

G.N. VERMA

v.

STATE OF JHARKHAND & ANR.
(Criminal Appeal No.122 of 2004)

MARCH 6, 2014

[**RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.**]

MINES ACT, 1952:

s.72-B r/w s.2(j) and 18(5) of 1952 Act and Regulation 8-A of Coal Mines Regulations - Deemed Agent - Fatal accident in mine - Complaint - Liability of Chief General Manager referred to in the complaint as deemed Agent - Held: Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an Agent -- In the absence of any statement having been made or any indication having been given by the owner enabling the appellant to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine -- s.2(j) which defines 'mine' has no reference to any administrative functions in relation to a mine but only technical matters related thereto - Appellant while performing administrative duties, cannot be assumed to have been involved in technical matters of mine -- Besides, the complaint does not state anywhere that appellant acted or purported to act on behalf of owner of the mine or that he took part in the management, control, supervision or direction of any mine and, therefore, no case for proceeding against him has been made out - Chief Judicial Magistrate erred in taking cognizance of complaint and issuing summons to appellant - Complaint against appellant is quashed.

A criminal complaint was filed against the appellant on 30.08.2004 on the allegation that in spite of the

A prohibitory order, extraction of coal was carried out in the colliery concerned on or about 09-03-2000 resulting into a fatal accident. Consequent upon the enquiry report indicating violation of the prohibitory order, the Inspector of Mines filed Case no. 323 of 2000 before the Chief
 B Judicial Magistrate on 30-08-2000 against three accused, namely, the appellant, who was the Chief General Manager and described as deemed Agent of the colliery concerned, the Agent of the colliery and the Manager of the colliery, that they contravened the provisions of s. 72-
 C B of the Mines Act, 1952. The Chief Judicial Magistrate took cognizance of the complaint and issued summons to the accused including the appellant. The appellant filed a petition u/s 482 of the Code of Criminal Procedure, 1973 seeking to quash the proceedings and the summons
 D issued to him. The single Judge of the High Court referred the matter to the Division Bench which held that in view of the extended definition of Agent read with s. 18(5) of the Act, the Chief General Manager of a mine would be deemed Agent responsible for the management, control, supervision or direction of a mine or a part thereof, and
 E dismissed the petition.

Allowing the appeal, the Court

F HELD: 1.1 This Court has been consistently adopting the view that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. [para 24] [635-G; 636-A]

G *W.H. King vs. Republic of India (1952) SCR 418* - relied on.

H 1.2 It is true that "Agent" has an extended meaning in the Mines Act, 1952. It not only brings within its fold a person who is appointed as an Agent in relation to a mine but also a person not appointed as an Agent but who

acts or purports to act on behalf of the owner of the mine and takes part in the management, control, supervision or direction of the mine or any part thereof. [para 17] [633-C-D] A

1.3 Regulation 8-A of the Coal Mines Regulations requires the owner of a mine to submit in writing a statement showing the name and designation of every person authorised to act on behalf of the owner in respect of the management, control, supervision or direction of a mine. There is nothing on record to show that any such statement was furnished by the owner of the mine to the Chief Inspector or the Regional Inspector appointed under the Act. Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an Agent. In the absence of any statement having been made or any indication having been given by the owner enabling the appellant to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine. [para 22] [635-B-E] B C D

1.4 The word 'mine' has been defined in s. 2 (j) of the Mines Act, 1952 and it has no reference to any administrative functions in relation to a mine but only technical matters related thereto. The appellant was the Chief General Manager of the colliery concerned and it is not possible to assume that apart from performing administrative duties, he was also involved in technical matters related to the mine. [para 23] [635-E-F] E F

1.5 Besides, the complaint does not allege anywhere that the appellant acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. The averment in the complaint is bald and vague. The complaint does not contain any allegation against the appellant. The only statement concerning him is that he H

A was the Chief General Manager/deemed Agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder. On the facts of the case and given the absence of any allegation in the complaint filed against the appellant, no case for proceeding against him has been made out. In these circumstances, there is no basis for proceeding u/s 72-B of the Act against the appellant. The Chief Judicial Magistrate, therefore, erred in taking cognizance of the complaint and issuing summons to the appellant. The judgment and order of the High Court is set aside and complaint against the appellant is quashed. [para 18, 20, 25 and 26] [633-E, G, 634-F-G; 636-B-C]

D *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and Anr.* 2010 (2) SCR 805 = (2010) 3 SCC 330 - relied on.

R.J. Sinha vs. The State 1983 BLT (Rep) 97 - cited.

