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(2009) 03 JH CK 0025

Jharkhand High Court

Case No: Criminal M.P. No"s. 274 and 547 of 2005

Mrs. Chandra Kochhar and T.V. Narayanan		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: March 30, 2009

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 2, 2(1), 23, 24, 28(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 357(1)

Citation: (2009) CriLJ 4720 : (2010) 1 Crimes 351 : (2011) 2 JCR 319 : (2010) 6 RCR(Criminal) 630

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: H.K. Mitra, M.S. Mittal, A.K. Yadav and M.K. Seal, for the Appellant; Prabhash Kumar, C.G.C., for the Respondent

Judgement

Narendra Nath Tiwari, J.
These two cases arise out of the same complaint and the impugned order dated 30.11.2004 taking cognizance of the offence under Sections 23/24 of the Contract Labour Act against the petitioners of the said cases along with another accused namely Vivek Mishra. Said Vivek Mishra is not a party in these petitions.

2. At the time of argument, common questions were raised on the basis of the facts and as such both the cases have been heard together and are being disposed of by this common order. The cognizance has been taken on the basis of the complaint made by the complainant-Assistant Labour Commissioner (Central), Ranchi.

3. Learned Counsel appearing on behalf of the petitioners submitted that in the whole complaint petition there Is no specific allegation against the said petitioners namely Mrs. Chandra Kochhar and T.V. Narayanan that they are the persons responsible for the

supervision and control of the establishment at Ranchi. They have been sought to be prosecuted for the alleged violation of the several rules, which was allegedly found on inspection by the complainant of Ranchi establishment of ICICI Bank Ltd. Though there is no specific allegation, they have been sought to be prosecuted as principal employer. There is nothing in the complaint or anything on record to establish that the said petitioners are principal employers. It has been submitted that the principal employer has been defined in Section 2(g) of the Contract Labour (Regulation & Abolition) Act, 1970. Admittedly it is not a Government Department, rather it is an establishment and for the establishment "principal employer" is defined in Section 2(g)(iv) of the said Act. According to the said definition, in the case of establishment "principal employer" is any person responsible for the supervision and control of the establishment. There is not a single word in the complaint even to allege that these petitioners are responsible for the supervision and control of the establishment at Ranchi. Mrs. Chandra Kochhar (petitioner in Cr. M.P. No. 274 of 2005) is the Executive Director, ICICI Bank Ltd. Mumbai and T.V. Narayanan (petitioner in Cr. M.P. 547 of 2005) is Regional Head of the ICICI Bank Ltd., Kolkata, Regarding the allegation of violation of the rules, the said two petitioners do not come anywhere in the picture. There is no allegation that the alleged provisions of the rules were to be complied with at their end, in their official capacity.

4. In view of the above, no case is made out at all against these petitioners. The issuance of process against them is, thus, an abuse of the process of the Court.

5. Learned Counsel appearing on behalf of the Union of India, on the other hand, submitted that Mrs. Chandra Kochhar happens to be the Executive Director of ICICI Bank Ltd. and T.V. Narayanan is the Regional Head of the said Bank at Kolkata and that they are also responsible for the supervision and control of the establishment and as such the said persons have been rightly sought to be prosecuted for violation of the rules. Learned Counsel also drew the attention of this Court on an order passed in Cr. M.P. No. 639 of 2004, J.P. Sharma v. The State of Jharkhand and Anr. and has submitted that in that case prosecution against the Chairman-cum-Managing Director, C.C.L. launched almost on similar allegation, was not interfered with by this Court.

6. I have heard the parties and considered the facts and materials on record. The complaint petition has been brought on record as Annexure-2. The relevant portion of the complaint petition is reproduced herein below:

1. That the complainant is the Assistant Labour Commissioner (Central) Ranchi and "Inspector" appointed u/s 28(2) of the Contract Labour (Regulation & Abolition) Act, 1970 vide Notification No. S-16014/20/87-LW dated 30.11.87 having jurisdiction for whole of the India.

