

(1963) 03 PAT CK 0007
In the Patna High Court
Case No : Govt. Appeal No. 56 of 1960

State of Bihar

APPELLANT

Vs

G.N. Ojha

RESPONDENT

Date of Decision : 16-03-1963

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 2
Criminal Procedure Code, 1898 (CrPC) — Section 248, 345
General Clauses Act, 1897 — Section 8
Mines Act, 1952 — Section 3, 76

Citation : AIR 1963 Patna 303 : (1963) CriLJ 307

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J;Anant Singh, J

Bench : Full Bench

Advocate : K.P. Verma and Ramananda Sinha, for the Appellant; S. Sarwar Ali, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—The respondent was prosecuted in the Court of Miss A. V. Dean, Magistrate with second class powers, Ranchi, for having committed the offence under Clause 12(1) (a) of the Coal Mines Bonus Scheme, 1948, as also under Sub-clause (2) of the same clause. Sub-clause (1) deals with the requirement of the payment of bonus to the employees by the employer within three months of the accrual of the bonus i.e. within three months from the last date of each quarter in the year. Sub-clause (2) provides for submitting return of compliance with the aforesaid rule. The respondent was prosecuted along with two other persons, S. V. Parkhari and S. R. Pasbicha, as directors of Messrs Karanpura Dewarkhand Colliery Co. Ltd., in respect of a colliery owned by the Company, being Karanpura Dewarkhandi Colliery police-station Khelari, in the district of Ranchi. The prosecution was launched on the report of the Coal Mines Provident Fund Inspector, Ramgah, who, in course of his inspection of the records of colliery, noticed that bonuses to the employees were not paid in time for the quarters ending September 1955, December 1956 and March 1957, but they

were all paid late on 31-1-57, 15-4-57 and 11-7-57, respectively. The report was made to the Regional Labour Commissioner, Dhanbad. After that a petition of complaint was duly filed by the Regional Labour Commissioner (Central), Dhanbad, on the 24th of February, 1958.

2. The prosecution case went on against all the three persons in the usual course. While writing her judgment, the learned Magistrate on reading Clause 12 of the Coal Mines Bonus Scheme, 1948, discovered that the person held to be liable was only "any employer" and that could not be taken to mean more than one employer at a time. Accordingly, she directed the prosecution by order dated the 18th of July 1959, to choose anyone of the three persons against whom the case would stand and to withdraw it against the remaining two. Prosecution, by a petition of that date, withdrew the case against two of the accused persons who were acquitted u/s 248, Code of Criminal Procedure, and confined it thereafter only to the respondent, G. N. Ojha.

3. The learned Magistrate held, on a consideration of the defence case, that there was sufficient cause for non-payment of bonuses to the employees within the time required under Clause 12(1) (a) of the Bonus Scheme, inasmuch as there were factors beyond the control of the employer, such as poor despatches, bank strike, fire in colliery and untimely allotment of wagons. Accordingly, she acquitted him of the charge under Clause 12 (1) (a) for delayed payment of bonus. She convicted the respondent, however, of the offence under Clause 12(2) for failure to file the return in time. She sentenced the respondent, accordingly, to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for one month.

4. The respondent preferred an appeal against the judgment of the learned Magistrate which was heard by the learned Assistant Sessions Judge of Ranchi, who acquitted him, as, in his opinion, withdrawal of the case against one of the accused amounted to withdrawal of the case against all, and prosecution would not be competent against the respondent in that view of the matter. Reliance was placed by the learned Assistant Sessions Judge on a decision of this Court reported in *Shyam Behari Singh v. Sagar Singh* 20 CriLJ 824 : AIR 1920 Pat 828. Reference was also made to the case of *Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others*, wherein it was held by this Court that all the directors of the Company owning the colliery were not liable to prosecution and only one of them, in fact was to be chosen and this was distinguished. The learned Assistant Sessions Judge, however, did not record any finding in favour of the respondent so far as the non-filing of the return of compliance of the rules and regulations in regard to payment of bonus etc. was concerned. The State of Bihar has brought this appeal to this Court against the order of acquittal passed by the learned Assistant Sessions Judge.

