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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 03, 2010

Date of Order: March 25, 2010

+ CM(M) 106/2009

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Yashwinder Khurana

Through: Mr. Pankaj Gupta, Advocate

25.03.2010

...Petitioner

Versus

Deputy Commissioner & Ors.

Through: Mr. M.N. Singh, Advocate for R-2/workman.

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By way of present petition, the petitioner has prayed that the proceedings initiated by respondent no.1 Deputy Commissioner under Workmen Compensation Act on an application moved by respondent no.2 (workman) dated 25th may, 2008 be quashed and the Deputy Commissioner under Workmen Compensation Act be directed to initiate action of perjury and fraud against respondent no.2 (workman).

2. Brief facts relevant for the purpose of deciding this petition are that the respondent no.2 herein was working with the petitioner's factory where some mishap took place on 22nd January 2008 and respondent no.2 lost two fingers of one of his hands. He (workman) lodged a compensation claim with the office of Commissioner on 11th March, 2008 under Section 10 of the Workmen Compensation Act and the same was registered there. However, the workman

on 9th April, 2008 is stated to have entered into a settlement with the petitioner for compensation in respect of injuries and received Rs.70,000/- in presence of Investigating Officer of Police Station Sarai Rohilla and in presence of his own sister in law and another friend Shri Chander Bhan. After receiving this compensation, the workman wrote to General Secretary of Majdoor Vikas Samiti Shri Vinod Kumar and to Shri S.K. Shukla of Majdoor Vikas Samiti not to proceed with his compensation case. On 30th April, 2008, the compensation case was taken up by the Commissioner where the parties appeared and before the Commissioner and it was stated by the workman that he had already taken Rs.70,000/- from the management for injuries sustained by him in the course of employment and after this settlement he would have no right under Workmen Compensation Act to receive compensation for injuries. He had settled his case willingly and the compensation case be closed. After recording this case was closed. However, later on the workman made an application for revival of his case, copy of which was sent to the petitioner. In the application, the allegations of fraud were made by the workman against the petitioner herein. The Commissioner under Workmen Compensation Act issued notice of the application to the petitioner and the petitioner filed reply to the application and also made an application under Section 340 Cr.P.C read with Section 195 Cr.P.C and Section 23 of Workmen Compensation Act. The petitioner also requested that the Commissioner should ensure personal appearance of respondent no.2 before him. It is stated that the Commissioner under Workmen Compensation Act however proceeded further on the application made by the workman and has not considered the application made by the petitioner under Section 340 Cr.P.C and hence the present petition.

3. The notice of the petition was served upon the respondents. The respondent No.2 (workman) admitted receiving of Rs.70,000/- from the management under the compromise. The management also offered that the respondent may continue with the compensation claim and return the amount received from the management. However, the workman was not prepared to return the amount already received on the ground that he did not have the amount now with him as he has already spent the same.

4. I consider that the petitioner has approached this Court prematurely. This Court cannot compel the Commissioner under Workmen Compensation Act to decide the application under Section 340 Cr.P.C first and then to decide the application made by the workman for revival of the proceedings. Since the petitioner has already placed facts before the Commissioner under Workmen Compensation Act, the petitioner ought to have wait for the order of the Commissioner under Workmen Compensation Act and if the petitioner felt aggrieved from the order of Commissioner under Workmen Compensation Act, then only the petitioner had a right to approach the appropriate forum available to him. This Court while exercising supervisory jurisdiction over subordinate courts or tribunals cannot give directions as to whether the tribunal should decide X application or Y application first. These are the matters within the competence of the Tribunal/Commissioner and the Tribunal has jurisdiction to decide the applications in accordance with law.

5. The petition stands disposed of with above order.

March 25, 2010
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SHIV NARAYAN DHINGRA J.