(2004) 01 PAT CK 0036

In the Patna High Court

Case No : Criminal. Reference No. 1 of 2003

Suresh Prasad Jaiswal and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 01 PAT CK 0036

Final Decision : Allowed

Judgement

S.N. Jha and B.N.P. Singh, JJ.—By this application purportedly filed u/s 89 of the Bihar Reorganisation Act 2000 and Section 395 of the Code of Criminal Procedure the petitioner seek-transfer of the proceedings in Complaint Case No. 366(M) of 1999 from the Court of Shri P.O. Gupta, Judicial Magistrate, 1st Class, Patna to the corresponding Court in the State of Jharkhand in terms of Section 89 of the Reorganisation Act.

2. Section 89 of the said act provides for transfer ("shall stand transferred") of proceedings pending immediately before the appointed day i.e. 15th November, 2000 before a Court (other than the High Court), tribunal etc. in any area which on that day falls within the State of Bihar shall, if the proceeding relates exclusively to territory which as from the appointed day is the territory of Jharkhand State, to the corresponding Court, tribunal etc. in the State of Jharkhand.

3. The case of the petitioners is that the alleged offence which is the subject matter of the aforesaid case, was exclusively committed, as per the complaint, at Chirkunda in Dhanbad district within the territory of Jharkhand State and, as such, in terms of Section 89 of the Act the proceeding stands transferred to the corresponding Court (at Dhanbad) in the State of Jharkhand. In the aforesaid case the allegation against the petitioners is that they failed to produce the records on demand by the Insurance Inspector at the time of inspection of the factory premises at Chirkunda in Dhanbad district and thereby committed offence u/s 85(g) of the Employees'' State Insurance Act, 1948 (in short ''the Insurance

Act'').

4. The relevant part of the complaint may usefully be quoted as under :

"Under Section 45(2) of the ESI Act, Principal employers are required to produce the relevant records including ledger, cash book and vouchers relating to their factory before the Insurance Inspector who visited their factory for the purpose of inspection and also where the records are called for.

The above accused persons failed to produce the relevant records viz. ledger, cash book, relevant vouchers etc. for the period from 1.1.1994 to 31.12.1997 before the insurance inspector who visited the factory for the purpose of inspection dated 1.10.1996, 8.11.1996 and 14.8.1997. Thereafter the accused persons were issued registered show cause notices giving an opportunity to produce the record on 29.5.1998 before the Insurance Inspector, Patna in the inspection office located at Regional Office, ESI Corporation, Panchdeep Bhawan, Patna. But neither the accused persons nor their representative turned up with the said records in the said inspection office on 29.5.1998. However, this office issued another registered letter to the employer on 14/15.7.1998 requesting him to produce the records without fail on 4.8.1998 as per their verbal request.....

The accused persons did not produce the aforesaid records and hence they are liable to be prosecuted for commission of the offence punishable u/s 85(g) of the ESI Act as amended from time to time."

5. Shri A.K. Jain, learned counsel for the petitioners, submitted that from bare reading of the complaint it would appear that the offence, if any, was complete at the factory premises at Chirkunda in Dhanbad district and, therefore, in terms of Section 89 of the Reorganisation Act the case "stands transferred" to the corresponding Court at Dhanbad where the case would have been instituted had the offence been committed after the appointed day i.e. 15th November, 2000. On behalf of the respondents it was submitted that Section 89 of the Reorganisation Act will apply only where the offence was exclusively committed in the territory of Jharkhand. As in this case notice had been issued by Patna Office to produce the records, which the petitioners failed to do, part of the occurrence took place at Patna and hence the case was correctly instituted at Patna, and no ground is made out for transfer of the case to another Court in the territory of Jharkhand.

6. As seen above, the petitioner is alleged to have committed offence u/s 85(g) of the Insurance Act. Section 85(g) deals with punishment for "any contravention of or non- compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided. The allegation against the petitioners is that they failed to produce the records the failure to produce the records at the time of visit by the Insurance Inspector. The relevant provision alleged to have been contravened may also usefully be quoted as under:--

"45. Inspectors, their functions and duties.--(1) ....

(2) Any Inspector appointed by the Corporation under Sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised in this behalf by it, may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied--

(a) ....

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary."

7. From a bare reading of the above provision it would appear that the moment the owner or the person found incharge of office, establishment, factory is asked to produce the records and he fails to do so the commission of offence is complete. In order to attract Section 45(2). It is not necessary to give another notice from the office of the Inspectorate. This is evident from the words "enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents......" These words leave little room for doubt that the Act obliges any person incharge of any office, establishment, factory etc. to produce the records as may be demanded by Insurance Inspector during his visit to such office, establishment, factory etc.

8. It may be that in the instant case notice was issued by the Patna office purporting to give an opportunity of hearing to the petitioners, but there is nothing in the Act to suggest that before launching prosecution the person accused of any non- compliance is to be given any opportunity of hearing. Giving such opportunity, in our opinion, was an exercise so that the petitioners could make amends and produce the records demanded from them. So far as commission of offence is concerned, as per the complaint, the offence was complete the moment the petitioners failed to produce the records. It was thus not necessary for the Insurance Inspector, or any other authority on his behalf, to send notice from the Patna office to produce the records. Section 85(g) of the Insurance Act refers to contravention or "non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided." The non-compliance, if any, having taken place at the factory premises of the petitioners at Chirkunda, it would follow that prosecution would lie in the Court under whose jurisdiction the occurrence took place. The transaction constituting offence was complete on 1.10.1996, 8.1.1996

and 14.8.1996 when the Insurance Inspector visited the factory premises and demanded the register, within the meaning of Section 45(2)(b) read with Section 85(g) of the Insurance Act. Notice sent by the Patna Office on 29.5.1998, 15.7.1998, 2.9.1998 by itself does not constitute an offence, for, as seen above, Section 45(2)(b) contemplates direction to produce the records etc. at the time of visit by the Insurance Inspector which is evident from the words "enter any office, establishment or factory etc." No part of the occurrence or transaction thus took place in territory falling in the State of divided Bihar on the appointed day to take the case out of purview of Section 89 of the Reorganisation Act.

9. On behalf of the petitioners reliance was placed on decision of the Supreme Court in C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, . The relevant part of the judgment relied on by the counsel runs as follows :

"27. If so, we have to gauge the implication of the words "proceeding relating exclusively to the territory" from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before "a Court (other than the High Court), Tribunal, authority or officer" of the Jharkhand State. A very useful index is provided in the section by defining the words corresponding Court, Tribunal, authority or officer in the State of Jharkhand, as this :

The Court, Tribunal, authority or officer in which or before whom the proceeding would have laid if it had been instituted after the appointed day.

28. Look at the words "would have laid if it had been instituted after the appointed day". In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word "exclusively should be understood as" substantially all or for the greater part or principally".

The observations fully support the plea of the petitioners. If there was any doubt about the ''exclusivity'' there cannot be an iota of doubt that the offence was substantially or principally - or greater part thereof - in the State of Jharkhand.

10. In the result, for the reasons stated above, being of the view that the case is covered by Section 89 of the Act, we direct the records of complaint case No. 366(M) of 1999 pending the Court of Shri P.O. Gupta, Judicial Magistrate, 1st Class, Patna be transferred to the corresponding Court in the State of Jharkhand. The petition is allowed accordingly.