E Case Law Reference:

1983 BLT (Rep) 97 cited para 11

2010 (2) SCR 805 relied on para 19

(1952) SCR 418 relied on para 24

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 122 of 2004.

G From the Judgment and Order dated 19.09.2002 of the High Court of Jharkhand at Ranchi in Cr. Misc. No. 8331 of 2000(R).

S.B. Upadhyay, Param Kumar Mishra, Kaustuv P. Pathak, Santosh Mishra, Rameshwar Prasad Goyal for the Appellant.

H Siddharth Luthra, ASG, Arita Singhla, C. Mangal Sharma, D.S. Mehra, M.P.S. Tomer, Ravindera Kumar Verma, Jayesh

Gaurav, Gopal Prasad for the Respondents.

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The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Apart from the questions of law, this appeal raises a serious issue of process re-engineering and case management, a concern that we need to address.

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2. A criminal complaint was filed against the appellant G.N. Verma on 30th August 2000. He sought quashing of the complaint which the High Court declined on 19th September 2002. Special leave to appeal against the said order was granted by this Court on 27th January 2004.

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3. Despite the fact that this Court did not pass any interim order staying the proceedings before the Trial Judge, we were informed that the criminal complaint has made absolutely no progress over the last more than thirteen years. We were understandably disturbed with this state of affairs. However, we were later informed that the trial could not progress since the original records of the case had been transmitted to this Court. In the absence of the original records, the Chief Judicial Magistrate obviously could not proceed with the trial.

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4. It is time to look into and revisit the rules, practices and procedures being followed not only by this Court but also by other superior courts requiring the routine summoning of the original records of a trial for no apparent reason except that the rules, practices and procedures provide for their requisitioning. This routine brings the trial to a grinding halt and delays the delivery of justice to an aggrieved litigant. It is time to decide on the customary summoning of the original records of a trial, particularly at an interlocutory stage of the proceedings. This appeal is an indicator that the disposal of some cases is delayed only because we follow some archaic rules, practices and procedures. If the original records had not been routinely summoned from the Chief Judicial Magistrate, we are confident that the trial could well have concluded many years ago, one way or another, and expeditious delivery of justice would not

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A have been converted into a mirage.

5. We are mentioning this only so that our policy planners and decision makers wake up to some harsh realities concerning our criminal justice delivery system.

B 6. The principal question for consideration is whether
C cognizance of the criminal complaint taken by the Chief Judicial Magistrate against the appellant G.N. Verma deserves to be set aside in the absence of any allegation made against him in the complaint. A related question is whether the appellant
D G.N. Verma could be described as a 'deemed Agent' of the owner of the Karkata Colliery in which an unfortunate fatal incident took place on or about 9th March 2000. In our opinion, the answer to the first question must be in the affirmative, while the related question must be answered in the negative.

D **The facts**

E 7. On 15th December 1999 an order was issued by the Director of Mines Safety, Ranchi Region in Ranchi under Section 22A (2) of the Mines Act, 1952 (for short the Act).¹ The order related to the failure of the Agent, Karkata Colliery to rectify certain defects, despite time having been granted, in the Bishrampur and Bukbuka seams. Accordingly, by virtue of the

F 1. **22-A. Power to prohibit employment in certain cases.**-(1) Where in respect of any matter relating to safety for which express provision is made by or under this Act, the owner, agent or manager of a mine fails to comply with such provisions, the Chief Inspector may give notice in writing requiring the same to be complied with within such time as he may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

G (2) Where the owner, agent or manager fails to comply with the terms of a notice given under sub-section (1) within the period specified in such notice or, as the case may be, within the extended period of time specified under that sub-section, the Chief Inspector may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not, in his opinion, reasonably necessary for securing compliance with the terms of the notice.

H (3) and (4) xxx.

order the Chief Inspector of Mines prohibited the employment of persons for extraction of coal from the extended Block B of the Bukbuka seam till the defects were rectified.

8. Notwithstanding the prohibitory order, extraction of coal was apparently carried out at the Karkata Colliery and on or about 9th March 2000 there was an unfortunate fatal accident. The cause and circumstances leading to the accident were investigated by an inspection of the mines on several dates in March and April 2000. The inquiry and inspection of the site of accident revealed that extraction of coal was being carried out in Block B of Bukbuka seam at Karkata Colliery in violation of the prohibitory order.

