

(2012) 3 JCR 138 : (2012) 2 JCR 570 : (2012) 2 JCR 490 : (2012) 2 JLJR 49 : (2012) 4 LLJ 190 : (2012) LLR 751

Jharkhand High Court

Case No: Criminal Miscellaneous No. 545 of 2000 (R)

Ram Kumar Lal @ R.K.
Lal

APPELLANT

Vs

The State of Bihar (now
Jharkhand) and
Another

RESPONDENT

Date of Decision: Feb. 22, 2012

Acts Referred:

- Bihar Factories Rules, 1950 - Rule 73, 74, 75, 76
- Factories Act, 1948 - Section 106, 2, 48, 92

Citation: (2012) 3 JCR 138 : (2012) 2 JCR 570 : (2012) 2 JCR 490 : (2012) 2 JLJR 49 : (2012) 4 LLJ 190 : (2012) LLR 751

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Advocate: A.K. Mehta and Ananda Sen, for the Appellant; Shashank Shekhar Prasad, for the Respondent

Final Decision: Dismissed

Judgement

Prashant Kumar, J.

This application has been filed for quashing order dated 3.12.1999 passed by learned Chief Judicial Magistrate, Dhanbad in F.A. Case No. 656 of 1999, whereby he took cognizance u/s 92 of Factories Act against the petitioner. It appears that Factory Inspector, Dhanbad made inspection of M/s Loyabad Cooking Bye-Products Recovery Plant, Loyabad, and thereafter filed a complaint alleging therein that on the date of inspection more than 170 female workers were working in one shift, but no proper creche provided in factory premises. Which is violative of the provisions of Section 48 of the Factories Act and Rules 73 to 76 of Bihar Factories Rules, 1950.

2. It appears that said complaint received in the Court of learned Chief Judicial Magistrate on 3.12.1999 and on the same day he took cognizance of the offence u/s 92 of the Factories Act.
3. It is submitted by Sri A.K. Mehta, learned counsel for the petitioner that petitioner being a director of the company cannot be prosecuted u/s 92 of the Factories Act, because he is not occupier within the meaning of Section 2(n) of the Factories Act. It is submitted that the person who manage the affairs of factory is occupier, therefore, he can only be prosecuted u/s 92 of the Factories Act. It is submitted that petitioner had not been appointed by Central Government as occupier of the factory, therefore order taking cognizance is bad. It is further submitted that order taking cognizance is also violative of Section 106 of Factories Act.
4. On the other hand, Sri S.S. Prasad, learned Additional P.P. submits that petitioner has been appointed by Central Government as occupier, which manifest from Annexure-A to the counter-affidavit. Sri Prasad further submits that petitioner put his signature on Annexure-B as occupier of factory. Under the said circumstance, as per Section 92 of the Factories Act, petitioner can be prosecuted for violation of any of the provisions of the Factories Act and Rule framed thereunder.
5. Having heard the submissions, I have gone through the record. Section 48 of the Factories Act reads as under:--
48. Creches.--(1) In every factory wherein more than [thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.
- (2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.
- (3) The State Government may make rules-
- (a) prescribing the location and standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided, under this section;
- (b) requiring the provisions in factories to which the section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
- (c) requiring the provision in any factory of free milk or refreshment or both for such children;.
- (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Rules 73 to 76 of Bihar Factories Rules reads as under:--

73. Creches.--(1) All factories shall conform to rules 73 to 76 within six months from the date of enforcement of these Rules.

(2) The creche shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably practicable it shall not be situated in close proximity to any part of the factory where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on.

(3) The building in which the creche is situated shall be soundly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be waterproof. The floor and internal walls of the creche shall be cement plastered or so laid or finished as to provide a smooth impervious surface.

(4) The height of the rooms in the building shall be not less than 12 ft. from the floor to the lowest part of the roof and there shall be not less than 12 square feet of floor area for each child to be accommodated.

(5) Effective and suitable provision shall be made in every part of the creche for securing and maintaining adequate ventilation by the circulation of fresh air.

(6) The creche shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with the necessary bedding for each child, at least one chair or equivalent sitting accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children:

Provided that for children over two years of age it will be sufficient if suitable bedding is made available.

