

NAGPUR HIGH COURT

State Government

Vs

Deodatta Diddi

Criminal Appeal No. 69 of 1954. decided on 30.7.1954

(Mudholkar and Choudhury, JJ.)

31.10.1953. 30.07.1954

JUDGMENT

Choudhury, JJ.

1. This is an appeal by the State Government against the acquittal of the respondent Deodatta Diddi, Agent, Rawanwara Khas Colliery, in the Chhinwara district.
2. A complaint was made under section 39, Mines Act, 1923, by the Chief Welfare Officer (Mines) against Messrs. Karamchand Thapar Bros, as, managing agents and owners of Rawanwara Khas Collieries as represented by their Managing Director Indra Mohan Thapar and the respondent Deodatta Diddi as Agent of Rawanwara Khas Colliery.
3. The trying Magistrate acquitted both Messrs. Karamchand Thapar and Bros, as well as Deodatta. The State Government has preferred an appeal only against the acquittal of the latter.
4. The prosecution was launched against the respondent and Messrs. Karamchand Thapar for the alleged infringement of Rule 3(1) of the Coal Mines Pithead Bath Rules, 1946. The aforesaid rules were made by the Central Government in exercise of the powers conferred by Sub-Section (bb) of Section 30, Mines Act, 1923, and were published under Government of India, Department of Labour Notification No. LMW 5(5)/46 dated 23-7-1943 (Gazette of India, Part I, page 1137) and also in the Central Provinces and Berar Gazette, dated 11-10-1946, in Part III at page 359. Sub-rule 1 of R. 3 provides that the owner of every coal mine shall construct thereat a pithead bath in accordance with plans prepared in conformity with the rules and approved by the competent authority. This rule is subject to certain provisos with which we are not concerned in this appeal. In the rules to be found at page 359 of the Central Provinces and Berar Gazette dated 11-10-1946, there is no provision as to the time within which the pithead baths must be constructed. We, however, find at page 432 of the Indian Labour Code (1st Edn.) compiled by

S.N. Bose the following as Sub-rule (2) of R. 3 :

"Pithead baths as aforesaid shall be constructed within six months of the coming into force of the rules."

These rules, as would appear from Sub-rule (2) of R. 1, came into force on 1-7-1947. It would thus seem that the original rules were amended soon after they were published in the Gazette of India by enacting the aforesaid quoted Sub-rule (2) of R.

3. The period of six months provided by the Sub-rule was extended to 12 months by an amendment of this sub-rule made by the Ministry of Labour Notification No. LW. 7(2)-46, dated 15-12-1947, published in Part I at page 29 of the Central Provinces and Berar Gazette. By a further amendment of the sub-rule made by the Ministry of Labour Notification No. LW. 51(8) 48, dated 31-1-1949, published in Part I in the Gazette of India dated 5-2-1949 at page 160, the period of 12 months was extended to 18 months.

5. It is common ground that pithead baths were not constructed at the aforesaid colliery within 18 months of the date on which the rules came into force. The aforesaid non-compliance came to the notice of the Chief Welfare Officer when he inspected the collieries on various occasions between 16-9-1947 and 19-1-1951.

When on the last mentioned date the then Chief Welfare Officer Mitra inspected the collieries, he pointed out the breaches to the management and eventually the complaint to which we have already referred was made.

6. The trying Magistrate points out that under Sub-rule (1) of R. 3 of the aforesaid rules, the liability to construct pithead baths is placed on the owner alone, that Messrs. Karamchand Thapar had ceased to be the owners of the collieries at the material times and that therefore they could not be prosecuted for the breaches of the rules. While acquitting the respondent the learned Magistrate held that the present owners of the collieries could not construct the baths because (a) they were short of materials such as bricks, cement and steel, (b) that their request for exemption from constructing the baths had been 'kicked' by the Government and (c) that they had made various attempts to obtain supplies of these materials but they did not receive any help from the Government. According to the learned Magistrate :

"The accused never grumbled for these constructions. They have had ample finances. But their hands were tight (sic) for lack of facilities. And so when the failure to regard the rules made by the legislature results in criminal prosecution the matter deserves to be looked with a judicious view under section 243, Criminal Procedure Code

If the accused admits that he had committed the offence of which he is accused and shows 'no sufficient cause' why he should not be convicted, the magistrate 'may' convict him. The accused persons have shown and (sic) sufficient cause why they should not be convicted. Any conviction under these peculiar circumstances would be nothing but imparting injustice (sic)." The learned

Magistrate has later observed :

"The duty of the legislature is to enact laws and it is for the Government to administer law. The rules have been framed for the betterment of the workers. Government must give necessary facilities to the subjects. In this particular case absence of facilities has resulted in the breach of rules for which the accused are not responsible."

The substance of what the learned Magistrate has said is that the failure of the respondent to construct pithead baths was due to causes, beyond his control.

7. From the judgment of the learned Magistrate it does not appear that the prosecution had contended before him, as the learned Additional Government Pleader has contended before us, that under section 39, Mines Act, an agent can be prosecuted for the breach of Rule 3(1) committed by the owner. It is common ground that the respondent is not the owner of the aforesaid collieries and therefore it is surprising that the learned Magistrate when he acquitted Messrs. Karamchand Thapar on the ground that they were not the owners of the collieries did not think it fit to give the same ground for acquitting the respondent.

