

(1958) 08 PAT CK 0016
In the Patna High Court
Case No : Criminal Ref. No. 28 of 1955

The State	Vs	APPELLANT
Thakur Aditya Narain Singh and Another		RESPONDENT

Date of Decision : 06-08-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Mines Act, 1952 — Section 17, 69

Citation : AIR 1959 Patna 222 : (1958) 6 BLJR 777 : (1959) CriLJ 642

Hon'ble Judges : U.N. Sinha, J; S.C. Misra, J

Bench : Division Bench

Advocate : G.P. Sahi, for the Appellant; Baldeva Sahay and Sushil Kumar Mazumdar, for the Respondent

Judgement

S.C. Misra, J.—This is a reference by the learned Additional District Magistrate, Dhanbad, for enhancement of the sentence passed on Thakur Aditya Narain Singh and Ramnath Dubey. They were prosecuted u/s 69 of the Mines Act (Act XXXV of 1952). The prosecution case was that Thakur Aditya Narain Singh, the owner of the colliery, and his agent Ramnath Dubey, had run the Madhudih Colliery, Dhanbad, without a qualified manager.

Section 17 of the Mines Act lays down that every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management & direction of the mine, and the owner or agent of every mine shall appoint himself or some person, having such qualifications, to be such manager. Section 69 of the Act provides the penalty for the person responsible for running the colliery in the event of its failure to appoint a manager as required u/s 17 of the Act. The punishment is imprisonment for a term which may extend to three months or fine which may extend to five hundred rupees, or both, and, if contravention is continued after conviction, a further fine may be imposed which may extend to one hundred rupees for each day on which the contravention is so continued. On 31-3-1954, the accused person appeared

before the learned Magistrate trying the case and pleaded guilty to the charge.

The learned Magistrate, accordingly, found them guilty u/s 69 of the Mines Act and ordered them to pay a fine of Rs. 200/- each, in default, to undergo simple imprisonment for two months each. In view of the plea of the accused persons, the learned Magistrate did not think it necessary to investigate as to whether the accused had committed the offence and, if so whether there were circumstances which might extenuate the offence.

2. It appears that thereafter the Mines Department made an application before the Additional District Magistrate under Sections 435 and 438, Code of Criminal Procedure, for reference of the case against Thakur Aditya Narain Singh and Ramnath Dubey to this court for enhancement of the sentence passed upon them, as the sentence of fine of Rs. 200/-, each was considered to be inadequate, the contravention of the provisions of Section 17 having been continued for a period of nearly five months. The learned Additional District Magistrate has accordingly made the reference to this court recommending the award of a higher penalty on the two accused persons.

3. Mr. Baldeva Sahay who appears against the reference, has contended that there is no justification for the imposition of any higher penalty even in terms of Section 69 of the Mines Act. Section 69 in itself does not lay down any particular standard which should guide the court in passing a sentence for contravention of the provisions of Section 17, but it lays down that if the contravention is continued after conviction then a further fine of Rs. 100/- for each day of the contravention continued may be imposed.

In the present case, if there was such further contravention, it was proper for the Mines authority to bring the matter to the notice of the court for imposition of the additional penalty laid down in that section. Learned counsel for the State has, however, urged that the reference should be accepted as the clause providing for additional penalty u/s 69 is not really invoked in the present case.

That clause may be construed as a provision for further fine for continued contravention after conviction in the same proceeding or it may even be that once an accused person has been convicted for contravention of the provisions of Section 17, in the subsequent prosecution that order may be brought to the notice of the court to be taken into account for a higher penalty. But that construction is not relevant in the present case because here the reference is for enhancing the sentence, in view of the fact that the learned Magistrate should have considered the failure to appoint the manager for a period of five months.

It was not merely a technical offence where the owner of the mine failed to appoint a manager for sometime which might be an offence of a simple nature. In the present case, the offence was almost deliberate and the owner of the mine had run the colliery without a manager to make* larger profits out of it in utter disregard of the safety of the miners and other persons who had to go down to the pit to raise coal out of the colliery.

