

**Laxman Jha Vs. State of Jharkhand**

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**Court :** Jharkhand

**Decided On :** Feb-23-2015

**Appellant :** Laxman Jha

**Respondent :** State of Jharkhand

**Advocate for Pet/Ap. :** Mr. Anoop Kumar Mehta

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Miscellaneous Petition No. 628 of 2005 --- Laxman Jha son of Late Hardeo Jha, Ex-Director (Technical), Operation of M/s. Bharat Coking Coal Ltd. at Koyla Bhawan, PO Koyla Nagar, PS Saraidhella, District Dhanbad Petitioner Versus 1.The State of Jharkhand 2.Sri B. A. Kumar, Inspector of Factories, Bokaro Circle No. 1, PO, PS & District Bokaro ... Opposite Parties --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner : Mr. Anoop Kumar Mehta, Advocate For the Opposite Party No. 1 : Mr. Shekhar Sinha, A.P.P. --- 3/23.02.2015 Heard Mr. Anoop Kumar Mehta, learned counsel for the petitioner and Mr. Shekhar Sinha, learned counsel for the State.

2. In this application, the petitioner has prayed for quashing the entire criminal proceedings in F.A. Case No. 45 of 2005 including the order dated 05.02.2005 whereby and whereunder the learned Chief Judicial Magistrate, Dhanbad has been pleased to take cognizance under Section 92 of the Factories Act, 1948.

3. It appears that a written complaint was instituted on 03.02.2005 by the opposite party no. 2 in his capacity of the Inspector of Factories of Bokaro Circle No. 1, Bokaro in which it is stated that M/s. Madhuban Coal Washery is a registered factory bearing Registration No. 66685/DNB and as per the records available in the office of the opposite party no. 2, the occupier of the factory is one Sri Laxman Jha, Director (Technical) and Sri Ratneshwar Kumar, Project Officer (Washery) is the Manager. It has been alleged that in the night of 3/4.11.2004, an accident took place in the factory in which one workman Ganga Ram Dhibar died. On inspection conducted by the opposite party no. 2, it came to light that the workers were working in an unsafe place resulting in the accident and therefore the occupier and the manager are responsible for not complying with the provisions of the Act and the Rules. Accordingly, the complaint was registered as F. A. No. 45 of 2005. -2-  
4. Subsequent to the filing of the complaint by the opposite party no. 2, vide order dated 05.02.2005, the learned Chief Judicial Magistrate, Dhanbad was pleased to take cognizance for the offence punishable under Section 92 of the Factories Act, 1948.

5. It has been submitted by the learned counsel for the petitioner that admittedly the accident took place on 03.11.2004 and the petitioner took charge as Director (Technical) Operations with effect from 05.11.2004. He thus submits that although the petitioner has been shown as occupier in the complaint petition, but admittedly on the date of the accident, the petitioner was not an occupier. In this context, he has referred to Section 2 (n) (iii) of the Factories Act which reads thus:

2. (n)(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

6. He thus submits that in view of the admitted position that the petitioner was not an occupier on the date of the accident as such the petitioner cannot be prosecuted for any offence under the provisions of Section 92 of the Factories Act. In this context, he has referred to the judgment in the case of Indian Oil Corpn.

Ltd. v. Chief Inspector of Factories reported in (1998) 5 SCC738 7. The learned counsel for the State, on the other hand, while relying on the counter affidavit filed by the opposite party no. 2 has submitted that in fact the petitioner was appointed vide letter dated 17.09.2004 which is before the date of occurrence and as such, the opposite party no. 2 has rightly made the petitioner as an occupier in the complaint petition.

8. After hearing the learned counsel for the parties and after going through the records, I find that Section 2 (n) (iii) defines an occupier. In the present case, the complaint was filed with respect to an accident which took place on 03.11.2004 and the petitioner in his capacity as Director (Technical) of M/s. Bharat Coking Coal Ltd. was shown to be an occupier. The office order dated 05.11.2004 issued by the M/s. Bharat Coking Coal Ltd. indicates that the petitioner -3- was functionally designated as Director (Technical) Operations with immediate effect which in effect means from 05.11.2004. The learned counsel for the State had submitted that on 17.09.2004, the petitioner was appointed as a Director (Technical) Operations which was objected by the learned counsel for the petitioner by stating that appointments are made prior to the actual vacancy, and the same are filled up subsequently by the persons who have been selected earlier. In this context, he has also while referring to the office order dated 05.11.2004 submitted that the petitioner was functionally designated as the Director (Technical) Operations with effect from 05.11.2004. In the case of Indian Oil Corpn. Ltd. v. Chief Inspector of Factories reported in (1998) 5 SCC738(supra), it has been held by the Hon'ble Supreme Court that, 16. Apart from the main part of Section 2(n), the first proviso also indicates that the legislature intended that the person having ultimate control over the affairs of the factory has to be regarded as an occupier of the factory. The proviso to the section is not in the nature of an exception. In order to avoid any ambiguity, to plug loopholes and to seal the escape routes, a deeming provision has been made in a mandatory form. In the case of a firm, obviously the partners of the firm have ultimate control over the affairs of the partnership. In case of other type of association, the members thereof will have such control. In the case of a company, the directors have the ultimate control, as the power to manage the affairs of the company vests in the Board of Directors. What clauses (i) and (ii) of the proviso provide is that they shall be

