
(1990) 04 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No's. 1369, 1372, 1935 and 1983 of 1987 (R)

Triloki Nath Raina

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Cattle Trespass Act, 1871 — Section 20
COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 12
Criminal Procedure Code, 1973 (CrPC) — Section 197, 2
Mines Act, 1952 — Section 17, 18, 67, 75, 76
Penal Code, 1860 (IPC) — Section 21

Citation : (1990) 38 BLJR 1210

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Judgement

L.P.N. Shahdeo, J.—In all these four Cri. Misc Nos. 1935 of 1987 (R), 1983 of 1987 (R), 1369 of 1987 (R) and 1972 of 1987 (R), Mr. Triloki Nath Raina, Director (Technical) of Central Coal Fields Limited, is the petitioner, who has since retired.

2. In all the cases, the petitioner is the same person and common question of law has been involved, which was also argued together by both the parties and as such all the aforesaid cases have been taken up together for the sake of convenience for disposal with the consent of both the parties.

3. In Cri. Misc. No. 1935 of 1987 (R), the petitioner has prayed for quashing the entire criminal prosecution including the order taking cognizance dated 15-7-1986 passed the Chief Judicial Magistrate Daltonganj, whereby the Chief Judicial Magistrate had taken cognizance against the petitioner for the offence under Rule 22-A of the Payment of Wages (Mines) Rules, 1956.

In Cri. Misc. No. 1983 of 1987 (R), the petitioner has prayed for quashing the entire criminal prosecution including the order taking cognizance dated 4-9-1986

passed by Sri S. Kunkal, Judicial Magistrate, 1st Class, Ranchi, whereby and whereunder the learned Magistrate had taken cognizance for the offence punishable under Rule 22-A of the Payment of Wages (Mines) Rules, 1956.

In Cri Misc. No. 1369 of 1987 (R), the petitioner has prayed for quashing the entire criminal prosecution including the order taking cognizance dated 15-5-1986 passed by Sri S. Kunkal, Judicial Magistrate, 1st Class, Ranchi, whereby and whereunder the learned Magistrate had taken cognizance against the petitioner for the offence u/s 67 of the Mines Act, 1952,

In Cri. Misc. No. 1372 of 1987 (R) the similar prayer has been made by the petitioner for quashing the criminal prosecution including the order taking cognizance dated 15-5-1986 passed by Sri S. Kunkal, Judicial Magistrate, 1st Class, Ranchi, whereby and whereunder the learned Magistrate had taken cognizance against the petitioner for the offence u/s 67 of the Mines Act, 1952.

4. In Cri. Misc. No. 1935 of 1987 (R), the allegation against the petitioner was that when the complainant/opposite party, Labour Enforcement Officer (Central), Ranchi, had inspected Hutar Mines in the district of Palamau had found irregularities of breach of Rules 8(1), (i), 8(1)(i), 8(1)(1), 8(1)(u), 8(?) and also breach of Rules 17 and 5-A, which all were punishable under Rule 22-A of the Payment of Wages (Mines) Rules, 1956, and he had submitted report.

Similar breach of the Rules were found in respect of Cri. Misc. No. 1983 of 1987 (R), when the Labour Enforcement Officer (Central), Ranchi, had inspected the Darka Bukhuka Colliery of the Central Coal Fields Limited, in the District of Ranchi.

In Cri. Misc. No. 1369 of 1987 (R), the allegation against the petitionsr was that when the complainant/opposite party had visited Karanpura Dewir-hand Colliery in the district of Ranchi, he found that the persons were employed in the Mines for more than six days in a week including on Sundays, the same constituted an offence punishable u/s 67 read with Section 18 of the Mines Act, 1952.

In Cri. Misc. Not 1372 of 1987 (R), the allegation against the petitioner was the same, as stated in Cri. Misc. No. 1369 of 1987 (R), that the persons were employed in the Mines for more than six days in a week including on Sundays and the same constituted an offence punishable u/s 67 read with Section 81 of the Mines Act, 1952, and in this case the Mines involved was Dakra Colliery in the district of Ranchi.

5. The Labor Enforcement Officer (Central), Ranchi, had submitted prosecution report in all the aforesaid cafes as a result of which cognizance in all the aforesaid cases for the offences as indicated above were taken against the petitioner, which are being challenged in these four applications before this Court.

6. Mr. K.D. Chatterjee, Sr. Advocate, appearing on behalf of the petitioner in all the aforesaid cases, has raised preliminary objection and submitted that the order taking cognizance against the petitioner in all the aforesaid cases are void

because no prior sanction, in all the cases, was taken from the Central Government for criminal prosecution against the petitioner, which is imperative u/s 197 of the Code of Criminal Procedure. Therefore, it was submitted that admittedly, the petitioner In all the aforesaid cases, was the Director (Technical) of the Central Coal Fields Limited, and he was appointed by the President of India and he was a Public Servant within the meaning of Section 21 of the Indian Penal Code at that relevant time and as such the criminal prosecution launched against the petitioner, in all the aforesaid cases, without previous sanction as required u/s 197 of the Code of Criminal Procedure, is void and invalid and on this point alone, these applications, are fit to be allowed and the orders taking cognizance against the petitioner, in all the aforesaid cases, are fit to be quashed.

