

(2006) 11 PAT CK 0096

In the Patna High Court

Case No : Criminal Miscellaneous No's. 26209 and 31771 of 2002

Vijay Kumar Singh and Others and Krishna Kamal Prasad @
Krishna Kant Prasad and S.K. Gupta

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Bihar Factories Rules, 1950 — Rule 11, 3, 3A, 4, 5
Bihar Minor Mineral Concession Rules, 1972 — Rule 21, 9
Factories Act, 1948 — Section 105, 106, 119, 2, 6
Mines Act, 1952 — Section 2

Citation : (2007) 1 BLJR 65 : (2007) 113 FLR 137 : (2007) 2 LLJ 1015 : (2007) 1 PLJR 389

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Jha, J.—Heard the parties.

2. Both these two applications having similar nature are heard together and being disposed of by this common order.

3. These two applications are for quashing the orders dated 10.6.2002 passed by the Chief Judicial Magistrate, Rohtas at Sasaram, in Official Case Nos. 67/2002 & 68/2002, whereby cognizance has been taken for the offences under Sections 6 and 7 of the Factory Act punishable u/s 92 of the Factory Act against these Petitioners.

4. Prosecution case in short is that these Petitioners have violated the provisions of Section 6 read with Section 7 of the Factory Act and Rules 3, 3A, 4 and 5 of Bihar Factory Rule, 1950.

5. It is stated that on 6.9.1999 a lease deed was executed in Form-D under Rule 21 of Bihar Minor Mineral Concession Rules, 1972 in favour of Petitioner No. 1

and Petitioner No. 2 (Names of all the petitioners as also the facts have been taken from Cr. Misc. No. 26209/2002) by the authorised authority of O.P. No. 1 by which mining lease for sand stone in respect of 3.50 Acres of land situated at Mouza-Basa, Plot No. 723(Part) registered District Rohtas, bearing Cadestra-1 Survey No. 221 for a period of ten years with effect from 27.9.1993 to 26.9.2003 and as such they became mine owner for extracting the above said Mineral from the aforementioned Mines. They have nothing to do with Plot No. 722. Similarly, a lease deed was also executed in favour of Petitioner No. 3 Ram Chandra Razak on 12.11.1990 for a period of ten years with effect from 18.2.1990 by O.P.No. 1 in respect of mining lease for sand of 1.6 Acres of land at Mauza-Basa, Plot No. 723, registered District Rohtas which expired on 17.2.2000 and since then he is not operating mining work there. He has nothing to do with Plot No. 722.

6. Likewise, another lease deed was executed in Form-D in favour of Petitioner Nos. 4 and 5 in respect of 1.15 Acres of land at Mauza Basa and Fazilpur for sand stone which expired on 3.5.1994 and for that they are not doing any mining operation in the above lease hold area.

7. Similarly, another lease deed was executed on 22.11.1994 in Form-D in favour of Petitioner No. 6, namely, Kashi Nath Ram for mining lease for sand stone in respect of 0.75 Acres of land situated at Mouza-Basa, Plot No. 723, District Rohtas, for a period of ten years with effect from 27.4.1993, He has nothing to do with Plot No. 722.

8. In the same way, another lease deed was executed in the above said rule in favour of Petitioner No. 7, Tileshwar Pd. Gupta for a Period of ten years which expired on 7.2.1991 and he has nothing to do with the above said Mining lease hold area or with Plot No. 722.

9. In the facts and circumstances, it has been stated that it is manifestly evident that Petitioner Nos. 1, 2 and 6, namely, Vijay Kumar Singh, Gupteshwar Singh and Kashi Nath Ram are operating their mines and for extracting the Minerals from their Mines and they sometime use crushing machine. The rest of the petitioners were performing some minor operation using crushing machine for extracting of Stone Minerals and Stone chips.

