
(2019) 07 JH CK 0106

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 199 Of 2010

Vikash Ranjan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Contract Labour (Regulation And Abolition) Act, 1970 — Section 2(1)(c), 12(1), 12, 23, 24, 25, 26, 27

Negotiable Instruments Act, 1881 — Section 141, 142, 142(1)

Citation : (2019) 07 JH CK 0106

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Sanjay Kumar Thakur, Sanket Khanna

Final Decision : Allowed

Judgement

1. Heard Mr. Sanjay Kumar Thakur, counsel appearing on behalf of the petitioner.
2. Heard Mr. Sanket Khanna, counsel appearing on behalf of the opposite party no. 2.

3. This petition has been filed for quashing the order dated 23.12.2008 taking cognizance against the petitioner under Sections 23 and 24 of Contract Labour (Regulation and Abolition) Act, 1970 by the Chief Judicial Magistrate, Ranchi in connection with C-III 311/2008. The counsel for the petitioner submits that the entire criminal proceeding as against the petitioner is fit to be set-aside on account of following reasons:

(a) As per the complaint petition, the sole accused is the partnership firm, namely M/s A.V.V. Enterprises, the contractor of Food Corporation of India and the petitioner is only a partner of the firm but cognizance has been taken against the petitioner in individual capacity. He submits that section 25 of Contract Labour (Regulation and Abolition) Act, 1970 is pari materia with that of Section 141 of Negotiable Instruments Act, 1881. He submits that on the face of the

complaint petition, there is no allegation against the petitioner in his individual capacity and there is no such statement made in the complaint petition that the petitioner was in charge of and was responsible to the partnership firm for the conduct of its business at the time of commission of the alleged offence by the firm. He submits that on this ground alone, the entire criminal proceedings including order taking cognizance against the petitioner is fit to be set-aside and the matter be remanded back to the learned court below for fresh consideration, so far as it relates to the firm, in accordance with law.

(b) Under similar circumstances, earlier one proceeding was initiated against the petitioner and other partners of the firm namely M/s A.V.V. Enterprises by Labour Enforcement Officer (Central). The petitioner, alongwith other partners were held guilty under Sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970. Upon being challenged, the order of conviction was set-aside in Criminal Appeal No. 5/09 by the appellate court in the district on the ground that Labour Enforcement Officer (Central) had no authority to initiate prosecution, rather, inspector appointed by the State Government was the competent authority.

The counsel further submits that it was held that though the firm had entered into a contract with Food Corporation of India to handle and transport rice bags, it did not mean that the partnership firm carried its business under the authority, or, pursuant to the authority of Food Corporation of India.

It is submitted that the partnership firm of the petitioner has entered into an agreement with Food Corporation of India and by virtue of such contract the Central Government does not become the appropriate Government for launching prosecution against the petitioner. As per the judgment passed by Hon'ble Supreme

Court reported in AIR 2001 SC 3527, it is the Food Corporation of India which has been included within the definition of "appropriate Government" and therefore, appropriate government for Food Corporation of India will be the Central Government. He submits that for the purposes of the petitioner, the "appropriate government" would be the State Government, which has been taken note of by the appellate authority in the earlier litigation. Thus the entire proceeding is wholly without jurisdiction.

(c) Cognizance has been taken beyond the period of limitation as prescribed under Section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 . He submits that the date of occurrence has been mentioned in the complaint petition as 16.09.2008 and the complaint has been filed on 23.12.2008. The case should have been filed within a period of three months from 16.09.2008 and accordingly, filing of complaint was barred by limitation by about 1 week, when counted from the date of occurrence.

4. Counsel for the opposite party no. 2, on the other hand, submits that he has filed a supplementary counter-affidavit in the instant case annexing therewith a