5. Learned counsel for the State has contended that the judgment of this Court, which was the basis of the order of acquittal by the learned Assistant Sessions Judge, in *Lala Karam Chand Thapar and Others Vs. The State of Bihar and*

Others, , was set aside by the Supreme Court by their judgment dated the 10th of February, 1961, reported in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , and, thus, the basis of the order of acquittal disappeared and the respondent should now be convicted of the offence with which he was charged.

6. Coming to the question of the main ground of acquittal of the respondent by the learned Assistant Sessions Judge, it may be stated that he acquitted the respondent not on the basis of Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others, , referred to above, but on the authority of the case of 20 CriLJ 824: 1 Pat LT 32 : AIR 1920 Pat 828 . Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others, was considered in passing and sought to be distinguished as it was relied upon by the learned Public Prosecutor. It may be stated, however, that in Lala Karam Chand Thapar and Others Vs. The State of Bihar and Others, , this Court ordered that the complainant should indicate against which one of the directors the prosecution would continue and the two directors preferred two appeals against this direction. The Supreme Court dismissed the two appeals while observing that "any one of the directors" used in Section 76 of the Mines Act, 1952, would include all the directors who were liable to be proceeded against for failure to observe the mining regulations which resulted in the accident; and, as such, punishable u/s 76 of the Mines Act of 1952. The appeals by the Mines Inspector for permission to proceed against all the directors, being Appeals Nos. 98 and 99, were allowed.

7. As for the decision in Shyam Behari Singh's case, 20 Cri LJ 824: 1 Pat LT 32: (AIR 1920 Pat 828) , which relates to the effect of withdrawal of a case against some of the accused in a summons trial and the consequent acquittal u/s 248, Code of Criminal procedure, of the remaining accused, on which the Court below relied, it appears to me that the decision cannot be held to be correct. The learned Judges of this Court came to the conclusion that the effect of withdrawal of the case against some of the accused and their acquittal u/s 248, Code of Criminal Procedure, is that the case cannot proceed against the remaining co-accused as well; and this rested on the case of Chandra Kumar Das and Another Vs. The Emperor . In my opinion, the decision is not in consonance with the wording of Section 248, nor with the principle underlying a criminal trial involving more than one accused person. Section 248 of the Code of Criminal Procedure runs thus:

"If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused".

Section 345 of the Code of Criminal Procedure in Clause (6) provides:

"The composition of an offence under this Section shall have the effect of an acquittal of the accused with whom the offence has been compounded".

It appears to me wrong to say that withdrawal of compliant u/s 248 will be withdrawal of the whole case. It may be partial as well. The Section does not say in whole or part. The Allahabad High Court in the case of Chajju and Others Vs. Emperor, , while referring to the effect of compounding of an offence with some of the accused by the complainant, in a compoundable case, has ruled that the effect of this is not the acquittal of the other accused. Their Lordships observed as follows:

"it seems to us that the view taken by the Madras High Court is right. What the complainant came into Court with was an accusation against four persons, each of whom, he said, has assaulted him. He filed one complaint against all four because all four together at the same time assaulted him and under the law all four could be tried together, as was obviously most convenient. There had been in reality, if his allegations were true, four assaults, or offences punishable u/s 323 of the Indian Penal Code, committed more or less simultaneously. In one sense it was a joint offence, but it was also a separate offence on the part of each assailant. It seems to us, therefore, that the compounding of the offence against one of them could not affect the case against any of the others".

