CRIMINAL REVISION.

Before Mukerji and Bartley JJ.

KESHARDEO GOENKA

v.

EMPEROR.*

1934

Jan. 12, 15, 16.

Mine—"Working a mine", What is—Indian Mines Act (IV of 1923), s. 3 (f).

The primary lexicographical meaning of the word "mine," standing alone, is an underground excavation made for the purpose of getting minerals.

The term "mine", however, is not a definite term, but is susceptible of limitation or expansion according to the intention in which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature.

Midland Railway Co. v. *Haunchwood Brick and Tile Company* (1) and *Lord Provost and Magistrates of Glasgow* v. *Farie* (2) referred to.

The word "mine" as used in the Indian Mines Act includes, in addition to excavations, machinery, *etc.*, works which are incidental to or connected with mining operations. Thus, the working of the pumping machine connected with a mine and the carrying out of surface duties by a number of men is "working a mine" within the meaning of the Act.

CRIMINAL REVISION.

The material facts of the case and the arguments in the Rule appear from the judgment.

Ramaprasad Mukhopadhyaya and *Mohitkumar Chatterji* for the petitioners.

Prabodhchandra Chatterji for the opposite party.

MUKERJI AND BARTLEY JJ. Petitioners Nos. 1 and 2 are the owners of a colliery. They appointed one P. N. Ghosh as the manager of the colliery in August, 1932, but the appointment was rejected by the Chief Inspector of Mines on the 16th September,

*Criminal Revision, No. 745 of 1933, against the order of G. Waight, Sessions Judge of Burdwan, dated May 27, 1933, confirming the order of A. K. Sen, Magistrate, first class, of Asansol, dated March 15, 1933.

(1) (1882) 20 Ch. D. 552. (2) (1888) 13 App. Cas. 657.

1934

Keshardeo Goenka v. Emperor.

1932, as Ghosh was already manager of another colliery. The said two petitioners were, therefore, tried on the allegation that, inspite of this rejection, they allowed Ghosh to continue as manager of their colliery from the 16th to the 30th September, 1932.

On the 1st October, 1932, petitioners Nos. 1 and 2 informed the Chief Inspector of Mines that they had appointed their Assistant Manager, the petitioner No. 3, to act as manager of their colliery for one month from the 1st October, 1932, as a temporary manager in a case of emergency. During the course of that month, the Chief Inspector of Mines drew the attention of the first two petitioners to the fact that as Mukherji, the third petitioner, had already been appointed a temporary manager after the resignation of the last incumbent in July, he could not be appointed a temporary manager a second time without his special sanction and required them to appoint a duly qualified manager at once. On the 2nd November, he paid a surprise visit to the colliery and, it is said, that when he did so he found that Mukherji was still in charge and work going on in it. These constitute another set of facts upon which the three petitioners were tried.

The first two petitioners, therefore, were tried for two offences, for having contravened the provisions of section 15 (*1*) and of section 15 (*2*) of the Indian Mines Act (IV of 1923), read with Regulations 21, 22 and 23 of the Indian Coal Mines Regulations, and the third petitioner for having contravened the provisions of section 15 (*2*) of the Act read with Regulation 23 of the said Regulations. The offences are punishable under section 39 of the Act. They have been convicted for the said offences and their sentences as modified by the Sessions Judge are that the first two have to pay a fine of Rs. 500 each, and the third a fine of Rs. 100.

Of the grounds on which this Rule has been obtained, those that have been pressed before us are

Nos. 7, 8 and 17. On these grounds, several arguments have been addressed to us.

One of the arguments, and that is the main argument in so far as the conviction is based upon a contravention of section 15 (2) of the Act, is that the expression "if a mine is worked", occurring in the said provision, should be read as meaning actual mining operations, that is to say, such operations underground as relate to the actual raising of coal. The learned Judge has held that, on the 2nd November, 1932, the mine was worked within the meaning of the provision. He has observed thus :—

> Mr. Lang deposed that, on the 2nd November, he found no persons engaged underground, but the pumping machinery was being worked and a number of men were carrying out surface duties. As the trying magistrate has pointed out, the definition of a "mine" does not mean only underground but also surface activities, which Mr. Lang saw fall under the heading of working of a mine.

It may be pointed out that, in Mr. Lang's report, it was said,—

> When I visited the mine, 22 persons were employed loading wagons, and others were employed on the surface, but no miners were at work. Steam was up. Pump *khalasis* had been employed on the 1st and over 50 persons had been employed on the 31st October.

Now, the word "mine" is defined in clause (*f*) of section 3 of the Act. And the word is to be understood in the sense of that definition wherever it is to be found in the Act, unless there is anything repugnant in the subject or context. The definition, it must be conceded, is clumsy and very loosely expressed. According to the definition, the word means an excavation and includes works and machinery, tramways and sidings whether above or below ground in or adjacent to or belonging to a mine. It is expressed in the widest possible terms; and, apart from anything else, the expression "adjacent to", which connotes proximity or nearness and not necessarily the idea of touching, seems to have been misused. It is possible that, if too strict an interpretation is applied, it would include things

1934

Keshardeo Goenka v. *Emperor.*

never contemplated to come within its scope. But, as it stands, there can be no question that, in addition to excavations, machinery, *etc.*, works which are incidental to or connected with mining operations clearly fall within the definition and are meant to be covered by it. This is sufficiently indicated by the definition of the word "employed" as given in section 3 (*d*) of the Act. Whether a particular kind of work comes within the mischief of the definition or not must always be a question of fact. It may be pointed out that, although the primary lexicographical meaning of the word "mine", standing alone, is an underground excavation made for the purpose of getting minerals, the particular signification of the word as used in a contract, where there is no question of any definition, may be varied largely by the context. [See per Kay J. in *Midland Railway Co.* v. *Haunchwood Brick and Tile Company* (1); and per Lord Halsbury L. C. and Lord Watson and Lord Macanaghten L. JJ. in *Lord Provost and Magistrates of Glasgow* v. *Farie* (2)]. The term "mine" is not a definite term, but is susceptible of limitation or expansion according to the intention in which it is used and its primary signification can always be enlarged if that is the intention of the contracting parties or the legislature. We are of opinion that what was found by Mr. Lang as going on on the premises may well be regarded, on a question of fact, as amounting to a working of the mine within the meaning of the Act.

On the question of knowledge on the part of the petitioner No. 2, so far as the first of the charges is concerned, we are unable to hold that the findings of the two courts below are not correct. Nor are we prepared to hold that Regulation 24 of the Regulations would exonerate the petitioners in respect of the offence upon the facts that have been found against them.

(1) (1882) 20 Ch. D. 552. (2) (1888) 13 App. Cas. 657.

1934

Keshardeo Goenka v. *Emperor.*

We have considered the question of the sentences, so far as the petitioners Nos. 1 and 2 are concerned. The sentences are no doubt heavy. But, according to Mr. Lang's report, this was not the first occasion that the petitioners were found contravening the law; and moreover, the contravention in the present case was persisted in inspite of the warning given in Ex. 2.

The Rule is discharged.

Rule discharged.

A.C.R.C.