copy of the licence issued in the name of the Partnership firm M/s A.V.V. Enterprises represented by Vikash Ranjan (Partner) under the provisions of Section 12(1) of the Contract Labour (Regulation and Abolition) Act, 1970 subject to the conditions mentioned in the annexure to the licence. The licence is for doing the job of handling and transport contract for transportation of food grains and allied materials from Namkum to the establishment of District Manager, Food Corporation of India, Ranchi. He further submits that the said licence was issued upon an application made by the partnership firm of the petitioner in the prescribed form before the Regional Labour Commissioner (Central) and licence was issued. He submits that once a licence has been issued by the Regional Labour Commissioner (Central), all the consequences arising out of the said licence has to follow and accordingly, it is not open to the petitioner to contend that the Enforcement Officer, under the Regional Labour Commissioner (Central) will have no jurisdiction for the enforcement of the Contract Labour (Regulation and Abolition) Act, 1970. He further submits that licence has been issued to the partnership firm of the petitioner in the capacity of being the contractor under the Food Corporation of India pursuant to an application under the Contract Labour (Regulation and Abolition) Central Rules, 1971 read with section 12 of the aforesaid Act of 1970. The counsel submits that the licence which has been issued clearly indicates that the partnership firm is represented by the partner Vikash Ranjan, who is the petitioner before this Court. He submits that as per the provisions of Section 23 of the Contract Labour (Regulation and Abolition) Act, 1970, there is a clear provision that whoever contravenes any provision of the Act or Rules made thereunder prohibiting, restricting or regulating the employment of the Contract Labour, or contravenes any condition of a licence granted under the Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or both.

5. The counsel for the opposite party no. 2 further submits that as per the provisions of Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970, there is a clear provision that the person committing an offence, if it is a company, then the company as well as the person in-charge of and responsible to the company for the conduct of its business at the time of commission of offence, shall be deemed guilty of an offence. He submits that name of the petitioner appears in the license as a partner of the licensee firm and in the license itself, the licensee has been described as follows:- "A.V.V. Enterprises, Represented by Sri Vikash Ranjan (Partner), new colony, by Lane Peace Road, Lalpur, Ranchi- I, (Jharkhand)" and accordingly, the impugned order taking cognizance against the petitioner has been rightly passed.

6. So far as the point of limitation is concerned, the counsel for the opposite party no. 2 submits that this point has not been raised by the petitioner in the present petition and accordingly, there was no occasion for the opposite party to respond to the point of limitation in the counter-affidavit. It is further submitted that the point of limitation by itself is a mixed question of fact and law. However,

he submits that upon comparison of the provisions of Section 27 of the Contract Labour (Regulation and Abolition) Act, 1970 vis-à-vis the provisions of Section 142 of the Negotiable Instruments Act, 1881, it is clear that under the provisions of Negotiable Instruments Act, 1881, where the legislature intended to exclude the applicability of provisions of Code of Criminal Procedure for the purposes of limitation, they have clearly indicated by a non-obstante clause. Section 142(1) starts with the word "notwithstanding anything contained in the Code of Criminal Procedure, 1973". He submits that, there is no such non-obstante clause in Section 26 of Contract Labour (Regulation and Abolition) Act, 1970 and accordingly, the provisions of the Code of Criminal Procedure, 1973 in connection with condonation of delay etc. is fully applicable.

7. He further submits that as per the complaint petition, the date of occurrence is 16.09.2008 on which day the inspection was carried out by the Labour Enforcement Officer (Central), Ranchi and as per the paragraph 5 of the complaint petition, it appears that the inspection report cum show-cause notice dated 23.09.2008 was served to the accused person by registered post. The counsel for the opposite party no. 2 submits that in this background the petitioner, having not taken the plea of limitation in this petition, and the limitation being a mixed question of fact and law, this point may not be decided in this case.

8. Counsel for the opposite party no. 2 further submits that so far as the earlier litigation in Criminal Appeal No. 5 of 2009 is concerned, in the said case which related to the year 2002 it is not clear as to whether the partnership firm of the petitioner was holding any licence issued by the Regional Labour Commissioner (Central) or not. Accordingly, in absence of such fact, the learned lower appellate court in the said case, held that there was no relationship of the partners of the partnership firm, or the partnership firm, with the Central Government and accordingly they are not appropriate authority and the Labour Enforcement Officer (Central) was held to be having no authority to initiate the proceedings for prosecution and it was observed that the State Government was the competent authority. He further submits that once the licence has been issued by the office of the Regional Labour Commissioner (Central), all the consequences regarding compliance of terms and conditions of license has to necessarily follow and any violation of the terms and conditions of the license calls for prosecution under the provisions of Section 23 of the Contract Labour (Regulation and Abolition) Act, 1970, which is required to be initiated at the instance of the licensing authority. Accordingly the Labour Enforcement Officer (Central) was the competent authority to launch the prosecution.

