

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 20 of 2024

Vijay Kumar Mishra, Commissioner, CMPFO, S/o Sri Krishna Mishra, Rep. by Vijay Kumar Mishra (Commissioner), aged about 58 years, Coal Mines Provident Organization, Police Line, P.O. -Dhanbad, P.S. -Hirapur, District -Dhanbad, Jharkhand.

.... Petitioner

Versus

1. The State of Jharkhand
2. The Union of India represented by Labour Enforcement Officer (Central), Dhanbad-III, I/c Katrasgarh, Chirkunda & Bermo, P.O. and P.S. -Dhanbad, District -Dhanbad, Jharkhand, PIN-828113.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Prashant Kumar Singh, Advocate
For the State	: Mrs. Lily Sahay, Addl. P.P.
For the O.P. No.2	: Mr. Anil Kumar, ASGI
		: Mr. Abhijeet Kr. Singh, CGC

By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer for quashing the entire criminal proceeding instituted against the petitioner including the order dated 20.12.2022, passed in Complaint Case No. 13710 of 2022 by the learned Chief Judicial Magistrate, Dhanbad, whereby and where under the learned Chief Judicial Magistrate, Dhanbad has taken cognizance for the offences punishable under Section 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970.

3. The allegation against the petitioner is that a prosecution report with other documents was submitted by the opposite party no.2 for prosecution of the petitioner who is the Commissioner of Coal Mines Provident Fund Organization, Police Line Hirapur, Dhanbad alleging therein that an inspection was conducted by the opposite party no.2 on 28.09.2022 in the establishment of the said Coal Mines Provident Fund Organization and found that the petitioner engaged contractors for executing the work of Housekeeping, Security, Electrical, Repair and others at Dhanbad by employing more than 20 contract labour in his establishment and the following irregularities/breaches of the law were also detected:-

(I) That in contravention of Rule 81 (1)(i) of the Contract Labour (Regulation and Abolition) Rules, 1970, the accused person failed to display the notices containing rates of wages, hours of work, wages period, date of payment of wages and date of payment of unpaid wages in English and Hindi at the work spot.

(II) In contravention of Rule 81(3) of the Contract Labour (Regulation and Abolition) Rules, the accused person failed to intimate the date of commencement/completion in respect of the contractors engaged within 15 days of the commencement/completion of the work in form-VII annexed to the Rationalization of Forms and

Report under Certain Labour Laws Rules, 2017 to
the inspector

(III) In contravention of Rule 74 of the Contract Labour (Regulation and Abolition) Rules, the accused person failed to maintain Register of Contractors in Form-XII.

The learned Chief Judicial Magistrate *prima-facie* found incriminating materials available on record for commission of the offences punishable under Section 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970 against the petitioner and took cognizance of the said offence is in respect of the petitioner.

4. It is submitted by the learned counsel for the petitioner drawing attention of this Court to Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 which reads as under:-

Contract Labour (Regulation and Abolition) Act, 1970

25. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence 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 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 that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also

be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

That Central Mines Provident Fund Organization is statutory body constituted under Section 3A of the Coal Mines Provident and Miscellaneous Provisions Act, 1948 under the Ministry of Coal, Government of India and is a Body Corporate, hence besides the person in-charge of and responsible to the company for the conduct of its business, the company should have also been arraigned as an accused. It is next submitted that the allegations against the petitioner are false and the petitioner was not engaged in day to day activity and had no knowledge about the above mentioned case as no notice has ever been served upon the office of the petitioner nor any information has been received by the petitioner for issuance of warrant against the petitioner. Hence, it is submitted that the entire criminal proceeding instituted against the petitioner including the order dated 20.12.2022, passed in Complaint Case No. 13710 of 2022 by the learned Chief Judicial Magistrate, Dhanbad, whereby and where under the learned Chief Judicial Magistrate, Dhanbad has taken cognizance of the offences punishable under Section 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 be quashed and set aside.

5. The learned Central Government Counsel appearing for the opposite party no.2 drawing attention of the Court to page no.29 of the brief which is the Form-VII submits that the petitioner therein has mentioned the following himself :

Name of the principal employer under the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970)/Employer under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996):- Shri Vijay Kumar Mishra, Commissioner, Coal Mines Provident Fund Organization, Police Line, Hirapur, Dhanbad.

6. It is next submitted that since it is the admitted case of the petitioner that Vijay Kumar Mishra, Commissioner of Coal Mines Provident Fund Organization is the principal employer, hence it is not open for the petitioner to take a different plea that he is not the principal employer rather the company is the principal employer. It is next submitted by the learned Central Government Counsel, drawing attention of this Court to the para -3 & 6 of the complaint that the same categorically shows the petitioner being the principal employer, engaged contractors for executing the work and that petitioner was asked to correct the irregularities and he submitted a reply to the show cause notice but failed to comply the mandatory provisions under the Contract Labour (Regulation and Abolition) Act, 1970. It is next submitted that it is a false contention made on the part of petitioner that it has not been served with any show cause. It is then submitted that no illegality has been committed by arraying the petitioner as an accused and so far as the contention that the allegation against him is false or he has no knowledge about the offences alleged to have been committed by him is, at best, the defence which he can take during the

trial of the case but certainly the same is not a ground to quash the entire criminal proceeding. Therefore, it is submitted that this Criminal miscellaneous petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials in the record, it is crystal clear from the Form-VII under the signature of no one other than the petitioner himself, the copy of which is annexed to this criminal miscellaneous petition, that he has represented himself to be the principal employer under the Contract Labour (Regulation and Abolition) Act, 1970 and he has intimated the same to the complainant. It was not his case that a body corporate in the name of Coal Mines Provident Fund Organization is the principal employer; as the petitioner tries to make out, in this criminal miscellaneous petition for the first time. Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 comes into play only if the person committing the offence under the Act is a company. The respondent no.2 was never intimated by the petitioner that the company has committed any offence. In the absence of any material in the record to this effect, this Court is of the considered view that the provisions of Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 is not attracted in this case; in view of the categorical admission made by the petitioner in Form-VII, copy of which is kept at annexure-II at page no.29 of the brief wherein the petitioner himself has represented to be the principal employer concerned and there is direct and specific allegation against the petitioner in the complaint filed by the opposite party no.2-complainant that the petitioner in capacity of the principal employer

has committed the offence punishable under Section 23/24 of the Contract Labour (Regulation and Abolition) Act, 1970. Hence, this Court is of the considered view that there is no illegality committed by the learned Chief Judicial Magistrate, Dhanbad in passing the order dated 20.12.2022.

8. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th February, 2024
AFR/Sonu-Gunjan/-