

(2007) 12 JH CK 0002

Jharkhand High Court

Case No: Criminal M.P. No. 1108 of 2006

Ravi Kant and Dilip Sengupta

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Dec. 18, 2007

Acts Referred:

- Bihar/Jharkhand Factory Rules, 1950 - Rule 55A
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Factories Act, 1948 - Section 105, 106, 92

Citation: (2008) 56 BLJR 1471

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Rana Pratap Singh and V.P. Singh, for the Appellant; A.P.P and A.K. Jha, for Opposite Party No. 2, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the order dated 27.5.2006 passed

by Chief Judicial Magistrate, Jamshedpur in Complaint Case No. C/2 case No. 2031 of 2006 whereby and whereunder Chief Judicial Magistrate

took cognizance of the offence punishable u/s 92 of the Factories Act against the petitioners.

2. It appears that a complaint was lodged by the Inspector of Factories- opposite party No. 2 stating therein that on 15.12.2005 when he received

an information that on account of fatal accident occurred at Truck-1, Shed of M/s. Tata Motors Limited one worker, namely, Ram Kumar has

died, he inspected the accident site and did find that demarcated gangway meant for passage way for movement of men and use of machine was

being used as parking and for rectification work of newly built chassis of Tata Motor without adopting any safe measures and that newly built

chassis were parked closely to each other in rows, having a unsafe space of only 2"-3" in between them, still the Management permitted to drive

out OK chassis from these congested rows which was unsafe act, as a result of which fatal accident took place and that the chassis which knocked

the deceased Ram Kumar, who was working there, was without having any break and as such accident took required to pass order in respect of

condonation of delay in specific terms but as the court has not passed any order with respect to condonation of delay much less in specific terms,

the order taking cognizance is bad in law and hence, it is fit to be set aside.

3. Learned Counsel submits that if it is argued on behalf of opposite party No. 2 that if the court does not pass order in respect of condonation of

delay, then in that event it becomes the fault of the court and not the fault on the part of the presenting agency as the petition for condonation of

delay was there before the court and in this eventually if this Court intends to go into that matter for the ends of justice then the point for

consideration would be as to whether the complainant had assigned any satisfactory reason for condonation of delay. Learned Counsel in this

respect submits that a letter sent by opposite party No. 2 to the Department of Labour, Government of Jharkhand for according sanction would

indicate that on 10.1.2006 the opposite party No. 2 had sent a letter No. 20 dated 10.1.2006 to the Deputy Chief Inspector of Factories which

has been annexed with this application, obviously for the reason for according sanction of the prosecution as he under notification issued by the

Department of Labour on 2.4.1994 seems to be competent person to accord sanction but is quite strange that in stead of according sanction for

prosecution by Deputy Chief Inspector of Factories, sanction for prosecution seems to have been accorded by the Joint Secretary in the

Department of Labour and Employment vide his letter dated 24.5.2006 and as such complainant cannot take any excuse for launching the

prosecution after the period of limitation on the ground that the sanctioning authority consumed time in according sanction for the prosecution and as such delay explained cannot be taken to be satisfactory.

4. However as per the statement made in the counter affidavit it is the stand of opposite party No. 2 that the Inspector who u/s 105 of the

Factories Act is empowered to file complaint before the court but before filing, he under the administrative direction was required to take

permission from the Department of Labour, Employment and Training and accordingly, a letter was sent through proper channel in the Department

of Labour and Employment for according sanction for prosecution which was granted on 24.5.2005 and then the complaint petition was filed on

27.5.2006 praying therein to take cognizance of the offence after condoning the delay and as such the order taking cognizance needs not to be

interfered with this Court.

5. Having heard learned Counsel appearing for the parties and on perusal of the records, it appears that Inspector of Factories-opposite Party No.