I respectfully agree with the above observation. Their Lordship's attention was drawn to the decision of this Court (1 Pat LT 32): AIR 1920 Pat 828 as also that of the Calcutta High Court Chandra Kumar Das and Another Vs. The Emperor but they expressed their dissent. In Muthia Naik and Others Vs. Emperor, also a Division Bench of that Court expressed a similar opinion. I am inclined to agree with that view; and, hence, it must be held that the decision of this Court is not correct and it must be overruled, inasmuch as the principle which arises for consideration in the case of compounding of an offence u/s 345, Code of Criminal Procedure, is the same as under the provision of Section 248 of the Code. The following observation of Le Rossignol, J. in the case of Anantia v. The Crown AIR 1924 Lah 595 is consonant with this view:

"It seems to me to be a question of fact whenever a complaint is withdrawn u/s 248 whether it is withdrawn as a whole or in part. If the withdrawal of a complaint implied the physical withdrawal of the document on which the complaint is written, it could be contended that the complaint is withdrawn against all the persons implicated."

Section 494 of the Code to which also reference was made appears to have no bearing in this case.

8. This case was ordered to be placed before a larger Bench by a Division Bench of this Court just to consider the effect of the withdrawal of the case by the prosecution against the accused persons except one, all of them being treated as directors of the Company. In view, however, of the proposition of law laid down above, it must be held that the effect of withdrawal against the other director will not necessarily vitiate the trial against one or the other remaining directors.

9. Mr. Sarwar Ali has contended that even so, the petitioner is still not liable to

punishment for violation of Clause 12(2) of the Coal Mines Bonus Scheme. The Coal Mines Bonus Scheme refers to the liability for punishment of an employer which, according to the definition of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (Act 46 of 1948), means an owner. The word "employer", however, referred to in Clause 12 has been defined in Act 46 of 1948 as follows:

"2. In this Act, unless there is anything repugnant in the subject or context.

XXX X X

(e) "employer" means the owner of a coal mine as defined in Clause (g) of Section 3 of the Indian Mines Act, 1923."

Clause (g) of Section 3 of the Mines Act of 1923, in so far as relevant, defines "owner" as follows:

" "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof. . . ." Since the word "owner", under the Indian Mines Act of 1923, means the immediate proprietor, lessee or occupier only, the petitioner, being neither the proprietor, lessee nor occupier, cannot be convicted of the violation of the provisions for payment of bonus and filing a report for payment of it in time. The owner of the mine is the Company as was also admitted by the Inspector Himself, being the Karanpur Devarkhand Colliery. The petitioner is neither owner, lessee nor occupier in the individual capacity. The person who is liable to punishment in terms of Chapter VIII of the Indian Mines Act of 1923 is the person actually involved in the violations referred to in that Chapter. As a matter of fact, in Section 41 reference is made to the liability to punishment of any owner, agent or manager. Learned counsel has contended that although the Mines Act of 1923 has been substituted by the Mines Act of 1952, yet for the purposes of ancillary acts in which reference has been made to the Act of 1923, it is that Act which should be held to be kept alive as was held in the English cases which have been quoted by Craies on Statute Law (12th Edition):--

"Sometimes an Act of Parliament, instead of expressly repeating the words of a Section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the "rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second"."

XX X X X .

" "I agree", said Blackburn, j., "that the authorities show that the repeal of the original Act does not of itself re-pea! provisions as incorporated in a subsequent Act, and without authorities it is but common sense that, where a second Act in effect re-enacts an older Act, the second Act must be expressly repealed as well as the older Act, otherwise it must be taken to remain in force". (1844) QB 343)." Thus, the petitioner is not liable, the owner being the Company. The

prosecution, therefore, should have been started against the Company and fine should have been imposed upon the Company and not the petitioner who was a mere shareholder.

In my opinion, however, no such support can be derived from the above passage from Craies. The first passage in the above quotation refers to the situation in which the previous Act has been altogether repealed, but incidental reference "to this or any other Acts is not for that reason held to be inoperative on account of the repeal of the principal Act. But, where the Act repealed has been re-enacted with or without modification, as has been done in the case of Indian Mines Act, reference to the prior Act has been held to be referable to the subsequent Act, according to the second passage in the above quotation and Section 8 of the General Clauses Act, which runs thus:

"8(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then references in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted." Therefore, the Act of 1952, which took the place of the Act of 1923 is held to be applicable to such a case. This was also laid down by the Supreme Court in *Slate of U. P. v. M. P. Singh* AIR 1960 SC 559 and the following cases; *Moradhwaj Vs. Bhudar Das*, and *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, .

