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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.170 of 2022

Mahanadi Coalfields Ltd.

....

Petitioner

Mr. Debaraj Mohanty, Advocate

-versus-

State of Odisha and Others

....

Opp. Parties

Ms. S. Mishra, Additional Standing Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER
20.4.2022

Order No.

- 02.
1. Heard Mr. Mohanty, learned counsel for the Petitioner and Ms. Mishra, learned Additional Standing Counsel for State – Opposite Party.
 2. The impugned order dated 3rd December, 2021 (Annexure-4) of the learned S.D.J.M., Jharsuguda in 2(C)CC No.83 of 2019 is the subject matter of challenge in the present petition wherein the application of the workman for intervention has been allowed.
 3. It is submitted on behalf of the Petitioner that when the offence is under Section 29 of the I.D. Act, a criminal proceeding, the course of trial is between the Court and the offender, where the workman has no right of being heard or to participate for the complaint being lodged at the instance of Labour Enforcement Officer,.
 4. Admittedly, the proceeding being a criminal proceeding in respect of offence under Section 29 of the I.D. Act, the procedure prescribed under the Cr.P.C. is applicable for trial by operation of

Section 4 of the Cr.P.C. Section 24(8) read with section 301(2) of the Cr.P.C. authorizes the victim to participate in the proceeding, subject to such limitation. Considering the definition of victim as enumerated in the Code, the workman, who is the beneficiary of the Industrial Award, is considered as the victim in respect of offence under Section 29 of the I.D. Act. The victim's right of hearing in the criminal proceeding has been explained in a recent decision of the Supreme Court in *Jagjeet Singh and others vs- Ashish Mishra alias Monu and another*, 2022 SCC Online SC 453. It has been held that,

“23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a *brutum fulmen*. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime.

24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is

also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

25. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses."

5. Therefore, in the instant case, permitting the workman to intervene in the proceeding or to participate in conducting the criminal prosecution cannot be said as illegal and the learned S.D.J.M. has rightly permitted them so to intervene. As such no illegality being found in the impugned order, the CRLMC is dismissed.

5. However, it is clarified that such participation of the workman in the criminal proceeding shall limit in accordance with law as discussed above.
6. The CRLMC is accordingly disposed of.
7. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

