IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1069 of 2018

Pinaki Das .... …. Petitioner

Versus

1. The State of Jharkhand
2. Labour Enforcement Officer (Central), Chaibasa

.... Opp. Parties

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Ajay Kumar Sah, Advocate
For the State : Mr. V.S. Sahay, A.P.P.
For the O.P. No.2 : Mr. Ravi Prakash, Special P.P.

Order No.06 Dated : 20.09.2023

Instant petition has been filed for quashing the entire criminal proceeding including the order taking cognizance under Section 22-A of the Minimum Wages Act in connection with C-2 Case No.161 of 2012.

2. The complainant is the Labour Enforcement Officer (Central), Chaibasa and the case has been lodged against Eureka Forbes Ltd. represented by Sri Sapoor P. Mistry (Chairman) and Sri Pinaki Das, Regional Head (ER), the petitioner.

3. The case of the complainant is that the above named accused persons were executing the contract work of intensive coach cleaning work at coach cleaning complex of Tatanagar Railway Station of South Eastern Railway, Tatanagar, District Singhbhum (E), Jharkhand and on inspection of the said establishment, the irregularity was observed that the accused person failed to display the notice showing the extract of the Act and Rules in Hindi and English at the work place which was breach of Rule 22.

4. On the basis of the prosecution report, the cognizance has been taken which is under challenge in the instant petition.

5. It is submitted by learned counsel on behalf of petitioner that there has been delay of six months between the time when the inspection was conducted and the time when the complaint was filed before the learned Court below. The cognizance has been taken only against this petitioner and not against the Company which is in violation to the specific provision of Section 22-C of the Minimum Wages Act which reads as under:-

"If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company as

well as the company 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 provided in this Act 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 is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

6. It is submitted that this provision is *pari materia* to Section 141 of Negotiable Instrument Act regarding which Hon'ble Supreme Court in ***Ashok Shewakarmani & Others Versus State of Andhra Pradesh & Another,*** **2023 SCC OnLine SC 958** wherein it has been held that merely because somebody is managing the affairs of the company, *per se*, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company.

7. Learned counsel on behalf of opposite party no.2 opposed the quashing petition. It is submitted that this petitioner was Head of Eastern Region and was responsible for day to day affair of the Company and it is a case of direct liability and not a case of vicarious liability for which the principles as stated by the learned counsel on behalf petitioner will apply. It is submitted that after inspection, notices were served on the petitioner which was not responded to which resulted in delay in filing the present complaint. The complaint has been filed within statutory period on 10th February, 2012. Reliance has been placed on ***Kapil Agarwal & Others Versus Sanjay Sharma,*** **(2021) 5 SCC 524**

8. The short question that false for consideration before this Court is whether the order taking cognizance only against this petitioner and one another Chairman of the Company without the cognizance being taken against the Company, is sustainable in the eye of law or not?

9. The criminal jurisprudence envisage both direct and vicarious liability for an act which is an offence under the penal provision. In case of direct liability of an accused, on the basis of facts as disclosed in a particular case, there may not be a requirement of impleading the Company as an accused along with the person who is sought to be proceeded. However, requirement of impleading the Company arises when the accused is

vicariously held liable for the acts of the Company. In view of statutory provision as well as ratio laid down by the Hon'ble Supreme Court in ***Aneeta Hada Versus M/S Godfather Travels and Tours*, (2012) 5 SCC 661**, impleading the Company as an accused will be an imperative necessity in case of vicarious liability against the accused by virtue of him being holding a position of party of the said Company.

10. In the present case, there is no direct allegation against this petitioner that he was personally liable for not displaying the notice of the Act and Rule in Hindi and English at the work spot. This allegation is directed against Company and the petitioner has been proceeded against as he held the position of head of Eastern Region. Thus, this is a case where vicarious liability is sought to be imputed on the basis of averments made in the complaint petition.

Under the circumstance, the provision of Section 22-C of the Minimum Wages Act will be applicable and it was necessary for the Trial Court to have taken cognizance against the Company and without such cognizance, there is infirmity in the order of cognizance.

Under the circumstance, this Court is of the view that the order taking cognizance is not sustainable and it is accordingly, set aside.

Criminal Miscellaneous Petition is allowed.

(Gautam Kumar Choudhary, J.)

Anit