deemed to be occupiers. Thus, they merely restate the position which is obvious even otherwise. The position of the Government and the local authority is quite different from that of a firm or an association or a company not only with respect to the person who can be said to be in ultimate control but also with respect to the object for which the factory is set up. In a democratic set-up of government, it may not be possible to say with certainty as to who is having the ultimate control. In a welfare State, the Government does not carry on such activity for its own profit or benefit but for the benefit of the people as a whole. Moreover, it is the Government which looks after the successful implementation of the provisions of the Factories Act and, therefore, it is not likely to evade implementation of the beneficial provisions of the Factories Act. That appears to be the reason why the legislature thought it fit to make a separate provision for the Government and the local authorities. Ordinarily, for running the factories owned or controlled by the Central -4- Government or any State Government, or any local authority, a person or persons would be appointed by it to manage the affairs of the factory, because the Government or the local authority as a whole would not run the factory. Therefore, the legislature appears to have provided that in case of a factory owned or controlled by the Central Government, the State Government or the local authority the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier. Therefore, if it is a case of a factory in fact or in reality owned or controlled by the Central Government or the State Government or any local authority, then in case of such a factory, the person or persons appointed to manage the affairs of the factory shall have to be deemed to be the occupier, even though for better management of such a factory or factories, a corporate form is adopted by the Government.

17. Before 1987, when Section 100 was the governing provision, any one of the individual partners of a firm or any one of the members of the association of individuals could be punished under sub-section (1) thereof for any offence for which the occupier of the factory was punishable. The firm or association was given an option to nominate one of its members as the occupier of the factory and if such an option was exercised by giving a notice to the Inspector, then he alone was to be deemed to be the occupier of the factory for the said purpose. Under

sub-section (2), if the occupier of the factory was a company then any one of the directors thereof could be prosecuted and punished. A similar option was available to the company, as in the case of a firm and an association of individuals. It is significant to note that it was by way of a proviso to sub-section (2) which dealt with the case of a company that the provision was made for deciding who should be deemed to be the occupier of a factory in case it belonged to the Central Government or any State Government or any local authority and a similar option is made available to them. The said proviso though enacted as an exception to the main part of sub-section (2), is truly by way of a separate provision made in the case of a factory belonging to the Central Government or any State Government or any local authority. While making the amendment in 1987 in Section 2(n) and deleting Section 100 at the same time, the legislature made the proviso to sub-section (2) of Section 100, an independent proviso to Section 2(n). That also clearly indicates the intention of the legislature that it wanted to make a separate provision for deeming who should be the occupier of a government factory. -5- 18. For the aforesaid reasons, we hold that as the factories run by the appellant-Corporation are effectively and really owned and controlled by the Central Government, they fall within the purview of clause (iii) and not clause (ii) of the first proviso to Section 2(n). In our opinion, the High Court was wrong in taking a contrary view. We, therefore, allow these appeals, set aside the judgment and order passed by the High Court to the extent indicated above and direct Respondents 1 and 2 to accept the persons appointed by the Central Government to manage the affairs of the factories at Namkum as the occupiers of those factories for the purposes of Section 2(n) of the Factories Act. In view of the facts and circumstances of the case, we direct the parties to bear their own cost.

9. Thus, it appears that the petitioner on the date when accident took place was admittedly not the occupier and in such circumstances, the petitioner cannot be prosecuted for any criminal offence instituted under Section 92 of the Factories Act. The office order dated 05.11.2004 is being relied upon by the court whose veracity and impeccability cannot be doubted as also because of what has been stated in the counter affidavit.

10. Accordingly, there being merit in this application, the same is allowed. The entire criminal proceedings in F.A. Case No. 45 of 2005 pending in the court of Shri S. S. Yadav, Judicial Magistrate 1 st class, Dhanbad is quashed, so far as the petitioner is concerned. (Rongon Mukhopadhyay, J) R. Shekhar Cp 3

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