

Tapas Kumar Nag Vs The State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Aug. 11, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 200
Factories Act, 1948 â€” Section 105, 88, 92

Citation: (2014) 143 FLR 268 : (2014) LLR 1237

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Anoop Kr. Mehta, Advocate for the Appellant

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioners and learned counsel for the State.

2. Petitioners are aggrieved by the order dated 23.5.2013 passed by the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, in the

Factory Case No. 01 of 2013, whereby the cognizance has been taken against the petitioners, being the Occupier and Manager of the Factory,

for the offence under Section 92 of the Factories Act.

3. The Official complaint was filed by the factory Inspector, Bokaro Circle No. 2, stating therein that in M/s. Kargali Washery, Kargali, the coals

were brought from the different mines for washing. It is stated in the complaint petition that plate and railing of a platform in the said washery was

damaged and the welder, helper and fitter, who replacing the plate and railing of the platform, met the accident, that took place due to the fact that

the necessary arrangements of safety were not there and even the safety belt and helmet were not given to the workers and in the accident the

worker died. In the written complaint filed by the Factory Inspector, it was mentioned that there was violation of Rule 55-A of the Bihar Factories

Rules, as also the violation of Section 88 of the Factories Act and the relevant Rules, regarding notice of accidents, making out the offence under

Section 92 of the Factories Act and in the said complaint, the petitioners were described as Occupier and Manager of the Factory. On the basis of

the written complaint, the cognizance was taken against the petitioners for the offence under Section 92 of the Factories Act by the impugned

order.

4. Learned counsel for the petitioners has taken a short point challenging the impugned order, submitting that the petitioners are not the Occupier

and Manager of the Factory. It has been submitted that the Factory Inspector himself had, by a letter contained in Annexure-5 to the application in

the matter of renewal of the license of the factory, had disclosed the position that there is no "occupier" of the Factory in accordance with law.

Learned counsel for the petitioners has also submitted that even the petitioner No. 2 was wrongly shown as Manager, even though he is not the

Manager of the Factory. Learned counsel accordingly, submitted that impugned order cannot be sustained in the eyes of law.

5. Section 105 of the Factories Act prescribes that no Court shall take cognizance of any offence under the said Act except on complaint by, or

with the previous sanction in writing of an Inspector. In the present case the written complaint has been filed by the Inspector of Factories. The

petitioners have been described to be the Occupier and Manager of the factory in the written complaint filed by the Inspector of Factories, who is

also a public servant, on the basis of which the Magistrate has taken the cognizance in the case. Section 200 of the Cr.P.C., provides that when

the complaint is made in writing by a public servant acting or purporting to act in discharge of his official duties, the Magistrate need not examine

the complainant and witnesses while taking cognizance in the case. In view of the aforementioned provisions, if in the complaint petition, the

petitioners were described as Occupier and Manager of the Factory, and there was nothing before the Magistrate to show that in fact the

petitioners are not the Occupier and Manager of the Factory, the cognizance order cannot be challenged on the factual ground that the petitioners

are not the Occupier and Manager of the Factory. At this stage, it cannot be said that there is any illegality in the impugned order passed by the

Court below. It is well settled that legality or otherwise of the order passed by the Court, cannot be judged on the ground of the materials, which

were not available before the Court while passing the order. It can only be judged on the basis of materials available before the Court. Learned

counsel for the petitioner has accepted that there was nothing before the Magistrate to show that the petitioners were not the Occupier and

Manager of the Factory. In that view of the matter, it cannot be held that the impugned order dated 23.5.2013 passed by the learned Additional

Chief Judicial Magistrate, Bermo at Tenughat, taking cognizance against the petitioners, who were shown to be the Occupier and Manager of the

Factory, is illegal in any manner.

6. As such, I do not see any illegality in the impugned order passed by the Court below. There is no merit in this application and the same is

accordingly, dismissed.

7. It is however, made clear that it shall be open to the petitioners to bring the real facts before the Court at the appropriate stage to show that they

are actually not the Occupier or Manager of the Factory and the Court below shall pass necessary orders in accordance with law.