9. In response , the counsel for the petitioner submits that as per the complaint petition, only the partnership firm has been made accused and the name of the accused has been mentioned as "M/s. A.V.V. Enterprises, Shri Vikash Ranjan, Partner, New Colony, Bye Lane, Peace Road, Lalpur, Ranchi-I". Though name of the petitioner has been mentioned as "partner" but neither the petitioner has

been made an accused nor there is any averment made in the complaint petition regarding any involvement of the petitioner or that the petitioner was ever responsible for the day to day affairs of the firm. In such circumstances, the order taking cognizance against the petitioner in his individual capacity is bad in the eyes of law. Counsel submits that if this contention is accepted then the other points need not be gone into, as decision on this point, would meet the ends of justice so far as petitioner is concerned.

10. After hearing the counsel for the parties, this court is of the considered view that the present case, so far as the petitioner is concerned, can be decided on the point no. (a) as argued by the petitioner and accordingly the other points need not be considered in this petition which are left open.

11. This court finds that the complaint has been filed against the partnership firm as follows:- "M/s. A.V.V. Enterprises, Shri Vikash Ranjan, Partner, New Colony, Bye Lane, Peace Road, Lalpur, Ranchi-I".

12. In the complaint petition, at paragraph no. 2 it has been mentioned as follows:-

"That the accused person mentioned above is the Contractor/Employer executing contract work of Handling, transport of food Grains from RH Namkum to FSD, Chutia, Namkum Rly Siding, Ranchi through 144 contract labourers. Hence he is the Contractor/Employer within the meaning of Section 2(1) (c) of the Contract Labour (Regulation and Abolition) Act, 1970.

13. In paragraph no. 4 the allegation which has been mentioned as follows:-

" That Shri P. K. Beura, Labour Enforcement Officer (Central) the then Ranchi inspected the establishment of the accused person on 16.09.2008 and during the course of his inspection he detected the following offences:-

(a) That the accused person failed to display the notices showing the wage period and the place and time of disbursement of wages at the place of work and non-submission copy thereof to the Principal Employer under acknowledgement of the Inspector, Breach of Rule 71.

(b) That the accused person failed to display of notices showing the rate of wages, hours of work, name and address of the Inspector and date of payment of unpaid wages in English and Hindi at the place of work. Breach of Rule 81(1) (i).

(c) That the accused person failed to display of notices showing the Act and Rules in English and at the place of work. Breach of Rule 79.

(d) That the accused person failed to maintain the Register of persons employed at the place of work or within the radius of 3-6. Breach of Rule 75 read with Rule 80(1).

(e) That the accused person failed to maintain the Register of Muster Roll and

Register of wages at the place of work or within the radius of 3-6. Breach of Rule 78(1) (a) (i) read with Rule 80(1).

(f) That the accused person failed to maintain the Register of Fines, Deductions for damage or loss and Advances at the place of work or within the radius of 3-6. Breach of Rule 78(1)(a) (ii) read with Rule 80(1).

(g) That the accused person failed to maintain the Register of Overtime at the place of work or within the radius of 3-6. Breach of Rule 78(1)

(a) (iii) read with Rule 80(1).

(h) That the accused person failed to issue of wages slips to his workers for any wage period(s). Breach of Rule 78(1) (b).

(i) That the accused person failed to issue of employment card to his workers even after three days of their employment. Breach of Rule 76(i).

(j) That the accused person failed to provide first aid facilities at the place of work. Breach of Rule 58."

14. This court finds that on the one hand complainant has filed the case against the partnership firm though being represented by the petitioner but the petitioner has neither been made accused in his individual capacity nor there is any allegation against the petitioner in the complaint petition, much less the allegation that the petitioner, in the capacity of the partner, was responsible for the day to day affairs of the partnership firm on the date of occurrence.

15. This court finds that the learned court below has taken cognizance only against the petitioner in his individual capacity though the petitioner is not an accused in the complaint petition nor any allegation has been levelled against the petitioner in the entire complaint petition. In the aforesaid facts and circumstances, the impugned order taking cognizance against the petitioner is not sustainable and is accordingly set-aside.

16. This court further finds that the accused as per the complaint petition involved in this case is the partnership firm. Accordingly, the learned court below is directed to consider the matter afresh and pass appropriate order in accordance with law. Any observation made in this order will not prejudice the case of the either parties before the learned court below.

17. This criminal miscellaneous petition is accordingly allowed.

18. Pending I.A., if any, stands dismissed as not pressed.