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Pancham Singh Vs State of Jharkhand and Shri Gyani Prasad Bhagat

Court: Jharkhand High Court

Date of Decision: Oct. 9, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 2(d), 319
Mines and Minerals (Development and Regulation) Act, 1957 â€" Section 21, 22, 23
Negotiable Instruments Act, 1881 (NI) â€" Section 138, 141
Penal Code, 1860 (IPC) â€" Section 379

Citation: (2013) 1 JLJR 570

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Indrajit Sinha, for the Appellant; Md. Hatim, Assistant Public Prosecutor for the State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

H.C. Mishra, J.
Heard learned Counsel for the petitioner and learned Counsel for the State. The petitioner is aggrieved by the order dated

14.04.2004/15.04.2004 passed by the learned Sub-Divisional Judicial Magistrate, Simdega, in G.R. No. 284 of 1999 arising out of Kolebira P.S.

Case No. 43 of 1999, whereby the application filed by the petitioner for discharge has been rejected by the Court below.

2. The petitioner has been made accused in Kolebira P.S. Case No. 43 of 1999, corresponding to G.R. No. 284 of 1999 for the offence u/s. 379

of the Indian Penal Code and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (herein after referred to as the

MM(DR) Act"").

3. The F.I.R. was lodged on the basis of the written information given by the Assistant Mining Officer, Gumla, wherein he had alleged that illegally

mined Morum and Stones were used in the construction of a road and the co-accused apprehended at the spot informed that the construction of

the road was being done by the Contractor, M/s. Vijeta Construction Ltd., Morabadi, Ranchi, and about 200 trips of tractor were used for

ferrying the Stones and Morum for laying on the road. On the basis of the written information given by the Assistant Mining Officer, Gumla, the

police case was instituted against the apprehended accused Kamal Kant and the contractor M/s. Vijeta Construction Ltd. The petitioner is the

Chairman of the said M/s. Vijeta Construction Ltd.

4. It appears from the Lower Court Record, that after investigation the police submitted charge-sheet in this case for the offence u/s. 379 of the

Indian Penal Code and Section 21 of the MM(DR) Act against the accused persons named therein, including the petitioner, being the owner of

M/s. Vijeta Construction Ltd. However, no charge-sheet has been submitted against M/s. Vijeta Construction Ltd.

5. The petitioner filed his application for discharge in the Court below stating inter alia, that the royalty of Rs. 8,96,570/- and the penalty of Rs.

9,430/- were realised from the petitioner''s company from the final bill, and accordingly, the said amounted to compounding of the offence by the

company, and as such, no offence can be said to be made out against the petitioner. However, the Court below rejected the application filed by

the petitioner holding that on the basis of the materials on the record, the offences were made out against the petitioner. It is also stated in the

impugned order that the petitioner had earlier filed Cr.M.P. No. 994 of 2003 in the High Court for quashing of the entire criminal proceeding,

including the order taking cognizance against the petitioner, and the order dated 26.09.2003 passed in the said Criminal Miscellaneous Petition

showed that the High Court was not inclined to interfere.

6. Learned counsel for the petitioner has submitted that the present application has been filed against the impugned order dated

14.04.2004/15.04.2004, whereby, the application for discharge has been rejected by the Court below. The order dated 26.09.2003 passed in

Cr.M.P. No. 994 of 2003 is available in the Lower Court Record, which would show that the said application was permitted to be withdrawn

with the liberty to raise all the points before the learned Court below at appropriate stage. Learned counsel for the petitioner has also submitted

that the petitioner''s company was granted contract by the State Government for construction of the road concerned, in which Morum and Stones

were used. It has been submitted that in order to avoid criminal liability the petitioner had already deposited the penalty which has been realised by

the State Government and accordingly, no offence can be said to be made out against the petitioner, once the royalty and penalty have been

realised from the petitioner by the State Government. It has also been submitted that in view of the fact that there is special provision under the

MM(DR) Act and the Rules framed there under for mining the Morum and Stones, which are the minor minerals, the offence cannot be said to be

made out u/s 379 of the Indian Penal Code.

7. Learned counsel further submitted that it is an admitted case that the offence, if any, is committed by the company M/s. Vijeta Construction

Ltd., which is a company incorporated under the Companies Act, but the said company has not been made accused in this case and accordingly,

the petitioner, who is the Chairman of the company, cannot be made an accused to face the trial. In this connection learned Counsel for the

petitioner has placed reliance upon a very recent decision of the Supreme Court of India in Aneeta Hada Vs. Godfather Travels and Tours Pvt.

Ltd., wherein the Supreme Court was dealing with almost similar provision under the Negotiable Instruments Act, 1881. In view of the Section

141 of the Negotiable Instruments Act, 1881 it was held that Commission of offence by the company is an express condition precedent to attract

the vicarious liability of others and as such it is clear that when the company can be prosecuted, then only the persons mentioned in the other

categories could be vicariously liable for the offence. Learned counsel for the petitioner placing reliance on this decision has submitted that Section

23 of the MM(DR) Act, also relates with offence by companies with the same provisions as in Section 141 of the Negotiable Instruments Act,

1881 and in view of the law laid down by the Supreme Court of India, the petitioner cannot be made accused in this case in absence of the

company, against which there is direct allegation of committing the offence. Learned counsel accordingly, submitted that on this score alone the

entire criminal prosecution against the petitioner is absolutely vitiated and cannot be sustained in the eyes of law.

