

:A
ITEM NO.205

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).7686/2008
(From the judgment and order dated 10/07/2008 in CRLMP No. 1429/2007 of The
HIGH COURT OF JHARKHAND AT RANCHI)

RAM KISHORE PRASAD

Petitioner(s)

VERSUS

STATE OF JHARKHAND & ORS.

Respondent(s)

(With application for stay and office report)
[For Final Disposal]

Date: 23/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Petitioner(s) Mr. Uday N. Tiwary, Adv.

Mr. Dharmendra Kumar Sinha, Adv.

For Respondent(s) Mr. Jayesh Gaurav, Adv.

No.1 & 5: Mr. Anil Kumar Jha, Adv.

For Rr.Nos.2-4:

Mr. Dhruv Mehta, Sr. Adv.

Mr. S. Udaya Kumar Sagar, Adv.

Ms. Bina Madhavan, Adv.

Ms. Anindita Pujari, Adv.

For M/s. Lawyer's Knit & Co., Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

We have heard learned counsel for the parties.

For the reasons recorded in the signed order, we allow
this appeal, set aside the impugned order of the High Court and
remand the matter to the Chief Judicial Magistrate, Bokaro Steel
City, who will apply his mind afresh to the prosecution report
including all materials placed before him and after hearing all the
parties will pass fresh orders as to whether the prosecution has to
go on against the respondent.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1250 OF 2013
[ARISING OUT OF SLP(CRL) NO. 7686 OF 2008]

RAM KISHORE PRASAD

..... APPELLANT

VERSUS

THE STATE OF JHARKHAND & ORS.

..... RESPONDENTS

O R D E R

Leave granted.

2. Heard learned counsel for the parties.

3. The Labour Court, Bokaro, passed an Award in Reference Case No. 12 of 1987 dated 10th January, 1994 in favour of the appellant. As the Award was not given effect to, the Deputy Labour Commissioner, Incharge, Bokaro, filed a prosecution report in the Court of the Chief Judicial Magistrate, Bokaro Steel City making a complaint that the Award passed by the Labour Court, Bokaro in Reference Case No. 12/1987 has not been complied with by the respondent-Management and this was a violation of Section 18(3) of the Industrial Disputes Act, 1947 which was punishable under Section 29 of the said Act. By order dated 22nd June, 2007, passed in ID Case NO. 2 of 2007, the Chief Judicial Magistrate took cognizance of the offence but inadvertently mentioned that the cognizance of the offence is under Section 18(3) of the Act instead of Section 29 of the Act. Aggrieved, the respondent-Management filed a petition under Section 482 of the Cr.P.C. being Criminal Miscellaneous Petition No. 1429 of 2007 before the Jharkhand High Court at Ranchi and by the impugned order dated 10th July, 2008, the High Court has quashed the Criminal prosecution in ID Case No.1 of 2007 in the Court of Judicial Magistrate, First Class, Bokaro with a word of caution to the Chief Judicial Magistrate to be careful in future.

4. We have perused the impugned order passed by the High Court and we find that two reasons have been given by the High Court while quashing the criminal prosecution in ID Case No. 12 of 2007. The first reason is that the Magistrate without application of mind and in a mechanical manner took cognizance of the offence under Section 18(3) of the Act. The High Court was of the view that Section 18 of the Act was not a penal provision and cognizance, if any, could have been taken only under Section 29 of the Act. In our view the High Court ought not to have quashed the criminal case, if the facts as reiterated by the Deputy Labour Commissioner otherwise disclosed an offence of cognizance under Section 29 of the Act.

5. The second reason given by the High Court is that the annexures that the respondents have filed from time to time satisfied the queries of the Deputy Labour Commissioner and without going to the annexures, a complaint was filed against the respondents. Learned counsel for the respondents vehemently submitted that the annexures in fact disclosed that the Award passed by the Labour Court had been complied with. We, however, find from the prosecution report of the Deputy Labour Commissioner that he had clearly considered the contention of the respondent that the Award had been satisfied and that the appellant had been paid the wages in accordance with the Award, but he had not found the contention to be correct. Relevant paragraph of the prosecution report of the Deputy Labour Commissioner is extracted herein below:

"From the award dated 10.1.1994 passed in this subject by the Hon'ble Labour Court, Bokaro it is nowhere clear that the demand for which an industrial dispute was raised by the concerned workman was fulfilled by the management of Bokaro Steel Plant in the year 1984 itself. Against this, in order No. Pers. S.S&CA/11/94 dated 24.6.94 of the management issued in compliance with the award in Reference Case No. 12/87, the entitlement with effect from 1.7.93 is stated to be in the pay scale of 1550-2341 at the rate of Rs. 2221 per month, whereas under ordinary circumstances the concerned workman has already been receiving from before wages of Rs. 2221 per month with effect from 1.7.93. In this manner, the contention of the management that the arrears of the workman had been paid along with the wages for February, 1984 is not true."

In any case, if the High Court was of the view that the Magistrate had not applied his mind to the facts before taking cognizance and, in particular, the materials that were available along with the prosecution report, the High Court should have remanded the matter to

the Magistrate for considering the materials pointed out by the respondent and could not have quashed the prosecution altogether.

6. For the aforesaid reasons, we allow this appeal, set aside the impugned order of the High Court and remand the matter to the Chief Judicial Magistrate, Bokaro Steel City, who will apply his mind afresh to the prosecution report including all materials placed before him and after hearing all the parties will pass fresh orders as to whether the prosecution has to go on against the respondent.

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.....J
[A.K. PATNAIK]

.....J
[JAGDISH SINGH KHEHAR]

NEW DELHI
AUGUST 23, 2013.