by- (i) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual;

(ii) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and

(iii) a lessee, the lessee;]

61. The definition of employer in Section 2(e), now, does not add or subtract any important attribute of the definition as it existed prior to Amendment rather; it only explains that the person who has the ultimate control over the affairs of the plantation in case of a company, firm or other association of individuals, whether incorporated or not, would mean every director, partner or individual. Thus, the ambiguity with respect to which Director, which partner or which Individual, as the case may be, has been wiped out.

62. There is yet another perspective to the issue. The definition of employer provides that employer when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation. In the case of *Vanguard Fire and General Insurance Co. Ltd. v. Fraser and Ross*, AIR 1960 SC 971 the question before the Hon"ble Supreme Court was with reference to the meaning of the word "insurer" appearing in Section 2(9) of Insurance Act, 1938 and whether with reference to Section 2(9) a Company which has ceased to be an Insurance Company can come within the ambit of Section 2(9).

63. The Hon"ble Supreme Court in *Vanguard Fire and General Insurance Co. Ltd.* (supra), held that generally the word "insurer" has been defined for the purposes of the Act to mean a person or body corporate, etc., which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. However, it is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be

ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning.

64. In the light of the ratio laid down in the case of Vanguard Fire and General Insurance Co. Ltd. (supra), what can be deduced in the context of the present case is that if Section 2(e) defines employer to mean the person who has the ultimate control over the affairs of the plantation and as per the Explanation that person having ultimate control over the affairs of the plantation would be its director, partner or individual the meaning assigned in the definition clause is to be accepted unless the context otherwise requires. It follows therefore, that "employer would mean the person who has the "ultimate control" over the affairs of the plantation, otherwise, on whose hand the ultimate control is vested regarding the affairs of the plantation. Besides such person, if any other person to whom the affairs of any plantation are entrusted, whatever designation assigned to him, that person shall also be deemed to be the employer in relation to that person. If that be so, on complaining the violation of the provisions of the Act and Rules, a prosecution will sustain against the person who has ultimate control over the affairs of the Company and also against the deemed employer. In the present case, the Directors of the Company are the persons who have ultimate control over the plantation. It is for the Directors of the Company to decide the mode of expenditure for the running of the company. If the company is not according sanction, or making suitable allotment of funds for providing the measures contemplated by the Rules, even if there is a person acting as either Manager or Superintendent or whatever may be the designation, he may not be in a position to provide those amenities contemplated by the Rules. (See Ramakrishna Sharma S. and Ors. -vs- Inspector of Plantations and Ors., reported in ILR 2008 (1) Kerala 303).

65. In the present cases first of all the complaint contains specific allegations against all the respondents that they are persons having ultimate control over the affairs of the plantation. Such an allegation being a question of fact would be subject matter of proof and the respondents would be at liberty to prove during trial that affairs of the plantation have been entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) and hence such other person is to be treated as the employer in relation to that plantation. The respondents are liable to be impleaded as respondents by

virtue of their holding the Office of Directors in the respective Companies.

66. On facts, therefore, the ratio of S.K. Mehra (supra), in R. L. Rikhye (supra) and Rajiv Takru (supra) are clearly distinguishable from the facts of the present case.

67. In the result, the orders passed by the learned Sessions Judge, in the revision petitions, specifically referred to above, are hereby set aside and quashed. The learned trial Court will, now, proceed with the trial of the cases against the accused/respondents herein as well as against the accused/non-revisionist.

68. Accordingly, all the criminal petitions are allowed and the same stand disposed of.

69. Send down copies of this judgment and order to the learned Sessions Judge, Tinsukia and learned Chief Judicial Magistrate, Tinsukia.