2. That the accused persons mentioned above are the Principal Employer and Executing Contract work by engaging 35 security personnel through contractor in M/s I.C.I.C.I. Bank at Ranchi. Hence he is the Principal Employer within the meaning of Section 2(1)(g) of

the Contract Labour (Regulation & Abolition) Act, 1970.

3. That the addresses of the accused persons for issuance of summons, processes etc. by the Hon"ble Court are as stated above.

4. That Sri V.K. Sinha, the then Asstt. Labour Commissioner (Central), Ranchi inspected the establishment of the accused persons on 19.8.2004 and during the course of his inspection he detected the following offences:

i) That the accused persons executing contract work without obtaining Certificate of Registration from the Asstt. Labour Commissioner (Central) cum Registering Officer, Violation of Rule 7.

(ii) That the accused persons failed to display notices showing the rates of wages, hours of work, wage period, date of payment of wages, name and address of the Inspector and date of payment of unpaid wages in English and Hindi at the place of work. Violation of Rule 81(1)(i).

(iii) That the accused persons failed to submit copies of notices displayable under Rule 81(1)(i) to the Inspector. Violation of Rule 81(2).

(iv) That the accused persons failed to submit copies of notices of commencement/completion to the Inspector in Form-VI-B. Violation of Rule 81(3).

(v) That the accused persons failed to maintain the Register of Contractor in form-XII. Violation of Rule 74.

(vi) That the accused persons failed to submit Annual Return in form XXV. Violation of Rule 82(2).

5. That the offences detected by the then Asstt. Labour Commissioner (Central), Ranchi at the time of his inspection were incorporated in the Inspection Report-cum-Show cause Notice No. 35(8)2004-ALC(R) dated 23.9.2004 and was served to the accused person by Registered A/D post.

6. That the accused persons having thus contravened the Rule 7, 81(1)(i), 81(2), 81(3), 74 and 82(2) have rendered themselves liable for prosecution u/s 23/24 of the Contract Labour (Regulation & Abolition) Act, 1970.

7. It is therefore, prayed that the Hon"ble Court to please to take the cognizance of the offences committed and dispose off the same as per the law.

8. That the complainant also prays the Court to kindly award a part of fine imposed on the accused person towards expenses incurred by the Department in conducting the prosecution in terms of Section 357(1) of the Cr.P.C., 1973 and the amount so awarded may please be ordered to be credited in the following head of account.

"Revenue receipt No. 087-Receipt under labour laws (Central)".

7. On reading the said complaint, it is evident that no single word has been whispered to show that the petitioners Mrs. Chandra Kochhar and T.V. Narayanan are the persons responsible for supervision and control of the establishment. According to learned Counsel for the petitioners the compliance of the provisions of rules are to be made by the local establishment. The allegation, in the petition, is of violation of different rules at the local establishment. The petitioners, who are placed in Mumbai and Kolkata in the different capacity, are not responsible for supervision, control and any such matter of the establishment. In absence of the facts showing the said persons responsible for supervision and control of the establishment. I find no ground available before the learned Magistrate for taking cognizance of the alleged offences under Sections 23 and 24 of the Contract Labour Act against these two petitioners. In the said case of J.P. Sharma (Supra) the order was passed considering facts and materials on record of that case. Moreover, the complaint petition filed in that case is not before this Court. There is no other document on record as well to show that in that case too the Chairman-cum-Managing Director was not responsible for supervision and control of the establishment in question. The said decision, thus, is of no help to the prosecution in the facts and circumstances of this case.

8. I, therefore, find no ground on the basis of which the impugned order taking cognizance and issuance of process against these two petitioners can be sustained. These Cr.M.P.s are, thus, allowed. The order taking cognizance dated 30.11.2004, so far as these two petitioners are concerned, as well as criminal proceeding against them, are quashed.