

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2846 of 2019

M/s. Bharat Kolkata Container Terminals Pvt. Ltd. & Anr.

Vs

Government of India (Ministry of Labour & Employment), Kolkata.

For the Petitioners : Mr. Sandipan Ganguly, Ld. Sr. Adv.
Mr. Soumyajit Chowdhury,
Mr. Pratik Shanu,
Ms. Megha Shaw.

For the Union of India : Mr. Arun Kr. Maity,
Mr. Sagar Saha.

Hearing concluded on : 10.01.2024

Judgment on : 22.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding in CS/6041/2019 now pending before the Learned Metropolitan Magistrate, 11th Court at Calcutta under Section 14(2)(a) of The Dock Workers (Safety, Health and Welfare) Act, 1986 and Regulation 107(1) and 116 of The Dock Workers (Safety, Health and Welfare) Regulations, 1990 and all orders passed therein including the order dated 01.02.2019 and the order dated 3rd July, 2019.
2. The petitioners' case is that the petitioner No.1 is a company duly incorporated and registered under the provisions of the Companies Act, 1956, having its office at the address mentioned in the cause title of the instant application. The petitioner no.1 is also an existing company within the meaning of the Companies Act, 2013.
3. The petitioner no. 2 is employed as a Director with the petitioner no. 1 company.
4. It is stated that the petitioners have been falsely arraigned and implicated in the instant case at the behest of one Sri D. K. Saxena, Deputy Director (Safety), Inspector under The Dock Workers (Safety, Health & Welfare) Act, 1986, being the Opposite party to the instant application.
5. **The petition of complaint is as follows:-**

“That the opposite party is an inspector of the dock safety for the port of Kolkata including Haldia Dock Complex. The petitioner no.1 is a company which was engaged in handling storage and transportation of containers at NSD, Kolkata Port Trust, Kolkata on 28th February, 2018, therefore the petitioner no.1 was carrying on ‘Dock Work’ within the meaning of Section 2D of the Dock Workers (Safety, Health and Welfare) Act, 1986 (hereinafter referred to as the “Act of 1986”) and at that time the petitioner no. 2 was a director of the petitioner no.1 company and was looking after the business on behalf of petitioner no.1 company and was the person responsible for Dock Work carried on by the petitioner no.1.

That on 28th February, 2018 one Md. Imran who was employed as a driver of a trailer for transporting containers in the dock area and one Abdul Kader was employed as a gearman by M/s. T.P. Roy Chowdhury Private Limited for unloading containers from the vessel. On 28th February, 2019 at about 16.45 hours when Abdul Kader was coming back towards berth No. 7 NSD Kolkata Port Trust on his bicycle after taking drinking water and tea, he tried to overtake the trailer and skidded into its travelling path and was hit by the trailer on the road near block No.5 as a result of which the victim fell down from the bi-cycle and his legs were run over by the trailer causing severe injuries to his legs and the victim succumbed to his injuries on 28th February, 2018 at 20.30 hours. That the petitioner Nos.1 and 2 were employers of the said driver causing the aforesaid accident and on enquiry it was found that the driver of the trailer had not undergone the medical examination required under Regulation 107(1) of The Dock Workers (Safely, Health and Welfare) Act, 1986 (hereinafter referred to as “the Regulation of 1990”). That under Regulation 7(4)(b) of the Regulation of 1990 it was the duty of the petitioners to comply with the Regulation 107.....”

6. It is the case of the petitioners that on the basis of the petition of complaint, cognizance was taken by the Learned Magistrate vide order dated 01.02.2019 and by the self same order the Learned Magistrate

issued process against the petitioners without examination of the Inspector Mr. D.K. Saxena.

