

(1962) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Criminal Revision No's. 82 and 83 of 1962

State of Madhya Pradesh

APPELLANT

Vs

D.V. Parkhani and Others

RESPONDENT

Date of Decision : 27-09-1962

Acts Referred:

Coal Mines Provident Fund and Bonus Schemes Act, 1948 — Section 2, 9
Mines Act, 1952 — Section 2(1)

Citation : AIR 1964 MP 222 : (1964) CriLJ 301 : (1964) JLJ 399

Hon'ble Judges : S.P. Bhargava, J

Bench : Single Bench

Advocate : R.J. Bhawe, for the Appellant; R.S. Dabir and V.S. Dabir, for the Respondent

Judgement

S.P. Bhargava, J.—This order shall dispose of Revision No. 82 of 1962. (State v. D. V. Parkhani and others) also.

2. The accused in all these cases were prosecuted before the Magistrate First Class, Chhindwara, on complaints filed by the Labour Inspector. They were charged with having committed breach of para. 9 Clause (2) and para. 10 of the Coal Mines Bonus Scheme) hereinafter called "the Scheme". The said breach is punishable under para. 12 (1) (a) and 12 (2) of the Scheme. The accused were convicted by the trial Court under both the counts and were sentenced to pay a fine of Rs. 30/- and Rs. 20/- respectively for the offences specified. The Additional Sessions Judge, Chhindwara has made a reference to this Court u/s 438 of the Code of Criminal Procedure recommending that the sentences should be quashed.

3. The non-applicants in all these cases are the Directors of limited-liability companies owning coal mines. It is not disputed that they failed to pay bonus in respect of some quarterly periods to their employees who were entitled to get it within two months from the last day of the quarter, under para. 9 (2) of the Scheme. Further, they did not submit Returns, as required by para. 10 of the

Scheme, within the period of one month from the last date by which the bonus in question was required to be paid under the provisions of para. 9 of the Scheme, to the Regional Labour Commissioner.

4. Paragraph 12 of the Scheme provides for penalties. It reads thus :

"(1) Any employer who : --

(a) refused or without reasonable cause, fails to pay any bonus within the period specified for the payment thereof to a person entitled to it under this Scheme;

(b)* * * * (c)* * * * shall be punishable with imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or with both.

(2) Any employer who fails to furnish any return required under paragraph 10 of this Scheme shall be punishable with fine not exceeding one thousand rupees."

5. According to the learned Additional Sessions Judge, the following three questions arose for consideration :

(1) Is mere failure to pay the bonus in time an offence punishable under para. 12 (1) (a) of the Coal Mines Bonus Scheme? or failure to pay bonus without reasonable cause is an offence?

(2) Is the offence of the late submission of returns resulting from late payment of bonus a separate offence and not included in the principal offence?

(3) Are directors of companies individually liable under the Coal Mines Provident Fund and Bonus Scheme Act, 1948?

In my opinion, however, it is not necessary to consider the three questions stated above in detail, because the prosecution must fail on a different ground;

6. Section 9 of the Coal Mines Provident Fund and Bouus Schemes Act, 1948 (Act No. XLV1 of 1948), hereinafter called "the Act", prohibits the Courts from taking cognizance of any offence punishable under the Scheme except on a report in writing of the facts constituting such offence made by an Inspector with the previous sanction of such authority as may be specified in this behalf by the Central Government; It is common ground that the authority specified by the Central Government for the purposes of Section 9(2) of the Act is the Regional Labour Commissioner (Central), Jabalpur. As already stated, cognizance of the offence against the Directors was taken on the written report of the Labour Inspector. The said authority has sanctioned the prosecution of the Limited Companies. His orders sanctioning their prosecution are on record in each case. In none of the cases is there any sanction given to prosecute the Directors of the Companies. It is well established that a Company is a legal entity different from its share holders. The Company is a separate legal entity. It can very well be prosecuted if it is alleged that it is guilty of acts which make it punishable under the provisions of a penal statute. The provisions contained in para 12 of the

Scheme create liabilities only against the "employer." The word "employer" is defined as meaning "the owner of a coal mine" in clause (g) of Section 3 of the Indian Mines Act, 1923 (IV of 1923). The 1923 Act was repealed in the year 1952 by the Mines Act, 1952 (XXXV of 1952). In Section 2(1), thereof the word ""owner" has been defined thus :

" "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 and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver, and in the case of a mine owned by a company the business whereof is being carried on by a managing agent, such managing agent; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an. owner, but not so as to exempt the owner from any liability."

7. Considering this definition it is clear that the; Directors are neither the immediate proprietors nor lessees nor occupiers of the mine or any part thereof. The lessee or the occupier in the present case would be the company itself. Therefore, the Directors cannot be validly prosecuted under the sanction which has been given to prosecute the Company itself by stating that the owners thereof may be prosecuted.

8. In a case where the punishment for the offence is not only imprisonment but imprisonment or fine, as is the position in this case, there is no doubt that the company could be prosecuted and fined. The punishment prescribed in the instant case is not a compulsory sentence of imprisonment and thus the present case differs from the case of *Hawke v. Hulton & Co.*, 1909-2 K B 93, where the only punishment under the Act which created the offence were imprisonment and whipping and the defendant was prosecuted as a rogue and vagabond. In *Anath Bandhu Vs. Corporation of Calcutta*, , the contention before the Court was that under the Indian Criminal Law, a limited company could not be proceeded against. Chunder, J. repelled this contention and took the view that though there may be many offences, which from their very nature could not be committed by a limited company and, therefore, the company could not be prosecuted for them, yet, under the Indian law the company can be prosecuted for an offence. As punishment prescribed for the offence was an alternative punishment of imprisonment or fine, it is clear that the company could be tried for the offence because the precise question before the Court in such a case would be of proper punishment and the alternative provision does not defeat the jurisdiction of the Court to try the company for the commission of any offence. Thus, the sanction which was accorded to prosecute the Company cannot be availed of to prosecute the Directors.

9. For all these reasons, the reference made by the learned Additional Sessions

Judge, Chhindwara is accepted and the convictions and the sentences are quashed.