The contention of the learned counsel for the State may be correct and it may well be that the learned Magistrate, who tried the case, could have imposed a higher sentence. As it is, however, the fact remains that he thought it proper in his discretion to impose a fine of Rs. 200/- on each accused and now we have to see whether the sentence, in the circumstances disclosed in the case, is so inadequate and necessarily to call for its enhancement by this court in its revisional jurisdiction.

4. Learned counsel for the State has urged that the court should have suo motu considered the question of continued contravention for five months. The learned Magistrate, in the report that he has submitted, has stated that if the gravity of the offence rested upon continued breach of the provisions of Section 19 for five months, it was incumbent on the Department to have instituted the proceeding earlier. In my opinion, the explanation submitted by the learned Magistrate appears to be reasonable.

It will be too much to expect of a court of law to start a scrutiny of certain circumstances which might aggravate the offence so as to call for deterrent sentence. In the present case, no doubt, our attention has been drawn by the learned counsel for the State to the report of the Mines Inspector in which he has referred to various breaches committed by the owner of the mine regulations. He has been able to bring to our notice a reference in the report to the conviction of Thakur Aditya Narain Singh by a Dhanbad Magistrate on 5-9-1952, when he was convicted and sentenced to pay a fine of Rs. 25/-.

In my opinion, however, the reference to this statement in the report is immaterial. In the first place, it is not very clear as to what is meant in the report by saying that the owner of this mine was convicted on "5-9-1952, by the Sub-divisional Magistrate of Dhanbad for working Madhudih Colliery in two cases. I cannot understand, *prime facie*, how two cases could have been started against the owner of the mine apparently for contravention of the provisions of Section 17 of the Act in which judgment was delivered by the learned Magistrate on the same day, because, evidently, it must have been for the same period.

Even as it is, however, it appears to me to be immaterial to refer to that matter because in this court only an affidavit has been filed by Thakur Aditya Narain Singh explaining the circumstances in which a manager was not appointed in the Colliery during the period for which he was prosecuted. If we leave out of consideration the affidavit, however, as it is filed at this stage, we have likewise to leave out the report of the Mines Inspector, because if the matter contained in the report had been brought to the notice of the learned Magistrate in course of the trial on the question of sentence, even when the accused pleaded guilty, the accused would have been in a position to put before the court the circumstances which would minimise the nature of the offence even if it continued to be a technical offence. In the result, therefore, I am not prepared to look to what is contained in the report even as I am not taking into account the affidavit filed on behalf of Thakur Aditya Narain Singh, the owner of the mine.

5. The conclusion, therefore, is that it does not appear to be a fit case in which the reference should be accepted and the sentence passed upon the owner of the mine or upon his agent should be enhanced. Learned counsel for the State, however, has urged that considering the responsibilities of the owner of the mine with regard to the safety of the workers underground, a mere sentence of fine should not be considered to be adequate where the contravention of the salutary provision of law contained in Section 17 appears to be deliberate.

It may be observed, therefore, that in a fit case it should be the duty of the Mines Department to put proper material before the trying Magistrate to convince him that the particular case is one where deterrent punishment should be given either by way of sentence of imprisonment or the maximum amount of fine laid down u/s 69 or whatever is considered fit. It is, true, no doubt, that the court is not bound by the prayer on behalf of the prosecution, but in the peculiar circumstances of prosecution for such offences it is appropriate that the attention of the learned Magistrate should be drawn to the question of sentence as well which may be justified in the context of the case.

If the trying Magistrate thinks it proper in spite of his attention being drawn to it to award a "punishment which, in the circumstances, appears to be inadequate, it is always open to the prosecution to move the Sessions Judge or this court in its revisional jurisdiction to enhance the penalty. Unfortunately, in the present case that has not been done, and, as I have mentioned, it is not a fit case to enhance the sentence.

6. The reference is accordingly discharged.

U.N. Sinha, J.

7. I agree.