7. It is further stated that all transportations and supplies/services of tractor/trailer and reach stacker were vested on a consortium of Phonex Traders Private Limited and Kaushik Global Logistics Limited i.e. two completely separate entities, by the petitioner no.1 company vide a supply and service agreement dated 28th October, 2014 pertaining to trailer/tracker services at Kolkata Port.
8. Pursuant to the said agreement, Phonex Traders Private Limited and Kaushik Global Logistics Limited were the sole employers of all trailers/trackers operating for the concerned service and therefore, the driver who was driving trailer was an employee of Phonex Trader Private Limited and Kaushik Global Logistics Limited and therefore those companies were the “employers” of the said “Dock Worker” within the meaning of Section 2(f) of the Act of 1986.
9. It is further stated that Section 2(f) defines an “employer”, Section 2(g) of the Act of 1986 defines a “principal employer”. The petitioner no. 1 company may fall within the domain of a “principal employer” but not an “employer” defined in Section 2(f) of the Act.
10. It is also stated by the petitioner, that the statute and its regulations clearly provide for separate domains of liabilities for a principal employer and an employer. The domain of liability which is attracted against an employer cannot be imposed on a principal employer as

that would amount to an unreasonable classification, not contemplated by the legislature.

11. The complaint has also not been filed within the period of limitation.
12. **As seen from the petition of complaint** under Section 14(2)(a) of the Dock Workers (Safety, health of Welfare) Act, 1986, it appears that the **complainant has stated** that the Accused No.1 is the company by name M/s. Bharat Kolkata Container Terminal Pvt. Ltd., Kolkata, engaged on 28.02.2018 for handing storage and transportation of containers at NSD, KoPT, Kolkata. The Accused No.1 was carrying on “dock work” within the meaning of Section 2(d) of the said Act, which provides the definition as:-

Section 2(d):-

“Dock Work” means any work in or within the vicinity of any port in connection with, or required for, on incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place and includes-

- i) Work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port and***
- ii) Chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area on board the ship or in the docks.”***

13. It is further stated by the complainant that during the relevant time, the Accused No. 2 was the Director of Accused No.1 and was looking after the business on behalf of the Accused No. 1 and person responsible for dock work carried on by Accused No. 1 at NSD, KoPT,

Kolkata as defined under Section 15 of the said Act, which inter-alia states that:-

Section 15: Determination of the persons responsible for the offence in certain cases-

If the person committing an offence made punishable by this Act or the regulations or any abetment thereof is a firm or other association of individuals or a company or a local authority, all or any of the partners or members or directors thereof as well as the firm association of individuals, company or local authority shall be deemed to be guilty of the offence or abetment and shall be liable to be proceeded against and punished accordingly;

PROVIDED THAT where a firm, association or company has given notices in writing to the Chief Inspector and the Inspector of the port where any dock work is being carried that it has nominated,-

- a) *In the case of a firm, any of its partners;*
- b) *In the case of an association, any of its members;*
- c) *In the case of a company, any of its directors,*

Who is resident, in each case in any place to which this Act extends and who is in each case either in face in charge of the management of, or holds the largest number of shares in, such firm, association or company, to assume the responsibility of the person in charge of any dock work for the purposes of this Act, such partner, member or director, as the case may be, shall so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the person in charge of such dock work for the purposes of this Act unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member or director, as the case may be, is received by the Chief Inspector.

- 14.** The Complainant states that on 28/02/2018, Shri Mohammad Imran was employed as driver of trailer no. NL.01.L.5506 by the Accused nos. 1 & 2 for transporting/shifting of the container(s) in the dock area of

NSD, KoPT, Kolkata and Shri Abdul Kader (the victim) was employed as gearman by M/s. T.P. Roy Chowdhury & Company Pvt. Ltd., Kolkata for unloading of the container(s) from the vessel 'm. v. Oel Colombo' to wharf at berth no. 07 NSD, KoPT, Kolkata. On 28/02/2018 at about 16:45 Hrs, when Shri Abdul Kader (victim) was coming back towards berth no. 7 NSD, KoPT, Kolkata on his bicycle after drinking water and tea, the victim riding on his bicycle was hit by a trailer bearing no. NL.01.5506 on the road near block no. 5 CPY yard at NSD of Kolkata Port. As a result of this hit, the victim fell down from his bicycle and his legs were run over by the driver side rear wheel(s) of the said trailer causing severe injuries in his legs. Subsequently, the victim had succumbed to the said injuries in the hospital during treatment at about 20.30 Hrs. on 28/02/2018. The trailer no. NL.01.L.5506 was being driven by Shri Mohammad Imran at the time of above accident, The said trailer driver, employed by Accused nos. 1 & 2 and the victim **were dock workers** as per Section 2(e) of the said Act which inter alia states –

Section 2(e):-

Dock Worker “means a person employed or to be employed directly or by or through any agency (including a contractor) with or without the knowledge of the principle employer, whether for remuneration or not, on dock work”.