(7) A suitable fenced and shady open air playground shall be provided for the older children:

Provided that the Chief Inspector may by order in writing exempt any factory from compliance with this sub-rule if he is satisfied that there is no sufficient space available for the provision of such a playground.

(8) The manager shall appoint necessary staff in the creche to look after the children during the absence of their mothers.

74. Wash-room.--(1) There shall be in or adjoining the creche a suitable wash-room for the washing of the children and their clothings. The wash-room shall conform to the following standards, namely:--

(a) The floor and internal walls of the room to a height of 3 feet shall be so laid or finished as to provide a smooth impervious surface. The room shall be adequately lighted and

ventilated and the floor Shall be effectively drained and maintained in a clean and tidy condition.

(b) There shall be at least one basin or similar vessel for every four children accommodated in the creche at any one time together with a supply of water provided, if practicable, through taps from a source approved by the Health Officer, such source shall be capable of yielding for each child a supply of at least five gallons of water a day.

(c) An adequate supply of clean clothes, soap and clean towels shall be made available for each child while it is in the creche.

(2) Adjoining the washing-room referred to above, a latrine shall be provided for the sole use of the children in the creche. The design of latrine and the scale of accommodation to be provided shall either be approved by the Public Health Authorities or where there is no such Public Health Authority, by the Chief Inspector.

75 Supply of milk and refreshment--At least half a pint of clean pure milk shall be available for each child on every day it is accommodated in the creche and the mother of such a child shall be allowed, in the course of her daily work, intervals of at least 15 minutes each to feed the child. For children above two years of age there shall be provided in addition an adequate supply of wholesome refreshment.

76. Cloths for creche staff.--The creche staff shall be provided with suitable clean cloths for use while on duty in the creche.

6. From perusal of complaint petition, I find that at the time of inspection of factory premises about 170 female workers were employed in one shift, but there is no proper creche, which is in violative of Section 48 of Factories Act and Rules 73 to 76 of the Bihar Factories Rules, 1950. Section 92 of the Factories Act provides that if there is contravention of any provisions of Factories Act, or any rules made thereunder, then occupier and manager of the Factory shall be held guilty of the offence. Thus as per Section 92 of the Factories Act, occupier and manager of the factory can be prosecuted for violation of the provisions of the Factories Act & Rules.

7. The contention of learned counsel for the petitioner that at the relevant time petitioner was not managing the affairs of the factory as its occupier, cannot be accepted, because as per proviso 3 of Section 2(n) of Factories Act, if the factory is owned or controlled by Central Government then the person appointed by Central Government to manage the affairs of the factory shall be deemed to be the occupier. In the instant case a counter-affidavit filed by opposite party no. 2. Annexure-A to the said counter-affidavit, reveals that petitioner was appointed as occupier of M/s Loyabad Coke Plant. It further appears that petitioner put his signature on Annexure-B as occupier of M/s Loyabad Cooking Bye-Products Recovery Plant, Loyabad (factory in question). From Annexure-B it is clear that petitioner is the occupier of factory. Under the aforesaid circumstance, I find that contention of learned counsel for the petitioner has no leg to stand.

8. Now coming to the next contention that order taking cognizance is barred by law of limitation, it is worth mentioning that factory in question inspected on 3.9.1999. Thereafter petitioner was directed to remove irregularities vide letter no. 561 dated 10.9.1999. It appears that when said direction not complied, then present complaint filed on 3.12.1999. Proviso to Section 106 of Factories Act provides that if the offence consists of disobeying of written order made by an inspector the complaint petition can be filed within six months from the date on which the offence is alleged to have been committed. As noticed above, in the instant case, Factory Inspector gave direction to the petitioner to remove the irregularities within a certain period, but said direction not complied. Therefore, in this case, complaint can be filed within six months from the date on which said offence came in the knowledge of Inspector. Under the aforesaid circumstance, there is no delay in filing of complaint petition. Accordingly, second contention raised by Sri A.K. Mehta is also rejected. In view of the discussions made above, I find no merit in this application. Accordingly, same is dismissed.