10. Mr. Sanvar Ali urged, in the next place, that even if that be so, the definition of the word "owner" in the Act of 1923 in Section 3(g) is substantially as that in the Act of 1952; and to that extent it may be taken to have reference to the Mines Act of 1923 for defining the word "owner". In the Act of 1952, the same definition is retained, but something is added to the Act in Section 76, where the word "owner" has been explained as meaning particular things with reference to a firm, association of persons, a public Company or private Company.

That is a new provision altogether; and, if the Legislature intended that all such provisions should also apply, then incidental amendment should have been made in Act 46 of 1948 as well. Section 78 provides as follows:

"76. Determination of owner in certain cases.

Where the owner of a mine is a firm or other association of individuals, any one of the partners or members thereof, or where the owner of a mine is a public company, any one of the directors thereof, or where the owner of a mine is a

private company, any one of the shareholders thereof, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable:

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated,--

- (a) in the case of a firm, "any of its partners,
- (b) in the case of an association, any of its members,
- (c) in the case of a public company, any of its directors, or
- (d) in the case of a private company, any of its shareholders,

who is resident in each case in any place to which this Act extends to assume the responsibilities of the owner of the mine for the purposes of this Act, such partner, member, director or shareholder, as the case may be, shall, so long as he continues to so reside be deemed to be the owner of the mine for the purposes of this Act, unless notice in writing cancelling his nomination or stating that he has ceased to be a partner, member, director or shareholder, as the case may be, is received by the Chief Inspector."

This is still more so, because Section 76 will now make a person liable who was not liable under the definition of the word "owner" under the Mines Act of 1923. Hence, the Mines Act of 1952, if at all applicable, should be applied in a limited manner to the extent of the definition of the word "owner", but without adding to it the additional provisions of Section 76.

It has been urged on behalf of the State that Section 76 does not introduce anything new into the Act. It only lays down in precise terms what the word "owner" will be deemed to mean in particular contexts, in that view of the matter, it should not be taken as an addition to but merely as explanatory of the definition of the word "owner" in Section 3(g). In my opinion, although the argument of Mr. Sarwar Ali in so far as it relates to Section 76 of the Act of 1952 making a person liable who would not be liable under the Act of 1923, is not devoid of force, as being in the nature of a penalty which cannot be introduced by way of implication; nevertheless, the argument cannot be accepted. To accede to this position would amount to nullifying Section 8 of the General Clauses Act to a considerable extent and will introduce insurmountable difficulties in the interpretation and application of several statutes, certain provisions of which have been incorporated in other Acts. Having considered the matter fully, therefore, I am inclined to hold that the word "owner" in the light of Section 8 of the General Clauses Act should cover Section 76 of the Mines Act of 1952 as well; and in the case of a company the director or shareholder may be held liable as being comprehended within the scope of the definition of the word "owner".

11. Thus, although the argument of Mr. Sarwar Ali has been negatived with regard to the construction of Section 248 of the Code of Criminal Procedure and

Section 76 of the Mines Act of 1952, the position still has to be considered whether the order of acquittal passed by the learned Assistant Sessions Judge can be interfered with. In my opinion, it is difficult to set aside the order and allow the Government appeal. The respondent was convicted by the learned trying Magistrate on the ground that he was the owner and director, but the evidence led on behalf of the prosecution does not support the conclusion arrived at by the learned Magistrate.

12. In this connection learned counsel for the respondent has taken us through the evidence of the Mines Inspector (P. W. 1) whose evidence on this point is as follows:

"This colliery is owned by a private Ltd. firm, namely, Karanpur Devarkhand Colliery Company Private Ltd. The accused persons are directors of this firm, By directors mean that "they are the shareholders of the company. These persons stay in Calcutta. None of these accused persons is resident Director. I have met one of the directors in colliery three years ago. After that when I visit I meet the manager and not the directors."