15. It is thus the case of the complainant that the Accused nos.1 & 2 were working as 'employer' of the said trailer driver, causing the above accident, as per Section 2(f) the said Act which inter alia states:-

Section 2(f)-

'employer', in relation to a dock worker, means the persons by whom he is employed or is to be employed on dock work, whether for remuneration or not.

16. Inquires, held into the cause(s) of the fatal accident by the complainant, revealed that:-

- i) *The driver of trailer, employed & working as dock worker at the site, had not undergone the medical examinations as required under the Regulation 107(1) of the said regulations which inter alia states –*

Regulation 107(1):

"Medical examination of dock workers –

It shall be ensured that all dock workers undergo medical examination

- a) ***Before he is employed for the first time, or is being selected or trained for the operation of lifting appliances and transport equipment.***
- b) ***Periodically, as such intervals as may be considered necessary by the Chief Inspector in view of the risks inherent in the dock work and the conditions under which the dock work is performed.***

Thus, the Accused nos.1 & 2, being employer, had failed to ensure that the said trailer driver, being dock worker, had undergone medical examination prior to the employment on dock work **which**

amounts to the breach of Regulation 107(1) of the said Regulations.

17. The Complainant submits that as per the Regulation 7(4)(b) of the said Regulations, it was the duty of the Accused No. 1 & 2, being the employer of the dock worker(s) to comply with the Regulation 107(1) of the said Regulations.

18. Written Arguments have been filed by both the parties.

19. The petitioners have relied upon the judgments in:-

i) Sunil Bharti Mittal v. CBI, reported in (2015) 4 SCC 609.

ii) Birla Corporation v. Adventz Investments, reported in (2019) 16 SCC 610.

1. Relying on ***Sunil Bharti Mittal v. CBI (Supra)*** (para 33 to 35), the petitioners have submitted that the process in this case has been issued without any order issuing the same. This shows clear non application of mind by the Court and thereby gross miscarriage of justice has been caused to the petitioners.

2. The next contention of the petitioners is that they are not the “employers” of the said Dock worker/Driver Md. Imran.

20. The petitioners’ case is that they are the “principal employers” and the entire service for container handling, equipment handling and tractor trailer deployment with driver services were vested on a consortium of

Phonex Traders Private Limited and Kaushik Global Logistics Limited (being described as the “service provider”), pursuant to a Supply and Service agreement dated 28th October 2014.

- 21.** According to the terms of the said contract, the consortium of Kaushik Global and Phonex were “employers” of all drivers including Md. Imran. The said contract further clarifies that the employees of the “service provider” would not be construed as the employees of the petitioner no.1 company.
- 22.** It is further submitted that Section 2(f) of the said Act defines an employer as follows:-

*(f) “employer”, in relation to a dock worker, means **the person by whom he is employed** or is to be employed **on dock work**, whether for remuneration or not.*

- 23.** On the other hand Section 2(g) of the said Act defines the “principal employer”, as follows:-

*(g) “Principal employer”, **in relation to a dock worker employed** or to be employed **by** or through **any agency (including a contractor)**, means **the person in connection with those work he is employed** or is be employed by **such agency** .*

- 24.** Therefore Md. Imran was employed for “**Dock Work**” as trailer driver at the Kolkata Port, through the agency i.e. the consortium of Kaushik Global and Phonex. He was never employed directly by or under the petitioner no. 1 company.
- 25.** It is further submitted that **Regulation 7(4)(b) of the Dock Workers (safety, Health & Welfare) Regulations, 1990 imposes the liability**

of compliance of Regulation 107 and Regulation 116 of the said regulations on the employer and not the principal employer.

