
(2008) 08 JH CK 0019
In the Jharkhand High Court

Tata Construction Project Ltd.

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 91, 94
Factories Act, 1948 — Section 92

Citation : (2008) 119 FLR 240 : (2008) 4 JCR 350

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the learned Counsel for the petitioner. Nobody appears on behalf of the opposite parties.

2. In this application the petitioner has challenged the order dated 29.09.2001, whereby the learned Court below allowed the application filed by the Prosecution and directed the accused Sudhir Kumar Kochhar to produce the concerned attendance register on the next date fixed in the case.

3. Short facts of the case are that a complaint was filed by the complainant, who was the Factory Inspector against the accused persons including the petitioner for the alleged commission of the offence u/s 92 of the Factories Act, 1948. In the complaint it was alleged that against the provision of the Bihar Factories Rule 1956 Tata Iron and Steel Company Ltd. got a labour employed in construction of Cold Rolling Mill without giving proper facilities to the labourer namely Late Mangal Singh, who died in an accident on 24.09.1998 while discharging his duty and therefore, the said action of the accused including the petitioner was punishable for the offence u/s 92 of the Factories Act, 1948.

4. Pursuant to the said complaint, cognizance was taken against the accused person for the offence u/s 92 of the Factories Act.

5. In course of trial a petition was filed on behalf of the prosecution , purported

to be u/s 91 of the Code of Criminal Procedure 1973, in which a prayer was made to direct the accused Sudhir Kumar Kochhar to produce the concerned attendance register for the just decision of the case.

6. The learned Magistrate by the impugned order allowed the said prayer made on behalf of the prosecution relying on the decision of the Allahabad High Court reported in 1971 All. L.J. 389.

7. Mr. A.K. Chaturvedi, learned Counsel appearing for the petitioner submitted that in the Case of State of Gujarat v. Shyamlal Mohanlal Choksi and Anr. reported in AIR 1965 S.C. 1251 held that the words used the person in Section 91 of the Code of Criminal Procedure does not include the accused in the Case.

8. Section 91 of Code of Criminal Procedure provides that whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

9. This Section 91 of the Cr. P.C. 1973 is equivalent to Section 94 of the Code of Criminal Procedure 1898. The Supreme Court in the aforesaid case held that the word used the person in Section 91 does not include the accused of the Case. The present Case is fully covered by the decision of the Supreme Court in the Case of State of Gujarat v. Shyamlal Mohanlal Choksi and Anr. (Supra).

10. Accordingly, I hold that the learned Magistrate has no jurisdiction to direct the accused to produce the concerned attendance register in exercise of the power u/s 91 of Code of Criminal Procedure.

11. Accordingly, this application Is allowed and the Impugned order dated 29.09.2001 passed by the learned Court below is quashed.