

ASHOK KUMAR JAIN-AND ORS.

A

v.

THE STATE OF BIHAR AND ORS.

DECEMBER 8, 1994

[G.N. RAY AND B.L. HANSARIA, JJ.]

B

Criminal Procedure Code, 1973; Section 482, Industrial Disputes Act, 1947: Section 25-M and 25-O Company not clearing dues of Electricity Board and claiming chronic shortage of power Supply Disconnection of electric connection to the Company's factories and establishments—Company resorting to lay off without prior permission of the authority concerned—Complaints filed by the Labour Department and cognizance taken by the Chief Judicial Magistrate -Criminal cases. Awarded on special facts of the case. C

The appellants, who are Chairman, Managing Director and other senior officials of a company, claimed that there was chronic shortage of power supply, affecting the productive activities of the Company. Writ petitions were filed in the High Court for quashing the supplementary bills issued by the Electricity Board and they were dismissed. As the company failed to clear the dues, the Board disconnected electric connection to the company's factories and establishments. The Company resorted to lay-off of its workers without obtaining prior permission of the authority concerned, and the Labour Department filed complaints before the Chief Judicial Magistrate who took cognizance of the offence under Section 25-M read with Section 25-O of the Industrial Desputes Act. Appellants move the High Court for quashing the complaint. The High Court held that taking of cognizance by the Chief Judicial Magistrate was not illegal or invalid warranting quashing of the complaint. It, however, held that it was only just and proper that the Magistrate would hold an enquiry under Section 202 Cr. P.C. for the purpose of ascertaining as to whether the appellants or any one of them could be held to be employer so that they could be summoned to stand trial for the offence. D E F

The present appeals were filed against the said judgment of the High Court. G

Allowing the appeals, this Court

HELD: In the special facts of the case and in the altered scenario, namely the company becoming sick and it being one in management of H

- A the factories, the enquiry as directed by the High Court need not be made and the criminal cases instituted against the appellants need not be pursued any further. Such course of action is not only within the scope and ambit of Section 482 of the Code of Criminal Procedure but in the special facts of the case will also secure the ends of justice. Therefore, the criminal cases instituted against the appellants for the
- B alleged violation of Section 25-M of Industrial Disputes Act, 1947 are quashed. [392 H, 393 A]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 182 to 187 of 1985.

- C From the Judgment and Order dated 16.8.84 of the Patna High Court in Crl. W.J.C. No. 351 of 1983.

R.K. Jain and Mr. P.R. Seetharaman for the Appellants.

A.K. Srivastava for the Appellants in Crl. A. Nos. 182-186/85.

- D Dr. Shankar Ghosh, R.P. Dave, R.A. Perumal, H.K. Dutt and Ambrish Kumar for the Respondents in C.A. No.807/82.

The Judgment of the Court was delivered by

- E G.N. RAY, J. The appellants in these criminal appeals are Chairman, Managing Director and other senior officials in the management of the Rohtas Industries Limited a company registered under the Indian Companies Act and engaged in the manufacture and sale of variety of products namely cement, vanaspati, paper asbestos, cement products etc. The factories owned by the company were situated at Dalmianagar in the
- F district of Rohtas, Bihar, wherein about 15000 workers were engaged. The Company had a contract with Bihar State Electricity Board for the supply of 25000 KVA of electricity and the Company was to pay 75% of the electricity charges irrespective of the fact whether such supply for running its factories and establishments were made. The case of the Company is that due to chronic shortage of power supply ever since 1981 varying between
- G 11.5 to 7.3 MW. of electricity per diem, the productive activities of the Company suffered immensely. The Electricity Board made demand for payment of Bill including enhanced fuel surcharge for the period 1977-80 and 1980-81 which stood at Rs. 72,61,010, 70.00. The Company moved writ petitions in Patna High Court for quashing supplementary Bills but such writ petitions were dismissed. The Company's attempt to clear dues of
- H the Electricity Board by instalments also failed. The Board disconnected