7. On the other hand, it was submitted on behalf of the complainant opposite party by Miss, Indrani Choudhary that the petitioner cannot be said, to be the Public Servant within the meaning of Section 21 of the Indian Penal Code and as such no sanction was required for his prosecution u/s 197 of the Code of Criminal Procedure. It was also submitted by Miss. Indrani Choudhary that the petitioner is not removable from his office save by or with the sanction of the Central Government. It was lastly submitted that the petitioner has been prosecuted for contravention of different Acts and Rules as such Section 197 of the Code of Criminal Procedure is not applicable for committing offence in respect of those Acts or Rules. It was submitted that sanction, which is required u/s 75 of the Mines Act was taken as such no further sanction is required to be taken u/s 197 of the Code of Criminal Procedure, The petitioner is nominated as the owner of the Mines u/s 76 of the Mines Act and he is, therefore, being prosecuted for committing the offence under the Mines Act, 1952 and as such no sanction is necessary for the prosecution of the owner,

8. In the complaint petition, there were two other accused, who had been designated as the Dy. Chief Mining Engineer and Mines Manager. They have not approached this Court and only the petitioner has approached this Court for quashing the criminal prosecution against him, who was being prosecuted as Director (Technical) of the C.C.L.

9. The State has filed counter affidavit in Cri Misc. No. 1372 of 1987 (R) and in Cri. Misc. No. 1369 of 1987 (R). No counter affidavit has been filed in other two cases, i.e., Cri. Misc. No. 1935 of 1987 (R) and in Crim. Misc. No. 1983 of 1987 (R).

10. The crucial and important point for investigation and determination in all the aforesaid cases is as to whether the sanction is necessary for prosecuting the petitioner in respect of the offences alleged to have been committed by him in the aforesaid cases.

11. Section 21 of the Indian Penal Code has defined the "Public Servant". By the amendment Section 21-B has been introduced in this section, which says that in service or pay of local authority, a corporation established be or under the

Central or State Act or a Government Company as defined u/s 617 of the Indian Company Act, 1956. This shows that employees working in the corporation have been also included within the definition of "Public servant". The petitioner has been described as the Director (Technical) and nominated owner in the complaint petition. Therefore, there is no doubt that in view of the definition given in Section 21 of the Indian Penal Code, the petitioner can be safely included within that definition and he must be held to be a Public Servant. The petitioner has asserted in his petition that he was presidential appointed and was appointed by President of India which is also supported by the articles of association, which says that all the members of the Board of Directors including Vice-Chairman/ Managing Director/Executive Functional Director shall be appointed by the President of India in consultation with the Chairman of Company. The Central Coal Fields Limited is a Central Government undertaking and it must be deemed to be the State within the meaning of Article 12 of the Constitution of India and it is also a company within the meaning of Section 617 of the Indian Company Act, 1956. It is the Central Government owned company. The question, therefore, which falls for consideration is as to whether the previous sanction of the Central Government is necessary for launching criminal prosecution against the petitioner u/s 197 of the Code of Criminal Procedure.

12. Section 197 of the Code of Criminal Procedure says that a Judge or a Magistrate or a Public Servant not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction.

13. As found above, the petitioner is a public servant; who was appointed by the President of India. The petitioner is being prosecuted not in the individual capacity but he is being prosecuted in official capacity for not doing his official duty in relation to the Act or Rules. The undertaking or company owned by the Central Government or such corporation is deemed to be the State within the meaning of Article 12 of the Constitution of India and, therefore, the activities of that Corporation must be in connection with the affairs of that State. That section has given a protection to such a person, who is the public servant who is only removable from his service by the Central Government, if he had committed any offence in discharge or purported to discharge of his official duties, the sanction of the Central Government is necessary requirement. In this case, admittedly, the sanction of the Central Government for criminal prosecution of the petitioner has not been obtained. Therefore, fundamental previous requirement for prosecuting the petitioner is that sanction of the Central Government must be obtained and failure to obtain sanction is fatal lacuna for launching the criminal case against the petitioner. This protection has been introduced in Section 197 of the Criminal Procedure Code, to give protection to the officers from unnecessary harassment or embarrassment while discharging of their official functions. A restriction has been imposed that no court can take cognizance without previous

sanction of either the Central Government or the State Government under whom, that public servant was working, in his official capacity for any Act said to have been done in that capacity, In this case, the prerequisites of sanction for prosecuting the petitioner has admittedly, been not obtained. Therefore, the criminal prosecution of the petitioner without such necessary legal requirement must be held to be bad in law and on this ground alone, the criminal prosecution of the petitioner is fit to be quashed in all the cases.

14. In this case, there are two persons against whom cognizance has also been taken, but they have not filed any application for quashing and they are the Deputy Chief Mining Engineer and Mines Manager.