9. Consequent to the inquiry report suggesting a violation of the prohibitory order, the Inspector of Mines filed Case No.323 of 2000 before the Chief Judicial Magistrate at Ranchi on 30th August 2000. The events leading to the filing of the complaint were stated and it was alleged that since there were signs of engagement of persons for mining operations and coal production in contravention of the prohibitory order, the three accused persons, G.N. Verma who was the Chief General Manager (North Karanpura Area) and deemed Agent, Karkata Colliery, B.K. Sinha, Agent, Karkata Colliery and B.K. Ghosh, Manager, Karkata Colliery had contravened the provisions of Section 72-B of the Act and were liable to be punished under the provisions of that section.²

10. On 31st August 2000 the Chief Judicial Magistrate took cognizance of the complaint and issued summons to the accused persons, including the appellant G.N. Verma.

2. 72-B. Special provision for contravention of orders under Section 22.- Whoever continues to work in a mine in contravention of any order issued under sub-section (1-A), sub-section (2) or sub-section (3) of Section 22 or under sub-section (2) of Section 22-A shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine, shall not be less than two thousand rupees.

A Proceedings in the High Court

11. Upon receipt of the summons, G N. Verma preferred a petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings and the summons issued to him. The petition filed by G.N. Verma being Criminal Misc. No. 8331 of 2000 R was taken up for hearing by a learned Single Judge of the High Court of Jharkhand who noted that the question before him was whether a person, other than an Agent, could be fastened with criminal liability for an offence under the Act on the ground that he is a deemed Agent. The learned Single Judge noted the decision of the Division Bench of the Patna High Court in *R.J. Sinha v. The State*³ and observed that the definition of Agent in the Act had been amended since the decision rendered in *Sinha* and sub-section (5) had also been introduced in Section 18 of the Act. Accordingly, he was of the view that the import of Section 18(5) of the Act required further consideration and, therefore, referred the matter to the Division Bench for further consideration.

12. The Division Bench took up the matter for hearing and by its judgment and order dated 19th September 2002 (impugned) came to the conclusion that the definition of Agent as occurring in the Act prior to its amendment in 1983 had been substantially widened to include every person acting or purporting to act on behalf of the owner of a mine and taking part in the management, control, supervision or direction of any mine or any part thereof. Consequently, the law laid down in *Sinha* was no longer applicable.

13. The definition of Agent appearing in Section 2(c) of the Act prior to its amendment and subsequent to its amendment reads as follows:

“2(c) “agent”, when used in relation to a mine, means any individual, whether appointed as such or not, who acts as the representative of the owner in respect of the

H ³ 1983 BLT (Rep) 97.

management, control and direction of the mine or of any part thereof and as such is superior to a manager under this Act.” A

After its amendment, Section 2(c) of the Act reads as follows:

“2(c) “agent”, when used in relation to a mine, means every person whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine of any part thereof.” B

14. The Division Bench also took into consideration the amendment to Section 18 of the Act and the introduction of sub-section (5) therein. This sub-section reads as follows: C

“(5) In the event of any contravention, by any person whosoever of any of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing or prohibit any persons from doing an act or thing, besides the persons who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:- D

(i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened; E

(ii) the manager of the mine; F

(iii) The owner and agent of the mine; G

(iv) The person appointed, if any, to carry out the responsibility under sub-section (2): H

A Provided that any of the persons aforesaid may not be proceeded against if it appears on inquiry and investigation, that he is not *prima facie* liable.”

B 15. The High Court was of the opinion that in view of the extended definition of Agent read with Section 18(5) of the Act, the Chief General Manager of a mine would be a deemed Agent responsible for the management, control, supervision or direction of a mine or a part thereof. On this basis it was held that the Chief Judicial Magistrate rightly took cognizance of the complaint against G.N. Verma and that there was, therefore, C no merit in the petition filed by him for quashing the proceedings.

D 16. It may be noticed that neither the definition of Agent nor Section 18(5) of the Act refer to a deemed Agent. This expression is to be found in Regulation 8-A of the Coal Mines Regulations, 1957 dealing with the appointment of an Agent. Regulation 8-A reads as follows:

“8-A. Appointment of Agent

- E (1) The owner of a mine shall submit in writing to the Chief Inspector and the Regional Inspector, a statement showing name and designation of every person authorized to act on behalf of the owner in respect of management, control, supervision or direction of the mine.
- F (2) The statement shall also show the responsibilities of every such person and the matters in respect of which he is authorized to act on behalf of the owner.
- G (3) Every such person shall be deemed to be an agent for the mine or group of mines, as the case may be, in respect of the responsibilities as specified in such statement.
- H (4) The statement aforesaid shall be submitted within one month from the date of coming into force of the

Coal Mines (Amendment) Regulation 1985, in case of mines already opened, or reopened as the case may be, and in other cases within one month from the date of opening of the mine. A

