

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 628 of 2012

1. K. Kannan

2. Vijay Sharma

...Petitioners

Versus

1. The State of Jharkhand

2. Inspector of Factories, Seraikella-Kharsawan ...Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners

: Mr. P.A.S. Pati, Advocate

For State

: Mr. Achinto Sen, Advocate

06/12.04.2024

Heard the learned counsel for the petitioner as well as the learned counsel for the respondent State.

2. The petitioners have filed this petition for quashing the entire criminal proceeding in connection with G.O. No. 169 of 2011 as well as the order taking cognizance under section 92 of the Factories Act dated 05.01.2012 passed by the learned Judicial Magistrate, 1st Class, Seraikella .

3. A prosecution report was filed by the opposite party no.2 is that the petitioner no. 1 is the manager and petitioner no. 2 is the occupier of Usha Martin Ltd. (Captive Power Plant), Phase-V, Industrial Area, Adityapur. It has been alleged that on 01.10.2011 an inspection was carried out at the factory. The opposite party no. 2 sought details with regard to the security officer. It was informed to the opposite party no. 2 there is only one trained security officer. As per the notification of the Labour Employment and Training Department, Govt. Of Bihar, the number of notified security officer for the factory is three in number. It has been further alleged that pursuant to inquiry the management was directed to appoint required number of security officers, which it has failed to do. As such there has been a violation of section 40B of the Factories Act read with Rule 62 B of the Factories Rules.

4. The only point has been raised in this petition by learned counsel appearing for the petitioners that Section 106 of the Factories Act prescribes the period of limitation for three months for filing the complaint, under Section 92 of the Factories Act from the date of occurrence. He submits that the date of occurrence is 01.10.2011 opposite party no.2 inspected the place of occurrence and subsequently required information was furnished in statutory Form 17A by the company. He further submits that the knowledge

was there to the Inspector in view of the inspection and the complaint was filed on 05.01.2012. He further submits that three months' time from the date of occurrence comes to the date on 01.01.2012 and on that day 90 days' has been completed from the date of occurrence. He also submits that the complaint has been filed after 90 days which is against the mandatory provision made under Section 106 of the Factories Act. He further submits that there is no provision of condonation of delay. The petitioners are occupier and Manager under the Factories Act.

5. Mr. Achinto Sent, learned A.P.P. appearing for the State by way of referring Section 106 of the Factories Act submits that the enquiry was going on and that is why the case was filed later on.

6. For ready reference, Section 106 of the Factories Act reads as under:-

“106. Limitation of prosecutions.—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 an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed. (a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues; (b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.”

7. On perusal of the complaint petition, specifically the statements made in paragraph Nos. 5 and 6, it is crystal clear that it was in the knowledge of the Inspector that the occurrence took place on 01.10.2011 and the complaint was admittedly filed on 05.01.2012 and the cognizance under Section 92 of the Factories Act was taken against the petitioners.

8. On bare perusal of Section 106 of the Factories Act (as quoted herein 4 above), it is also crystal clear that the law with regard to filing of the complaint under the Factories Act is within a period of three months from the date of commission of the offence or from the date of knowledge of the occurrence.

9. It is an admitted fact that the complaint was filed on 05.01.2012. However, the occurrence took place on 01.10.2011. From the complaint itself in paragraph nos. 5 and 6, it is clear that it was in the knowledge of the Inspector that the occurrence took place on 01.10.2011 and there is no provision of condonation of delay. Section 106 of the said Act clearly speaks that 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. The Court has also perused the cognizance order dated 05.01.2012 and finds that the learned Judicial Magistrate, 1st class, Seraikella has taken cognizance in format thereby he has filled up the lines and section. It appears that he has not applied his judicial mind in order taking cognizance. The complaint petition itself is time barred under Section 106 of the Factories Act.

10. In view of the aforesaid facts, the entire criminal proceedings in connection with G.O. No. 169 of 2011, pending in the Court of learned Judicial Magistrate, 1st Class, Seraikella including the order dated 05.01.2012 passed by the learned Judicial Magistrate, 1st Class, Seraikella, are hereby, quashed.

11. Accordingly, this criminal miscellaneous petition stands allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

MM