2 having come to know that fatal accident has taken place in the factory on 15.12.2006, he came over there on the same day and made enquiry

and after making enquiry, he came to the conclusion that due to certain security lapses, fatal accident took place in which one of the employees

died and as such there was contravention of Rule 55-A(2) of the Jharkhand Factory Rules which as per Section 92 of the Factories Act is

punishable for a term which may extend two years or with fine which may extend to Rs. 1,00,000/- or with both. However, Section 106 of the

Factories Act puts limitation on launching the prosecution which reads as follows:

No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which

the alleged commission of the offence came to the knowledge of an Inspector.

Provided that where the offence consists of disobeying a written order made by (sic) Inspector, complaint thereof may be made within six months

of the date on which the offence is alleged to have been committed.

6. This makes it clear that prosecution needs to be launched within three months of having knowledge of the commission of any offence under the

Act or the Rules. But here in the instant case, it appears that opposite party No. 2 complainant who happens to be Inspector of Factories came to

know about the fatal accident on the same day when it had occurred, i.e, on 15.12.2005 but the complaint has been filed by opposite party No. 2

on 27.5.2006 certainly beyond three months of having knowledge of the commission of the offence but that delay as per complainant did occur as

the competent authority who was required to accord sanction consumed time in according sanction. From the reading of the complaint petition as

well as counter affidavit it does appear that opposite party No. 2 referred the matter to the Joint Secretary in the Department of Labour and

Employment for according sanction, though as per provision contained in Section 105 of the Factories Act, he needs not to seek any sanction from

any other authority. The provision contained in Section 105 of the Factories Act reads as follows:

Cognizance of offences -(i) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in

writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall (sic) any offence punishable under this Act.

7. From its reading it is explicitly clear that if complaint regarding contravention of any of the provisions of the Factories Act or the Rules is lodged

by the Inspector of Factories, then the Inspector of Factories needs not to have any sanction order from any other authority, rather the sanction is

required to be accorded by the competent authority, if the complaint is tiled by other person than the Inspector of Factories and this proposition

has been laid down by this Court, in a case of K.C. Majumder and Anr. v. State of Bihar and Anr. 2003(98) FLR 116.

8. That being the situation, any delay occurred in filing the complaint beyond the limitation period on account of time being consumed by other

authority in according sanction would not be satisfactory ground at all for condonation of delay. Moreover, the court taking cognizance has not

said a word regarding "condonation of delay", though admittedly the compliant was filed beyond the limitation period. Moreover, the court if

condones the delay is required to assign reason specifically. In this regard reference may be made in a case of State of H.P. v. Tara Dutta and Anr.

(2001) 1 SCC 230 whereby it has been said by the Hon"ble Supreme Court that the court is required to pass order in respect of condonation of delay in a specific term.

9. Before parting with this order it would be pertinent in view of the submission made on behalf of the petitioners and also in context of the

statement made in the counter affidavit to note here that an argument was advanced on behalf of the petitioners that Joint Secretary in the

Department of Labour and Employment cannot be sanctioning authority in view of the notification, bearing No. 228 dated 2.4.1994 issued by the

Department of Labour and Employment, rather it would be Deputy Chief Inspector of Factories who would be the competent authority, whereas

as per the counter affidavit it is the State Government under office order No. 2464 dated 7.11.2001 as has been annexed within the counter

affidavit who the competent authority for according sanction but I would refrain myself from going into the question firstly because of the reason

that this matter has already been decided by this Court in the case of State of H.P. v. Tara Dutta and Anr. but correctness of it has not been

challenged and secondly order taking cognizance being bad as there has been no order regarding condonation of delay, though the complaint

petition admittedly was filed beyond the limitation period. Thus, I do find that the prosecution seems to be bad on account of complaint petition

being bared by limitation and the order taking cognizance is significantly silent on the matter of condonation of delay.

10. Hence, the order dated 27.5.2006 passed by Chief Judicial Magistrate, Jamshedpur in Complaint Case No. C/2 case No. 2031 of 2006

taking cognizance of the offence u/s 92 of the Factories Act against the petitioners is hereby quashed.

In the result, this application is allowed.