8. On behalf of the respondent it was contended before us that the obligation for constructing pithead baths within 18 months from the date of the commencement of the rules was imposed for the first time on 31-1-1949, that is, long after the rules came into force. It was impossible for the owner of any colliery to comply with the rules and that therefore non-compliance with them would not render the owner liable for the breach. This argument is based upon the supposition that the time limit for complying with the provisions of Sub-rule 1 of R. 3 was for the first time imposed by the rule made on 31-1-1949. From what we have set out above, it would appear that the rules published in the year 1946 were amended either in that year or, at any rate, before the rules came into force, and therefore, the time limit provided in Sub-rule (2) of R. 3 had to be complied with. The time limit so provided was extended first to 12 months and then by Notification No. LW, 51 (8), 48, dated 31-1-1949 to 18 months. Thus it was not for the first time that the time limit was imposed on 31-1-1949 but it was imposed before the rules came into force and the time originally fixed was extended finally to 18 months by the notification published on that date. There is thus nothing in the first point raised on behalf of the respondent.

9. The second point urged on behalf of the respondent is that Sub-rule (1) of R. 3 makes the owner alone liable and not the agent. We are of opinion that the contention is a sound one and must succeed. No doubt, Section 33, Mines Act, lays down that whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine under this section, but it does not however mean that this section makes a person other than the one who contravenes the provisions of the Act, regulation, rule or bye-law or of any order made thereunder liable to be punished under this section. The person made liable for the disobedience of a rule is the one who contravenes that rule. Where a rule, as Rule 3(1), does impose a positive

obligation on the owner it is the owner alone who will be deemed to have contravened that rule by failing to perform that duty. That person alone would consequently be liable to be punished under section 39.

10. The learned Additional Government Pleader however referred us to the definition of 'agent' contained in section 3 of the Act. There, agent is denned thus :

" 'agent' when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof; and as such superior to a manager under this Act."

He argued that since an agent is the representative of the owner in respect of the management of the mine he is liable for the owner's omission to comply with Rule 3(1). In the first place, the definition is for the purpose of ascertaining the meaning of the word 'agent' as used in the Act or rules made thereunder. In this case we are not called upon to interpret the word 'agent' occurring in the provisions of the Act; on the other hand, what we have to interpret is the Word 'owner' as found in Rule 3(1) of the rules made under that Act. Consequently, even if we were to accept the position that the respondent who is described in the challan as the agent of Rawanwara Khas Colliery is the representative of the owner in respect of the management of the colliery, it does not follow that his duties extended to a matter which did not fall within the scope of his management.

11. "Owner" as defined in section means :

" 'Owner', when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner, from any liability."

This definition clearly excludes a manager or an agent. It is in that sense that the word 'owner' must be understood to have been used in Rule 3(1).

12. The word 'management' used in the definition of 'agent' must be understood to have its ordinary dictionary meaning which is "Conduct; administration; control; act or manner of treating, directing, or carrying on". Establishing any permanent works on the owner's collieries cannot fall within the purview of management. It may be that in a particular case, the owner may assign such a duty to the agent. Where it is so assigned the matter would be different. But there is nothing on record in this case from which it would appear that a duty of this kind was placed

upon the respondent by the owner. In this view, we are clear that the respondent could not be held liable for the contravention of Sub-rule (1) of R. 3.

13. We would briefly mention two other points which were raised on behalf of the respondent. A reference was made to rules 4 to 6 of the Coal Mines Pithead Bath Rules and it was contended that the Government had to show, in the first instance, that they had complied with these rules before requiring a mine owner to comply with Sub-rule (1) of R. 3. The other point was that the case should not have been tried as a summons case as the offence was a serious one and that at any rate the procedure followed by the Magistrate was wrong inasmuch as he had not explained to the respondent at the beginning of the trial what the accusation against him was.

14. Rule 4 of the Rules requires that certain standard for construction of a pithead bath should be complied with. Rule 5 provides that the water for a pithead bath should be at a certain pressure and of a particular quality. Rule 6 deals with lighting to be provided at the baths. It is said that the Government had certain duties to perform in regard to the enforcement of the rules and since these duties were not performed it was not possible for the owner to comply with rule 3(1). The rules appear to be self-contained and do not cast any duty on the Government to specify any further particulars or to do any act. It was represented to us during the arguments that certain designs were prepared by the Government and circulated only to certain mines but not to the mine in question. It may be that the Government did circulate the designs to some mines and not to the mine in question but that action does not appear to have been taken under any rule and therefore the owner of this mine cannot complain about the omission of the Government to let him see the designs prepared by the Government. Thus there is nothing in this point.

15. As regards the next point, it is difficult for us to appreciate the contention of the respondent that the case should not have been tried as a summons case because section 39 imposes punishment of fine only. Section 4(1)(v), Criminal Procedure Code, defines a "summons-case" as a case relating to an offence, and not being a "warrant-case" and Section 4(1)(w) defines a warrant case as a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months. Thus a case in respect of an offence which is punishable with fine only is a summons case and must consequently be tried as such.

16. As regards the contention that the accusation was not explained to the respondent at the beginning of the trial, it is sufficient to say that even if it were true, he would be entitled to a retrial and not to an acquittal. In the view we have taken regarding the second point, we uphold the acquittal of the respondent and dismiss the appeal of the State Government. Appeal dismissed.