10. In nutshell, it has been stated that whether their ex-lessee or lessee are being granted Mining lease for sand stone under Rule-9 of the Bihar Mining Minerals Concessions Rules, 1972 and a lease deed has been executed in Form-D under Rule 21 in their favour is not known. Part-II of the said Form-D deals with the liberties, power and privilege to be exercised and enjoined by the lessess/ lessees, subject to the restriction and condition in Part-III. Clause-I of the above said Part-II in Form-D gives liberties and powers to the lessees to enter upon the lease hold area to Carry away and dispose of the said Mineral(stone chips). They are also authorised to erect, construct and maintain the said lease machinery. In nutshell, it has been stated that the main object of the Mines and Minerals (Development and Regulation) Act, 1957, is an Act to provide for the

development and regulation of Mines and Minerals under the control of Union and as such the Petitioners by virtue of their lessees and in terms of the Rule and Regulation, they use or used Machinery and equipments like compressor, crusher, Machine for extraction and development of the Minerals. Petitioners were granted a bare piece of "Pahar" covered with thick layer of earth and they used some equipment to dig and remove that layer of soil and thereafter they extract mixed stone comprising of stone, soil and other useless or dead particles for obtaining the Stone Chips, metal etc.

11. O.P. No. 2 Ugra Narayan Pandey, Factory Inspector, Rohtas, submitted prosecution report bearing Case No. 67/2002 without verifying any fact and prayed before the learned court below to take cognizance under Sections 105, 106 and 119 of the Factories Act, 1948, for violation of the provisions of Section 6 read with Section 7 of the Factories Act and under Rule 3, 3(A), 4, 5 and 11 of: Bihar Factory Rules, 1950, against the Petitioners.

12. It is further stated that the learned court below took cognizance under Sections 6 and 7 of the Factories Act punishable u/s 92 of the Factories Act without applying its mind to the facts and circumstances of the case.

13. It is further stated that it would be manifestly evident that the petitioners are doing their Mining operation in their lease hold areas for which they are at liberty under the Mines Act, 1952, Mines and Minerals (Development and Regulation) Act, 1957 as well as under the BMMC Rules, 1972. Learned Counsel for the Petitioners has also submitted that such operation of mining activities for the purpose of extracting Stone Chips etc. would not be attracted by any Factories Act and as such they would not be liable for any such violation of the Act, and the same it, without jurisdiction. Moreover, Factories Act also enjoins application of such law working on any date of the preceding twelve months when ten or more workers are working and in any part of which a manufacturing process is being carried on with the aid of powers. Clause-II of the definition also shows that where twenty or more workers are working or were working on any day of the preceding twelve month and in any part of which manufacturing process is being carried on the aid of powers, then only there would be application of Factories Act. It does not include a Mine subject to the operation of (Mines Act, 1952 XXXV of 1952) or (A mobile unit belonging to the armed forces of the Union, the railway running shed or a Hotel, restaurant or eating place). It has been further submitted that it would be manifestly evident that only five workers were working in the Mines lease hold area of Petitioner Nos. 1, 2, 3, 4, 5 and 7 whereas in the Mines of Petitioner No. 6 only six workers were working showing that the petitioners' Mines lease hold area can not be said to be a factory within the meaning of the word "FACTORY" as defined in Clause-m of Section 2 of the Factories Act, 1948.

14. Reference of Mines Act, 1952, Clause (jj) of Section 2 of Mines Act has also been made at the time of argument. In nutshell, it has been stated that the impugned order dated 10.6.2002 is bad in law in facts besides the fact that the

learned court below erred in law in defining Sections 6 and 7 of the Factories Act which is not applied in the case of Mines and that no ingredient for constituting any offence punishable under the Factories Act is fulfilled. Rather, the Factory Inspector has not applied his mind in the facts and circumstances of the petitioners' case and submitted the prosecution report.

15. Citation of order dated 5.12.2005 passed in Cr. Misc. No. 26618/2002 by a Bench of this Court has also been made whereby in similar case cognizance order had been quashed and the Cr. Misc. petition was allowed.

16. Learned Additional Public Prosecutor appearing on behalf of the State also conceded the aforesaid factual and legal position.

17. In the facts and circumstances, I do feel that the impugned orders require interference for the ends of justice.

18. In the result, both these two applications are allowed and the impugned orders dated 10.6.2002 passed by the Chief Judicial Magistrate, Rohtas at Sasaram, in Official Case Nos. 67/2002 and 68/2002 are hereby quashed.