electric connection to the Company's factories and establishments for which the Company suffered a serious set back. The Company resorted to lay off of its workers without obtaining prior permission of the concerned authority. For such action of lay off, complaints were filed by the Superintendent of Labour, Dalmianagar before the Chief Judicial Magistrate Sasaram who took cognizance of the offence under Section 25-M read with Section 25-O of the Industrial Disputes Act. The appellants moved the Patna High Court for quashing the complaint by challenging the maintainability of the said criminal cases by contending that Section 25-M in so far as it required permission to lay off was *ultra vires* the Constitution of India. The appellants also contended that lay off was necessitated because of power failure on account of insufficient and irregular supply of power by the Electricity Board and some other reasons beyond the control of the Company or the appellants. It was also contended that the appellants could not be held an employer for the purpose of prosecution for the offence under Section 25-M read with Section 25 of the Industrial Disputes Act. The High Court of Patna held *inter alia* that the Section 25-M was *ultra vires* the Constitution and the complaint *prima facie* disclosed offence under the said provisions. Hence, taking of cognizance by the Chief Judicial Magistrate could not be held illegal or invalid warranting quashing of the complaint. The High Court, however, held that it was only just and proper in the facts and circumstances of the case, that the Magistrate would hold enquiry under Section 202 of the Code of Criminal Procedure for the purpose of ascertaining as to whether the appellants or any one of them could be held to be employer so that they could be summoned to stand trial for the aforesaid offence. The High Court therefore allowed the said applications for quashing the criminal proceedings only to the extent indicated above.

Against the aforesaid decisions of the High Court special leave petitions were moved before this Court which have been admitted giving rise to these appeals. Further proceedings and prosecution of the criminal cases have been stayed by this Court on 22.2.1985. Mr. Jain, learned Senior Advocate appearing for the appellants has contended that the vires of Section 25-M (2) cannot be upheld for the reasons indicated by this Court in Excel Wear's case. He has submitted that Madras High Court has held the said provision as constitutionally invalid and the appeal from such decision is pending disposal before this Court. That apart, lay off became inevitable on account of power failure occasioned by short supply and irregular supply of power seriously affecting productive activities. In the facts of the case it is more than evident that the lay off was not motivated or unjustified but such lay off had to be resorted for compulsive circumstances

- A beyond the control of the company and its management including the appellants. He has submitted that the Company became sick beyond revival and all attempts to revive have failed. The Company is no longer in the management of the factories and productive units. Even if the vires of Section 25-M is upheld, in the facts of the case, there is no difficulty in finding that there was no lack of *bona fide* on the part of the Company and
- B its management in resorting to lay off. Such action had to be taken to save the Company from being permanently sick. The situation was so grave that the management felt the need of immediate lay off without waiting for permission as contemplated under Section 25-M. That apart, Section 25-O was declared *ultra vires* by this Court in *Excel Wear's* case and constitutional validity of Section 25-M for the reasons indicated in *Excel Wear's* case was seriously doubted. In the aforesaid circumstances, the lay off without taking prior permission cannot be held to be *per se* illegal and unjustified and *mala fied*. The liability of the appellants for being prosecuted under Section 25-M read with Section 25-Q, in any event, are doubtful. As a matter of fact, the High Court has directed the Chief Judicial Magistrate to
- D first ascertain the liability of the appellants before proceeding further with the criminal cases. In view of order of stay granted by this Court, such enquiry has not yet been held. After such a long lapse of time, resumption of enquiry and the criminal proceedings will not serve any practical purpose but the appellants are bound to suffer irreparable loss and prejudice because of the changed circumstances and long lapse of time. Mr. Jain has
- E submitted that the criminal cases should be quashed to secure ends of justice. He has submitted that such power has been exercised by this Court when the ends of justice demanded such quashing although the criminal case was validly instituted and was otherwise maintainable.

- F As the question of vires of Section 25-M of the Industrial Disputes Act was involved in these appeals and also a Civil Appeal No. 807 of 1982 (arising out of the decision of Madras High Court), all these matters were heard analogously. We have upheld the vires of Section 25-M in the decision rendered in Civil Appeal No. 807 of 1982. Hence, the contention that Section 25-M being *ultra vires*, no prosecution on account of violation of the provisions of Section 25-M is maintainable, cannot be accepted.
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- H It however appears to us that there is enough force in the contention of Mr. Jain that in the special facts of the case and in the altered scenario, the enquiry as directed by the High Court need not be made and the criminal cases instituted against the appellants need not be pursued any further. Such course of action in our view is not only within the scope and ambit of

Section 482 of the Code of Criminal Procedure but in the special facts of A
the case will also secure the ends of justice. We, therefore, allow these
appeals and quash the criminal cases instituted against the appellants for the
alleged violation of Section 25-M of Industrial Disputes Act, 1947.

G.N.

Appeals allowed.