15. Section 17 of the Mines Act, 1952, says that the Manager shall be responsible for the overall management; control, supervision and direction of the mines and all such instruction when given by the owner or agent shall be confirmed in writing forthwith. Section 18 of the Mines Act, 1952, described the duties and responsibilities of owners, agent and manager. When a manager is named in the mines, he shall be responsible for day-to-day affairs of the company or the corporation. In this case, the petitioner is being prosecuted only because he happens to be one of Directors (Technical) of the Corporation and by this time he has already superannuated from the service and when other two competent persons, agent or manager have already been made accused, the criminal prosecution of the petitioner only in the capacity of (he Director, was not necessary and appears to be frivolous act and his criminal prosecution in the facts and circumstances, appears to be also vexatious. He was being one of the Director of the appex. body at that time, cannot be expected to discharge the day to day affairs of the mines of any particular area, for which agent and manager are there, to look after the day to day affair of that mines. It is not a case that manager or agent is not named, therefore, all the Directors should be held responsible for the (sic) to day compliance of Act and Rules. It is a case, in which manager and agent were, and whose duties and responsibilities have been described in the Mines Act and they were also made accused in complaint petition. When the responsibilities of the manager or the agent for day to day affairs of the company have been fixed, the criminal prosecution of the petitioner in the capacity of Director with respect to day to day affairs of the company, appears to be wholly bad, unwarranted, unjust and not maintainable in law.

16. In this case, the petitioner was not being prosecuted as the owner, but he has been prosecuted as the Director (Technical) of the C.C.L. He has not been specifically made an accused in this case. In this case the accused is Central Coal Fields Limited through the petitioner, designated as Director (Technical). The moment petitioner has retired from the service, he ceased to act or perform official duty of the Director (Technical) and he cannot be prosecuted for that offence individually as he has not been made an accused separately from that of the corporation. Hence criminal case against the petitioner is not maintainable in his personal capacity at present.

17. It appears that of the Mines Act, there is additional precaution taken that the criminal prosecution cannot be started without previous sanction of the competent authority named u/s 75 of the Mines Act.

Section 75 of the Mines Act says that owner, agent or manager cannot be prosecuted for any offence nor any case shall be instituted against them for any offence under the Mines Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, but for taking cognizance of the offence a further additional precaution has been provided u/s 197 of the Code of Criminal Procedure, if the owner of the mines is a person, who was appointed by the President of India. In this case the sanction as required u/s 197 of the Code of Criminal Procedure is necessary for prosecuting such owner also. Therefore, the argument that the petitioner was being prosecuted in the capacity of the owner for which no sanction as required u/s 197 of the Code of Criminal Procedure, is not tenable in law and has to be rejected.

18. It is made clear that in the Mines Act for initiating a criminal prosecution, sanction of competent authority u/s 75 of the Mines Act is required and sanction also u/s 197 of the Code of Criminal Procedure is necessary for filing a complaint in the court or for taking cognizance of an offence against such public servant, who are appointed by the Central Government or by the State Government, Sanction is pre-requisite before taking cognizance if this pre-requisite is not obtained from the Central Government or the State Government, the criminal prosecution in respect of that person without such sanction must be held to be bad in law and criminal prosecution of such person is invalid from the very beginning of the taking of the cognizance for the offence. In these four aforesaid cases, the petitioner has been charged not as the owner but he has been charged as the Director (Technical) of the Central Coal Fields Limited.

19. Another argument advanced on behalf of the opposite party, which has no substance that for prosecuting a person under the Mines Act or Rules, the provision of Section 197 of the Code of Criminal Procedure has no application!, It should be noted here that the case has been filed under Criminal Procedure Code. The procedure provided under this Code has been followed. Cognizance has been taken under the provisions provided in this Code. Therefore, the argument that requirement of Section 197 of the Code of Criminal Procedure is not applicable in case of the offence committed under the Mines Act has to be rejected.

20. Section 2(N) of the Code of Criminal Procedure defines offence, which means any act or omission made punishable by any law for the time being in force and includes any act in respect of which complaint may be made u/s 20 of the Cattle Trespass Act. Therefore, the definition of the offence is wide enough to include offence punishable under any law including the offence under the Mines Act or Rules. Therefore, the offences or contraventions, which have been made an offence under the Mines Act or its Rule includes within the definition of an

offence, as defined u/s 2(N) of the Code. Therefore, it follows that such offence is tried according to the procedure of the Criminal Procedure Code. It must be tried according to the requirement of the Code and Section 197 of the Code says that no court can take cognizance of the offence without sanction in certain cases and therefore, obtaining sanction for prosecution of such person for such offence is necessary. If it is not obtained, the criminal prosecution for that offence against that person must be held to be bad in law and must be struck down. Therefore, the argument that Section 197 of the Code of Criminal Procedure is not applicable when offence is committed for the Mines Act is wholly without any substance and must be outright rejected.

21. In the result, for the reasons stated above, all the aforesaid applications are accordingly allowed. The Criminal Prosecution of the petitioner in respect of all the aforesaid cases including the order taking cognizance in those cases against the petitioner only, are quashed. However, it is made clear that the trial court will proceed with trial in respect of other accused expeditiously.