(2012) 03 JH CK 0013

Jharkhand High Court

Case No: Criminal M.P. No. 1292 of 2007

Dr. A.K. Balyan @ Dr. Ashok Kumar Balyan		APPELLANT
	Vs	
The State of Jharkhand and Another		RESPONDENT

Date of Decision: March 13, 2012

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 23, 24, 25, 25(1)
- Contract Labour (Regulation and Abolition) Central Rules, 1971 - Rule 72, 74, 81(1), 81(3)
- Negotiable Instruments Act, 1881 (NI) - Section 141

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. Nobody appeared on behalf of the Opp. Party No. 2. Counter affidavit has also not been filed on behalf of the Opp. Party No. 2, in spite of ample opportunities being given for filing counter affidavit.

2. This application has been filed for quashing of the entire criminal proceeding of CLA Case No. 17 of 2000 including order dated 04.01.2000 passed by the then learned Chief Judicial Magistrate, Dhanbad whereby and whereunder, the cognizance of the offence punishable u/s 23 & 24 of the Contract Labour (Regulation and Abolition) Act, 1970 has been taken against the petitioner and another person.

3. Before adverting to the submission advanced on behalf of the petitioner, the case of the complainant needs to be taken notice of.

4. A complaint was lodged by the Labour Enforcement Officer (Central) Dhanbad-1, stating therein that on inspection of Coalbed Mathane Project, Talgoria, District Bokaro, a unit of ONGC, following irregularities were found:-

1. That the accused persons has failed to display the notice showing the rates of wages, hours of work, wage period, date of payment of wages, date of unpaid wages and name and address of the Inspector in English & Hindi version. Breach of Rule 81(1)(i).

2. That the accused persons has failed to nominate the representative to be present at the time of disbursement of wages by the Contractor. Breach of Rule 72.

3. That the accused persons has failed to maintain the register of Contractors in Form XII at all. Breach of Rule 74.

4. That the accused persons has failed to submit the notice of commencement/competition of Contract job of the contractors in Form VIB. Breach of Rule 81(3).

5. Thus, it has been alleged that the accused persons including the petitioner have contravened the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Contract Labour (Regulation and Abolition) Central Rules, 1971 and thereby they are liable to be proceeded u/s 23 & 24 of the Contract Labour (Regulation and Abolition) Act, 1970.

6. On such complaint, the cognizance of the offence was taken vide order dated 04.01.2000 by the then Chief Judicial Magistrate, Dhanbad, which is under challenge.

7. Mr. Indrajit Sinha, learned counsel appearing for the petitioner submits that from the perusal of the complainant, it would appear that the allegation is there of contravention of the provision of the Act and also the Rule against the Company and in such situation, the prosecution against the Officers cannot be allowed to be proceeded with in absence of the Company being accused.

8. Further it was submitted that the petitioner, happened to be the General Manager, still he has been made accused though there has been no allegation that he was responsible or In-charge of day-to-day affairs of the business of the Company and as such, the petitioner, in view of the provision as contained in Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970, cannot be prosecuted for the offence as alleged. In support of the submission, decision rendered in the case of K.K. Ahuja Vs. V.K. Vora and Another, and in the case of Pepsico India Holding Pvt. Ltd. vs. Food Inspector and Anr. reported in AIR 2011 SCW 341, were referred to.

9. Having heard learned counsel appearing for the petitioner and learned counsel appearing for the State, it does appear that the prosecution was launched against the petitioner and one another person, on an allegation that certain provisions of the Act and the Rules mentioned above have been contravened. On such allegation, the petitioner, who happened to be the General Manager, has been made accused without there being any allegation that the petitioner was responsible for In-charge of day-to-day affairs of the business of the Company.

10. It be stated that the if the offence is committed by the Company, then the Officers of the Company can be held liable vicariously, provided the allegations are there that the Officers of the Company were responsible or In-charge of day-to-day affairs of the Company.

11. Here, I may refer to Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as follows:-

Offences by companies.-(1) If the 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

12. From the perusal of the aforesaid provision, it is evidently clear that if any officer other than the Company is made accused then either there should be specific averment in terms of Clause 1 of Section 25 of the Act that that person was responsible for or In-charge of the company for the conduct of the business or in terms of Clause (2) of Section 25, that offence was committed with the consent or connivance of or that the commission of offence is attributable to any negligent act on the part of the any of the Officers of the Company.

13. Here in the instant case, neither there has been averment in the complaint that the petitioner was in-charge of and responsible to the Company for the conduct of its business at the time of the commission of the offence nor any averment is there

that with the consent or connivance of this petitioner was there nor it is there that on account of any negligent act, offence as alleged has occurred. Thus, in absence of such averment, the petitioner cannot be prosecuted.

14. At this stage, I may refer to a case of K.K. Ahuja (supra), facts of which case though is not concerned with the Contract Labour (Regulation and Abolition) Act, 1970, rather is concerned with the N.I. Act but provision as contained in Section 141 is almost similar to that of the provision as is there in Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970. Their Lordships has categorically held that if a person other than the Company is made accused then there should be a specific averment in the complaint that that person was in-charge of or responsible to day-to-day affairs of the Company and further there should be averment for bringing him within the parameters of sub clause 2 of Section 141 of the N.I. Act that with the consent or connivance of the offence alleged has been committed or on account of negligent act, the offence has been occurred.

15. Thus, the necessary averments for fastening liability against the petitioner is lacking and hence, the prosecution against the petitioner cannot be maintained.

16. Hence, the entire criminal proceeding of CLA Case No. 17 of 2000 including order dated 04.01.2000 passed by the then learned Chief Judicial Magistrate, Dhanbad under which the cognizance of the offence under Sections 23 & 24 of the Contract Labour (Regulation and Abolition) Act, 1970 has been taken against the petitioner is, hereby, quashed. In the result, this application is allowed.