Learned counsel has contended that on this evidence it will be incorrect to hold that the respondent was a director on the relevant date. Learned counsel for the State has, however, drawn our attention in this connection to an application filed on behalf of the respondent u/s 205 read with Section 540A of the Code of Criminal Procedure praying for dispensing with their personal presence in the case. In paragraph 3, it is stated-

"That as directors of the aforementioned Firm, the petitioners have frequently to go all over the State and the country from time to time. They will be, therefore, put to a serious loss and the entire work of the Firm will be dislocated if they are compelled to appear in person on every date in Court. The offences with which the petitioners have been charged are moreover as submitted earlier of a technical nature and, therefore, the prosecution ought not to have any objection if the personal attendance of the petitioners is dispensed with." This application is dated the 10th May, 1958. In the written statement filed on their behalf, however, it was said that the allegation that they were directors was not correct. In paragraph 4, they stated as follows:

"That it is alleged in the next place that the Petitioners are the directors of Messrs. Karanpura Dewarkhand Colliery Company (P) Ltd. which are the owners of Karanpura Dewarkhand Colliery. By directors of course he says that he means no more than that they are the shareholders of the company. But when the complainant was asked to confirm the present state of affairs he stated as follows in his cross-examination. "I do not know what is the, present state about the director. I tried to find out (their) names from the Regional Labour Commissioner, but since it was not forthcoming I acted on my five years old knowledge".

It is clear, therefore, that the respondent was challenging the position that he

was the director and it must have reference to his occupying that position at the time that the offence was alleged to have been committed. In order to appreciate whether there is any substance in the stand taken on behalf of the respondent, reference may be made to the Indian Companies Act, 1913, under which it was not necessary for a private limited company to have a director at all. Section 5 of that Act deals with the mode of forming an incorporated company, both public and private. Section 83A (1) provides that every company shall have at least three directors, but that section lays down that it will not apply to a private company except a private company being a subsidiary Company of a public company. Under the Indian Companies Act, however, of 1956, the privilege granted to private companies of doing without directors has been taken away and now, no doubt, private companies also must have directors in terms of Section 252 of the Act. It is also true that when this offence was committed, the Indian Companies Act of 1956 had come into force on the 18th of January, 1956. But the learned counsel has contended that the Act being a new one it is likely that the Karanpura Dewarkhand colliery took some time to regularise matters and no directors were appointed at the time that the offence was committed, although when the application was filed for dispensing with the personal presence of the accused persons in Court, in course of the trial, they may have been appointed directors, and, therefore, this application could not be taken as contradicting the written statement of the accused persons and the statement made by the Mines Inspector (P. W. I). In my opinion, the argument has substance; and it must be held that it has not been established by evidence in this case that during the time of the commission of the offence of non-submission of the return the respondent was a director of this private company.

13. The only further question which arises for consideration is whether the respondent's conviction could be upheld on the ground that he was one of the shareholders of the defaulting company which is a private company. In the case of a private company, Section 76 of the Mines Act of 1952, as referred to above, provides for the liability of a shareholder as well. It appears to me that even so, the conviction of the respondent cannot be supported on that ground either. In the prosecution report submitted by the Inspector, Coal Mines Provident Fund, Ramgarh Circle, which is the basis of the case against the respondent, he was sought to be prosecuted as a director along with the other two co-accused. He was convicted by the trying Magistrate also on that ground. The question of upholding the conviction on a different ground holding him liable as a shareholder cannot arise in the circumstances. To do so would be unfair at this stage, because the prosecution must prove the case on which it relies. But, in the present context, there is a greater difficulty, because Section 76 of the Mines Act of 1952 quoted above contained a proviso as to the circumstances in which all the shareholders would not be held liable but only one of the shareholders might be proceeded against. That question could not be gone into in this case, because it was not the prosecution case at any stage that the respondent was liable, because he was a share holder, but that he was the owner and director.

14. In the result, therefore, the acquittal of the respondent by the learned Assistant Sessions Judge cannot be interfered with although for a reason different from that which found favour with that Court. The appeal is dismissed.

Anant Singh, J.

15. I agree.