- (5) Any change, addition or alteration in the names or other particulars of aforesaid statement shall be reported in writing to the Chief Inspector and the Regional Inspector within seven days from the date of change, addition or alteration." B

Discussion C

17. It is true that "Agent" has an extended meaning in the Act. It not only brings within its fold a person who is appointed as an Agent in relation to a mine but also brings within its fold a person not appointed as an Agent but who acts or purports to act on behalf of the owner of the mine and takes part in the management, control, supervision or direction of the mine or any part thereof. D

18. It is nobody's case that G.N. Verma was appointed as an Agent of any mine. Also, the complaint does not allege or state anywhere that G.N. Verma acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. In fact his duties and responsibilities have not been described in the complaint. In the absence of G.N. Verma's duties having been spelt out in the complaint, it is not possible to say whether he was merely an administrative head of the Karkata Colliery being its Chief General Manager or he was required to be involved in technical issues relating to the management, control, supervision or direction of any mine in the Karkata Colliery. The averment in the complaint is bald and vague and is to the effect that at the relevant time G.N. Verma was the Chief General Manager/deemed Agent and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder. E F G H

A 19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and Anr.*⁴ that Section 141 is a penal provision creating a vicarious liability. It was held as follows:

B “It is therefore, not sufficient to make a bald cursory
 statement in a complaint that the Director (arrayed as an
 accused) is in charge of and responsible to the company
 for the conduct of the business of the company *without*
 C *anything more as to the role of the Director*. But the
 complaint should spell out as to how and in what manner
 Respondent 1 was in charge of or was responsible to the
 accused Company for the conduct of its business. This is
 in consonance with strict interpretation of penal statutes,
 especially, where such statutes create vicarious liability.”

D It was then concluded:

“The primary responsibility is on the complainant to make
 specific averments as are required under the law in the
 complaint so as to make the accused vicariously liable.
 For fastening the criminal liability, there is no presumption
 E that every Director knows about the transaction.”

20. Insofar as the criminal complaint is concerned, it does
 not contain any allegation against G.N. Verma. The only
 statement concerning him is that he was the Chief General
 F Manager/deemed Agent of the mine and was exercising
 supervision, management and control of the mine and in that
 capacity was bound to see that all mining operations were
 conducted in accordance with the Act, the rules, regulations,
 orders made thereunder. In the face of such a general statement,
 which does not contain any allegation, specific or otherwise, it
 G is difficult to hold that the Chief Judicial Magistrate rightly took
 cognizance of the complaint and issued summons to G.N.
 Verma. The law laid down by this Court in *Harmeet Singh*
Paintal (though in another context) would be squarely

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 4. (2010) 3 SCC 330

applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.

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21. The other remaining question would be whether G.N. Verma could be deemed to be an Agent of the mine.

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22. Regulation 8-A of the Coal Mines Regulations requires the owner of a mine to submit in writing a statement showing the name and designation of every person authorised to act on behalf of the owner in respect of the management, control, supervision or direction of a mine. There is nothing on record to show that any such statement was furnished by the owner of the mine to the Chief Inspector or the Regional Inspector appointed under the Act. Only a person who is authorised to act on behalf of the owner or purports to act on behalf of the owner may be deemed to be an Agent. In the absence of any statement having been made or any indication having been given by the owner enabling G.N. Verma to act or purport to act on his behalf, it cannot be said that he was a deemed Agent for the mine.

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23. The word 'mine' has been defined in Section 2 (j) of the Act and it has no reference to any administrative functions in relation to a mine but only technical matters related thereto.⁵ G.N. Verma was the Chief General Manager of the Karkata Colliery and it is not possible to assume that apart from performing administrative duties, he was also involved in technical matters related to the mine having the Bukbuka seam.

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24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in *W.H. King v. Republic of India*⁶ that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject.

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5. Section 2. Definitions

(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-

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A This view has been consistently adopted by this Court over the last more than sixty years.

25. On the facts of this case, we would need to unreasonably stretch the law to include G.N. Verma as a person vicariously responsible for the lapse that occurred in the mine resulting in a fatal accident. We are of the view that under these circumstances, there is no basis for proceeding under Section 72-B of the Act against G.N. Verma.

Conclusion

C 26. The appeal is allowed, the judgment and order of the High Court is set aside and the complaint against G.N. Verma is quashed.

R.P.

Appeal allowed.

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- D (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
- (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
- (iii) all levels and inclined planes in the course of being driven;
- (iv) all open cast workings;
- E (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
- (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
- (vii) all protective works being carried out in or adjacent to a mine;
- (viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
- F (ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
- G (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
- (xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;
- H 6. (1952) SCR 418