8. Learned counsel for the State on the other hand has submitted that the petitioner is admittedly the Chairman of the M/s. Vijeta Construction

Ltd., which was allotted the contract for construction work of the road by the State Government and it had violated the provisions of the MM(DR)

Act, and had illegally ferried the Morum and Stones in about 200 trips of tractor for laying them on the road, which were illegally mined, and

accordingly, the offence is made out u/s 379 of the Indian Penal Code as well as of Section 21 of the MM(DR) Act. Learned counsel also

submitted that the earlier criminal miscellaneous petition filed by the petitioner for quashing the entire proceeding has already been dismissed by this

Court and accordingly, there is no merit in this application also which is only fit to be dismissed.

9. Section 23 of the MM(DR) Act, deals with offence by companies and it reads as follows:-

23. Offences by companies.- (1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who

at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall

be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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10. Section 141 of the Negotiable Instruments Act, 1881 also reads as follows:-

141. Offences by companies.- (1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was

committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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(Emphasis supplied).

11. Thus, from a plain reading of both these provisions, it is clear that both these provisions are not at all in pari materia. The words appearing in

Section 141 of the Negotiable Instruments Act, 1881 ""as well as the company"" are not there in Section 23 of the MM(DR) Act.

12. In Aneeta Hada"s case (Supra) the Supreme Court has considered the words ""as well as the company"" and has held as follows:-

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express

condition precedent to attract the vicarious liability of others. Thus, the words ""as well as the company"" appearing in the section make it absolutely

unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable

for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person

and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the

corporate reputation is affected when a Director is indicted.

(Emphasis supplied).

Since the words ""as well as the company"" are not there in Section 23 of the MM(DR) Act, it cannot be held that both these provisions are in pari

materia, so far as the offences committed by companies are concerned. As such the law laid down in Aneeta Hada"s case (Supra) is not

applicable in the matter of offences under the MM(DR) Act. The submission of the learned Counsel for the petitioner that Section 23 of the

MM(DR) Act, relates with offence by companies with the same provisions as in Section 141 of the Negotiable Instruments Act, 1881 and in view

of the law laid down by the Supreme Court of India as above, the petitioner cannot be made accused in this case in absence of the company, is

thus absolutely misconceived.

13. This apart, this is not the stage when the prosecution against the petitioner can be quashed on this score alone. The trial of the case is yet to

conclude and even if the charge-sheet has not been submitted against the company by the police, the Trial Court can still exercise the power u/s

319 of the Cr. P.C., and may proceed against the company also for the offence, if any, found against it. In that view of the matter the petitioner

cannot be discharged at this stage only on the ground that the charge-sheet has not been submitted against the company by the police.

14. However there is yet another aspect of the matter, which needs consideration in the facts of the case. MM(DR) Act contains special provisions

and the question arises whether Section 22 of the MM(DR) Act barred cognizance of any offence punishable under the Act or any rules made

there under, except upon complaint in writing made by a person authorized in this behalf by the appropriate Government. Section 22 of the

MM(DR) Act reads as follows:-

22. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon

complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

15. In the present case the F.I.R. has been lodged against the petitioner. The term ""Complaint"" is defined u/s 2(d) of the Code of Criminal

Procedure as follows:-

2. (d) ""complaint"" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some

person, whether known or unknown, has committed an offence, but does not include a police report.

16. Thus the very definition of the term "complaint" shows that the F.I.R. lodged before the police cannot be a complaint made to the Magistrate.

This question has been considered by this Court in B. Muthuraman @ Balasubramanian Muthuraman & Ors. Vs. The State of Jharkhand,

reported in 2009 (3) JCR 261 (Jhr), wherein this Court has discussed the law regarding special law and the general law and has held that the

provision contained in special legislation will certainly take precedence over the general punishment prescribed under the penal code and the

provision of penal code would have no application in the matter of transportation of the minerals in contravention of the provisions of MM(DR)

Act, or rule or even regulation made therein. In this decision this Court has also taken into consideration that Section 22 of the MM(DR) Act

barred cognizance of any offence punishable under the Act or any rules made there under, except upon complaint in writing made by a person

authorized in this behalf by the appropriate Government. The Court took note of the definition of the complaint as given in Section 2(d) of the

Code of Criminal Procedure and held that the F.I.R. lodged in the case was illegal and nonest in the eyes of law and accordingly, the F.I.R. was

quashed.

17. Thus, there is a clear bar under the MM(DR) Act for taking cognizance of any offence punishable under this Act or any rules made there

under, except upon complaint made before the Magistrate. In Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation, , the law has

been laid down as follows:-

26. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be

followed....

18. In view of the foregoing discussions, the prosecution of the petitioner which has been instituted on the basis of the F.I.R. lodged before the

police cannot be continued and it is a fit case for quashing the criminal prosecution against the petitioner. I find that the facts of this case are fully

covered by the decision of the Apex Court in Jeewan Kumar Rout''s case (supra) and the decision of this Court in B. Muthuraman''s case (supra).

In view of the aforementioned discussions, the entire criminal prosecution against the petitioner in Kolebira P.S. Case No. 43 of 1999,

corresponding to G.R. No. 284 of 1999, pending in the Court of Sub-Divisional Judicial Magistrate, Simdega, including the order dated

14.04.2004/15.04.2004 passed therein, are hereby quashed. Consequently, the petitioner stands discharged. This application is accordingly,

allowed. Let the Lower Court Records be sent back forthwith.