- 26.** Under regulation 7(4)(b) of The Dock Workers (Safety, Health & Welfare) Regulations, 1990 (hereinafter referred to as the “**said Regulation**”) the liability to comply with regulation 107 and 116 of the said Regulation is solely vested on the “employer” and not the principal employer.
- 27.** Therefore, under Regulation 107 of the said Regulation, the obligation to conduct periodical medical examination and under Regulation 116 of the said Regulation, the general obligation is imposed only on the “employer” and not the “principal employer”.
- 28.** The opposite party has, with mala fide motivations, tried to saddle the responsibility of the employer which in the instant case is the consortium of Phonex Trader Private Limited and Kaushik Global Logistics Limited on the petitioner no. 1 company, which was never the “employer” of Md. Imran.
- 29. Thus it is stated that the penal provision under Section 14(2)(a) of the said Act does not apply against the petitioners.**
- 30. The petitioners have also relied upon the following rulings as stated in their written notes of argument:-**

- 1. State of Gujarat Vs. Mansukh Bhai (2020) 20 SCC 360, para 24.**

“The golden rule of interpretation for any penal legislation is to interpret the same strictly, unless any constitutional considerations are involved, and in cases of ambiguity, the benefit of the same should ensure in favour of the accused.....”

2. *State of West Bengal Vs. Swapan Kumar Guha, (1982) 1 SCC 561, Para 15.*

“A conjoint reading of Section 14(2)(a) of the said Act along with Regulation 7(4)(b), 107, 116 of the said Regulation makes it abundantly clear that the said penal provision cannot be expanded to include others who was not contemplated in penal provision.”

3. *State of UP Vs. Singhara Singh, (1964) 4 SCR 485, para 7 and 8.*

“7-.....that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other method of performance are necessarily forbidden.....”

8 - Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.....”

4. The petitioners also rely on ***Noor Md. Vs Khurram Pasha (2022)***
9 SCC 23, paras 14 to 16.

- 31. On the other hand,** the opposite party has filed his written notes of Argument stating there in that as it was the petitioners carrying on the Dock work, they are responsible for the offence as per Section 15 of the Act.
- 32.** The Opposite party denies that the petitioners are the principal employers and submits that they are the employers and thus responsible under the Act.
- 33.** The Contract Labour (Regulation and Abolition) Act, 1970, read with Contract Labour (Regulation and Abolition) Central Rules, 1971 defines ‘Principal Employer’:-

Principal Employer : A principal Employer would mean and include the head of any government or local authority. The ‘Owner’ or ‘Occupier’ or ‘Manager’ of a factory (under the Factories Act);

Owner, agent or manager of mine. Or any person responsible for the supervision and control in the establishment.

34. The Dock Workers (Safety, Health and Welfare) Act, 1986 defines:-

Section 2(e) “dock worker” means a person employed or to be employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, on dock work.

Section 2(f) “Employer”, in relation to a dock worker, means the person by whom he is employed or is to be employed on dock work, whether for remuneration or not.

Section 2(g) “Principal Employer”, in relation to a dock worker employed or to be employed by or through any agency (including a contractor), means the person in connection with those work he is employed or is to be employed by such agency.

Regulation 2(u) of the Dock Workers (Safety, Health and welfare) Regulations, 1990 defines “responsible person”.

Regulation 2(u) “responsible person” means a person appointed by the employer, the master of the ship, the owner of the gear **or port authorities**, as the case may be, to be responsible for the performance of a specific duty or duties and who has sufficient knowledge and experience and the requisite authority for the proper performance of the duty or duties.

35. In the present case, the petitioner no.1 company was engaged by the Kolkata Port Trust for handling of storage and transportation of containers at NSD, KoPT, Kolkata on 28th February, 2018 and the petitioner no.1 was carrying on the ‘Dock Work’ and the petitioner no. 2 was director of the petitioner no.1 company and the “responsible person” for performance of the said work. **The petitioners are thus**

the “contractors” engaged by the “principal employer” (KoPT), to carry out a specific task project or service.

