

Tarit Kumar Dutta Roy Vs. the State of Bihar and anr.

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Court : Jharkhand

Decided On : Aug-08-2008

Reported in : 2008(57)BLJR32; [2008(4)JCR24(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 2, 23, 24, 25 and 28; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Cr. Misc. No. 6374 of 2000 (R)

Appellant : Tarit Kumar Dutta Roy

Respondent : The State of Bihar and anr.

Advocate for Def. : Ram Subhag Singh, APP. and; Pawan Kumar Sahu, C.G.C. for O.P. No. 2

Advocate for Pet/Ap. : Ananda Sen, Adv.

Disposition : Application allowed

Judgement :

Amareshwar Sahay, J.

1. Heard learned Counsel for the parties.

In this application the petitioner has prayed for quashing of the order taking cognizance dated 03.05.2000 whereby cognizance for the offence under Sections 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970 was taken by the Chief Judicial Magistrate, Chaibasa in Case No. C/7 89/2000 against the accused persons including the petitioner.

2. The facts in short are that the complaint was filed by the Labour Enforcement Officer (C), Chaibasa in the Court of Chief Judicial Magistrate, Chaibasa against the three accused persons including the petitioner alleging that he being the Enforcement Officer in the capacity of Inspector appointed under Section 28 of the Contract Labour (Regulation & Abolition) Act, 1970 inspected the Mines in question where he found that the work of raising of Iron Ore, Loading, Transporting, Levelling of Iron Ore on B.G. Wagons, Drilling and Blasting in Iron Ore Mines was being done by the contract labour. According to the allegations made in the complaint, those nature of work was kept under the prohibited category of work and that could not have been done through Labour contract. In this view of the matter, the accused persons named in the complaint committed offence of Sections 23/24 of the Contract Labour (Regulation & Abolition) Act, 1970.

3. From the complaint petition, it appears that the petitioner T.K. Dutta Roy has been made an accused in the capacity of Deputy General Manager (P.E.). Gua Ore Mines Gua, Manoharpur, Chiria. In paragraph 04 of the complaint petition, it is alleged that the establishment of the accused persons was inspected and in course of inspection, it was found that the principal employer had employed contract labour in Chiria Iron Ore Mines.

4. Section 2(g) of the Contract Labour (Regulation & Abolition) Act, 1970 defines 'Principal Employer'. According to Section 2(g)(iii) of the said Act, in a mine, only the owner or agent of the mine and where a person has been named as the manager of the mine, the persons so named can come within the meaning of Principal Employer.

5. Learned Counsel appearing for the petitioner submits that the petitioner is neither the manager nor the agent nor owner of the mine in question. Therefore,

he cannot come within the purview of definition of Principal Employer. Accordingly, it is submitted that the prosecution of the petitioner for the alleged offence is bad in law and is liable to be quashed.

6. On the other hand, it has been submitted on behalf of the respondent that Section 25 of the Contract Labour (Regulation & Abolition) Act, 1970 speaks about the offences by the Company and it says that if a person committing an offence under this Act is a Company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Therefore, the petitioner being Deputy Manager of the Company, has rightly been proceeded against being the person in-charge of the business.

7. Learned Counsel for the petitioner submitted that there is no averment in the complaint petition that this petitioner was the person in-charge of the day-to-day conduct of dealing with the Company and admittedly, the offences alleged said to have been committed by the Company and therefore, in absence of any such averment or allegations in the complaint petition, the petitioner cannot be prosecuted for the offences alleged. In support of the submissions, he has relied upon the decision in the case of *Jayanand Tripathy v. State of Bihar and Ors.* reported in 2000 (1) East Cr. C 201 (Pat) wherein, it has been held as follows:

Non-compliance with the provision of Section 25 of the Contract Labour Act, shall be a valid ground for exercise of inherent power under Section 482, Cr.P.C. for quashing the criminal proceeding and order taking cognizance as omission to state in the complaint that the accused was in-charge of and responsible to the company, for the conduct of its business at the time of commission of offences goes to the root of the jurisdiction of the Court taking cognizance. There is nowhere mentioned therein that this petitioner was in-charge of and responsible for the conduct of the business at the work site having anything to do with the compliance with the rules. Therefore, the written complaint on the basis of which cognizance has been taken against the petitioner being not in conformity with the requirement of Section 25 of the Contract Labour Act, cognizance of the offences

alleged could not have been taken against the petitioner. To permit the proceeding against him, therefore, shall be abuse of the process of the Court. Hence, the entire criminal proceeding, held liable to be quashed.

8. The learned Counsel for the opposite parties very fairly submitted that in the complaint, there is no specific allegation that the present petitioner was the person in-charge of day-to-day conduct of the business of the Company.

9. On consideration of the rival submission, the submission of the learned Counsel for the petitioner appears to be correct and his case is covered by the aforesaid decision in the case of *Jayanand Tripathy v. State of Bihar and Ors.* (Supra). In this view of the matter, the impugned order dated 03.05.2000 taking cognizance against the petitioner for the offence under Sections 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970 cannot be sustained.

10. Accordingly, this application is allowed. The order dated 03.05.2000 passed by the Chief Judicial Magistrate, Chaibasa in Case No. C/7 89/2000 is hereby quashed.