
Court on its own motion in State of H.P. Vs Hazara Singh

Criminal Rev. No. 124 of 1987

Court: High Court of Himachal Pradesh

Date of Decision: March 17, 1988

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 & Section 12, 25#Criminal Procedure Code, 1973 (CrPC) & Section 200, 204, 257

Citation: (1988) 2 ShimLC 167

Hon'ble Judges: R.S. Thakur, J

Bench: Single Bench

Advocate: L.S. Panta, Deputy Advocate General, for the Appellant; Nemo, for the Respondent

Final Decision: Allowed

Judgement

R.S. Thakur, J.

This suo motu revision petition has been taken up this Court against the order passed by the learned Chief Judicial

magistrate Chamba on October 30, 1985. The order being a brief one is reproduced hereunder:

Present.-Complainant in person. complainant wants to make statement Be recorded. As per the statement of the complainant, the complaint is

dismissed as withdrawn. Be consigned to the record room.

Sd/-(Inder Ram)

Chief Judicial Magistrate,

Chamba.

2. The brief facts of the case are that Sh. Man Mohan Nayyar, Labour Inspector, Chamba Circle in Chamba District of Himachal Pradesh filed a

complaint in the Court of the Chief Judicial Magistrate, Chamba, on June 13, 1985, with the allegations that the Respondent-accused Hazara Singh

had employed 44 migrant workmen on a building construction work as sub-contractor in Chamera Project at Chelli (Ranikhet) in District Chamba

in violation of the provisions of Section 8 and Rule 7 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service)

Act, 1979, (hereinafter called as "the Act 1979"), and the rules framed thereunder. On the registration of this complaint, the learned Chief Judicial

Magistrate ordered the issuance of summons to the Respondent/accused for August 19, 1985. When the case was taken up on that day, the

Respondent-accused had not been served and the case was then adjourned to September 23, 1985 with the direction to issue fresh summons on

correct address to be supplied by the complainant. On the next hearing, as the order-sheet discloses, the correct address as directed, had not been

supplied by the complainant but he prayed that summons be given to him "dasti" for service upon the accused/Respondent which was accordingly

done and the case was fixed for October 30, 1985, when the impugned order was passed, after the complainant made the following statement to

the Court on the same day:

Stated that accused Hazara Singh has left the work and his whereabouts are not known. As such the complaint be dismissed as withdrawn.

3. I have heard the learned Deputy Advocate General and after taking into consideration the legal and factual sides of the case in hand feel no

doubt whatsoever that the learned Chief Judicial Magistrate has" committed an illegality in passing the impugned order which thus merits

interference by this Court. In the first place the learned trial Court has erred in holding in the order-sheet of June 14, 1985, Wax prima facie

offence under Sections 12/25 of the Contract Labour (Regulation and Abolition) Act, 1970, was committed by the accused. As a matter of fact

the complaint before him was for violating the provisions of Section 8 of the Act 1979 and Rule 7 of the rules framed thereunder which act was

punishable u/s 25 of the Act, 1979 and the learned trial Court thus cited the wrongs statute and the provisions thereof.

4. The second question that arises for determination is whether it was permissible under law to pass the impugned order? The reply to the poser is

clearly in the negative. Admittedly, the complaint in question was under the provisions of Section 200 of the Criminal Procedure Code and since it

was a complaint by a public servant, acting or purporting to act in the discharge of his official duties, therefore, the learned Court after applying its

mind to the accusations in the complaint itself straightway resorted to the provisions of Section 204 of the Criminal Procedure Code when the

summons were ordered to be issued to the Respondent/accused. It is also clear that the case in hand was required to be tried as a "summons

case" under Chapter XX of the Criminal Procedure Code Now having regard to the provisions of Sections 200 and 204 and the provisions of the

other sections in Chapter XX of the Criminal Procedure Code it becomes clear that once the Magistrate orders the issuance of an appropriate

process to the accused u/s 204, Code of Criminal Procedure there is no provision for withdrawal of the case against the accused except u/s 257

thereof which reads as under:

Section 257. Withdrawal of complaint.-If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the

Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused,

against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the

complaint is so withdrawn.

The provisions of this section clearly indicate that resort can be had to them only if the accused has attended the Court in response to the process

issued by it and the trial against him has commenced but has not reached the stage of final order. Even in such a situation it is enjoined upon the

Court to determine through a speaking order whether the complainant who wishes to withdraw the complaint against all or any of the accused, has

shown sufficient grounds to its satisfaction before according permission for such withdrawal. In the instant case, obviously, this stage had not

reached. As a matter of fact the accused had not even attended the Court in response to the summons issued by the Court and simply because the

complainant in his statement stated that the whereabouts of the Respondent-accused were unknown to him, could not be a legal ground to permit

him to withdraw the complaint and the impugned order is thus obviously vitiated by an illegality.

5. In view of the above, the revision is allowed. The order of the learned Chief Judicial Magistrate dated October 30, 1988 is set aside and the

case is remanded to the Court of the Chief Judicial Magistrate, Chamba for fresh trial of the case in accordance with law in light of the

observations made hereinabove.

6. This Court is at some pains to observe that the learned Chief Judicial Magistrate has failed to devote the amount of care and attention that the

proceedings of this nature deserved. The Court was expected to be alive to the fact that the proceedings it was seized of, were under a statute

which was meant for the benefit of the lowest strata of the society, namely, labour class and enacted to save it from exploitation at the hands of

ruthless employers or contractors. It is, therefore, incumbent upon the Courts of law to see that the provisions of such a statute are strictly

complied with and the violation thereof should invite deterrent punishment at their hands. It is, therefore, expected that in future the trial Court

would not treat the cases of this nature in a casual manner as has been done in the case in band.