- 36. “Port Authority”** as defined under Regulation 2(q) the Dock Workers (Safety, Health and Welfare) Regulations, 1990 means-

Regulation 2(q), “Port Authority”:- "Port Authority" means the person having the general management and control of dock:-

Provided that if any other person has, by exclusive right to occupation of any part of the dock, acquired the general management and control of such part, he shall be deemed to be the "Port Authority" in respect of that part and therefore the **Kolkata Port Trust herein is the principal employer in the case.**

- 37. The petitioners herein being the “contractor” of Kolkata Port Trust** has engaged a “sub contractor” on the basis of an agreement which also contain an Arbitration clause.

- 38. The petitioners are therefore the Principal Contractor in this case and thus, responsible for the safety of their employees and also liable for all activities, errors, and omissions of their sub-contractor, herein being a consortium of Phonex Traders Private Limited and Kaushik Global Logistics Limited.**

- 39. The stage of trial** before the Trial Court is that the accused/petitioner has been examined as per Section 251 Cr.P.C. and the case has been fixed for evidence.

40. The other contention of the petitioners is that without there being an order issuing Summons, Summons were issued and the petitioners appeared before the Court on receipt of the said Summons.
41. The complaint in the present case has been filed as per **Section 200(a) of the Cr.P.C.** and as such, examination of the complainant was not necessary. When such a case is filed, it cannot be quashed in the absence of statements of witnesses or copies of documents etc., if the facts alleged in the complaint prima facie suggest commission of offence **((AIR 1988 SC 994) T.J. Stephen & Ors. vs Parle Bottling Co.(P) Ltd. & Ors., on 22nd March, 1988).**
42. On filing of the complaint, cognizance has been taken by the Magistrate and it is thus understood that the Court has decided to initiate the proceedings and as a visible manifestation of taking cognizance, process was issued **(AIR 1984 SC 718, A.R. Antulay vs Ramdas Srinivas Nayak and Anr., on 16th February, 1984).**
43. In the present case on **considering** the complaint filed under Section 200(a) of the Cr.P.C., the Magistrate **took cognizance** and **directed service report** & disposal before the Learned Metropolitan Magistrate, 11th Court vide order dated 01.12.2019.
44. In **Kanti Bhadra Shah & Anr. vs State of West Bengal, in Appeal (crl.) No. 5 of 2000, on 05.01.2000**, the Supreme Court held:-

“.....We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima

facie order that the trial judge has formed the opinion, upon consideration of the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.....

It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused."

45. In *U.P. Pollution Control Board vs M/s Mohan Meakins Ltd. &*

Ors., on 27.03.2000, AIR 2000 SC 1456, the Supreme Court held:-

".....In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons vide Kanti Bhadra Shah vs. State of West Bengal [2000(1) SCC 722]. The following passage will be apposite in this context:

"If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."

(Emphasis supplied)

It was unfortunate that the Sessions judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. Instead the sessions judge relegated the work to the trial magistrate for doing the exercise over again.....”

46. This, thus, implies that process was duly issued, on receipt of which the accused appeared before the Court on 05.04.2019.

47. The petitioner no. 2 has been examined under Section 251 Cr.P.C., wherein the particulars of the offence of which the petitioners are accused of has been stated to him and on pleading ‘not guilty’, the case has been fixed for evidence vide order dated 03.07.2019.

48. In ***Ramveer Upadhyay & Anr. Vs State of U.P. & Anr., in SLP (Crl.) No. 2953 of 2022, on 20.04.2022***, the Supreme Court held:-

“26. Section 482 of the Cr.P.C. provides:-

“482. Saving of inherent powers of High Court.—
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

27. *Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C. is not to be exercised for the asking.*

28. *In **Monica Kumar (Dr.) v. State of U.P2** ., this Court held that inherent jurisdiction under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*

29. *In exceptional cases, to prevent abuse of the process of Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in **Mrs. Dhanalakshmi v. R. Prasanna Kumar**³.*

49. **In the present case**, plea has been taken of ‘not guilty’ and the case is fixed for trial. **Interference at this stage shall result in abuse of process** of law, considering that prima facie case is made out against the petitioners/accuseds.

50. **CRR 2846 of 2019 is thus dismissed.**

51. Trial Court to proceed with the trial expeditiously.

52. All connected Applications, if any, stand disposed of.

53. Interim order, if any, stands vacated.

54. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

55. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)