

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.123 of 2016

Anil Kumar Singh and others

Petitioners

....
Mr. S. Mohanty, Advocate

-versus-

***State (Government of India), ...
represented by Inspector of Mines,
Jharkhand***

Opposite Party

Mr. Nikhil Pratap, ASC

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
09.12.2022**

05. 1. The five Petitioners, who all hold the managerial positions in the Mahanadi Coalfields Limited (MCL), have filed this petition seeking the quashing of the complaint case i.e. 2(c) C. C. No.9 of 2014 in the Court of Sub-Divisional Judicial Magistrate, (SDJM) Sundargarh as well as the order dated 22nd September, 2015 passed by the said SDJM taking cognizance of the offences under Sections 73, 72 A, 72-C(1)(a) of Mines Act, 1852 against the Petitioners.
2. The above case was registered on a complaint by the Inspector of Mines appointed under Section 5 of the Mines Act, 1952 arising from a fatal accident at the Kulda OC Mine, village Balinga, PS Hemgir, District Sundergarh in which, while salvaging remnant coal from the toe of an external overburden dump of an opencast coal mine, 13 persons died due to serious bodily injuries. The complaint listed out numerous violations that were observed when

the complainant made an inspection and inquiry on 11th, 12th and 13th September, 2013 into the causes and circumstances that led to the said accident.

3. *Inter alia*, it is stated that the five Petitioners herein were at the relevant time entrusted with the oversight of the mining operations and strict compliance of the provisions of the Mines Act, 1952 as well as the Rules, Regulations and Orders made thereunder.

4. Learned counsel for the Petitioners on the basis of the judgment of the Andhra Pradesh High Court in *N. V. Subrahmanyam v. State (Government of India) 2002 Crl LJ 3264* argued that in the present case, no order had been passed by the Chief Inspector or a person authorized by him recording the subjective satisfaction that the “owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.” According to him, the complaint itself did not record such satisfaction.

5. In the present petition, while issuing notice on 8th April 2016, the further proceedings in the above case before the SDJM was stayed by this Court.

6. In response to the above notice, a counter affidavit has been filed by the Inspector of Mines, Chaibasa Region *inter alia* stating in para 8 as under:

“8. That, in reply to ground – (2) of the criminal misc. case is not correct and hereby denied. It is humbly submitted that the requirements under the provisions of section 75 of the Mines Act, 1952 was complied with,

as the complainant, being Director of Mines Safety as well as Inspector of Mines had already been authorized to institute the cases u/s75 of the Mines Act, 1952 by virtue of general authorization published in the Gazette of India, vide Notification No.Law/G-22/11/01 dated 23rd July, 2011. Before launching the case the complainant being Inspector of Mines satisfied himself that the delinquent persons had failed to exercise their duties as enshrined under provision of section 18(4) of the Mines Act, 1952 and different provision of the Coal Mines Regulation, 1957 and the same has already been mentioned in the complainant petition.”

7. The question whether the subjective satisfaction of the complainant as to the failure of the Petitioners to exercise due diligence to prevent the commission of the offence was in fact recorded is a matter that has to be gone into by the trial Court since it appears to be a disputed question of fact for which evidence would have to be led. Unlike the decision in *N. V. Subrahmanyam (supra)* where the High Court has observed that “no order has been passed under this section by the Chief Inspector or his authorised person”, the same cannot be said of the present case in view of the above averments in the counter affidavit. This being therefore a disputed question of fact cannot be possibly adjudicated at this stage in these proceedings.

8. Permitting the Petitioners to urge all the pleas that they may have in accordance with law, including the points urged in the present petition, at the appropriate stage before the trial Court, this Court declines to interfere at this stage.

9. Accordingly, the petition is dismissed. The interim order passed earlier stands vacated. A copy of this order be sent to the concerned Court below forthwith.

(Dr. S. Muralidhar)
Chief Justice

M. Panda

