

State Vs. Khan (A.H.)

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Court : Mumbai

Decided On : Mar-08-1965

Reported in : [1967(14)FLR94]; (1966)ILLJ442Bom; 1965MhLJ826

Judge : D.V. Patel, J.

Acts : [Factories Act, 1948](#) - Sections 2, 7, 63, 66, 66(1), 92, 93 and 101

Appeal No. : Criminal Reference Nos. 135 and 136 of 1964

Appellant : State

Respondent : Khan (A.H.)

Judgement :

ORDER

1. These two references are made by the District Judge, Sholapur, under S. 438 of the Criminal Procedure Code, recommending that the conviction and sentences recorded in both the cases should be set aside. The convictions are one under Ss. 66(1)(b) and 92 read with Ss. 66 and 66(1)(d) of the Factories Act.

2. The accused in the case is the owner of what is known as Munshi Bidi Works, which is a factory within the meaning of the Factories Act and is situated at No. 57/60. Gurwar Peth, Sholapur. He owned similar factories at several other places bearing the same name, while he himself stayed in Poona. The factory Inspector visited the factory on 9 October, 1963 at about 8-10 p.m. and found only six

women workers out of many working in the factory and doing the work of tying bidis into bundles. Now, the period of work, as stated on the painted board displayed in the factory, was between 10-30 a.m. to 2-30 p.m. and 3 p.m. to 7 p.m.

3. These six women workers were found to be working at 8-10 p. m. The accused was prosecuted in all the six cases, viz., Cases Nos. 56, 57 and 59 of 1964 under Ss. 66(1)(b) and 50, 60 and 61 of 1964 under S. 63 read with S. 92. Within three days of the date of hearing fixed for the case, the accused gave notice in terms of S. 101 of the factories Act stating that the manager was in charge of the factory at Sholapur, that the accused was residing at Poona and that he had instructed the manager to observe all the provisions of the Factories Act, and, therefore, it was the manager, who was guilty of the offence and not himself. In fact, this is the compliant to be made to the court by the accused three days before the hearing so as to enable the court to get the manager before it. The accused then also gave evidence in support of his contention that it was the manager who was guilty of the charge and not himself. The learned magistrate refused to accept the plea of the accused and held that it was an afterthought. One does not know whether the manager was summoned before the court in terms of the section. The accused filed an application in revision before the learned District and Sessions Judge, who held that the evidence of the accused that it was the manager of the factory, who was responsible for the breach of the provisions of the Act, ought to have been accepted and that in terms of S. 101 the factory manager ought to have been convicted and not the accused. In accordance with his findings, he has recommended that the conviction of the accused be set aside.

4. Sri S. B. Sukthankar, who appears on behalf of the accused, has supported the reference, while Sri Bhasme, learned Assistant Government Pleader, has opposed the reference very strongly. Sri Bhasme contends in the first instance that under the Factories Act the liability of the manager and the occupier is concurrent and it is not open under S. 101 for either of them to allege and prove that it was the other who was guilty of the offence and get himself acquitted. In other words, that the liability of the manager and the occupier is absolute and they have no defence even under S. 101 of the Act, if any breach of the rules or the Act is committed. Sri Bhasme relies for this purpose upon the definition of 'occupier' in clause (n) of S. 2

of the Factories Act.

5. Section 7 requires an occupier to give notice within fifteen days of the occupation of the factory to the Chief Inspector containing the particulars mentioned in the sub-clauses thereunder. By Clause (b) the name and the address of the occupier have to be given and by Clause (f) the name of the manager of the factory has to be given. Sub-section (5) provides that during such period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager or if no such person is found, the occupier himself shall be deemed to be the manager of the factory for the purpose of the Act, Section 92 provides that save as otherwise provided in the Act and subject to the provision of S. 93, if in, or in respect of, any factory there is any contravention of any of the provisions of the Act or of any rule made thereunder the occupier and manager of the factory shall each be guilty of an offence and be punishable. Section 93 has no application, as it concerns the owner of the premises. Section 101 is headed :

'Exemption of occupier or manager from liability in certain cases.'

6. It reads :

'Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge : and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the court

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(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier of

manager of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence;'

7. The two provisos are procedural and do not deal with the question of liability. The first proviso enables the occupier or the manager who has raised the defence and complained to examine himself on oath and also any witnesses he may bring in support of his case. The second proviso requires the Court to adjourn the matter from time to time for a period not exceeding three months, if the occupier or the manager, as the case may be, cannot be brought before the Court. It also, further provides that if the actual offender cannot be brought before the Court, the Court must proceed to hear the charge against the person actually charged and if the offence is proved, then convict him.

8. Sri Bhasme contends that the Factories Act is an Act enacted for improving the working conditions of the workmen and therefore the same must be construed liberally so as to advance the purpose of the Act. He says that this can be achieved only if it is held that both the occupant and the manager are liable. There is nothing in the definition of 'occupier,' which can possibly advance the contention. He says S. 101 ought to be confined to a plea where either of them contends that some person other than the occupier and manager is guilty of the offence. In my view, it is not possible to accept the contention. Even though this is a beneficial provision and ought to be liberally construed, in my view it has to be construed sensibly and reasonably. One cannot lose sight of the fact that S. 92 which provides the penalty for breach of the Act and the rules itself creates the exception for it says :

'Save as is otherwise expressly provided in this Act,'

which includes S. 101 following it. The section assumes the possibility of prosecution of either the manager or the occupier alone and it gives an option to either of them to prove that someone else other than the one charged is guilty of the offence. The purpose of construction of a statute is to get at the intention of the maker. In doing so the Court must be guided primarily by the words of the statute. It may be that this meaning of words may be modified to some extent by the context in which they are used. For arriving at the correct meaning the Court must

read the statute as a whole and give effect to all the words thereof. If the argument advanced is accepted, I will have to omit much from consideration which I have no right to do.

9. It is also contended that in a prosecution under the Factories Act there is no scope for the application of the doctrine of mens rea and, therefore, want of intention, even if any, is no bar to conviction. I agree that that is so but the exception created by S. 101 has no relation to mens rea. It requires much more than mere want of mens rea to take shelter under S. 101. It requires that the accused has used due diligence for the enforcement of the execution of the Act and has not either the knowledge of the offence being committed or has not consented to list commission or connived at it. It is not, therefore, that S. 101 creates an exception by way of providing mens rea as an ingredient of the offence. The accused is expected to prove something much more than that.

10. I am supported in this view by the judgment of a Division Bench of this Court in Criminal Appeal No. 1381 to 1385 of 1955 dated 29 February 1955 (Bom.) (Shah and Vyas, JJ.), Where the Courts below had applied S. 101 and upheld the contention of the occupier that it was the manager who was the guilty party and not the occupier. The High Court refused to accept a similar contention as now made by the Assistant Government Pleader. This contention, therefore, must fail.

11. Sri Bhasme then contended that the accused has not proved that any written instructions were given to the manager of the factory and oral instructions cannot be effective to sustain the defence under S. 101. No absolute rule can be laid down in that respect. Everything must depend ultimately upon the nature of the evidence brought before the Court and it is for the Court to accept or reject the same. There is nothing in the Factories Act which requires that there should be written instructions.

12. Sri Bhasme then contended that in any event the learned Sessions Judge cannot be right when he says that the accused has made out his defence under S. 101 of the Act. He refers me to Ex. 7, which is a letter written by the accused himself from Poona on 24 October, 1963, wherein he conveyed to the factory Inspector that he approved the statement made by his manager at the time when

he visited the factory on 9 October, 1963 and that the incident had occurred because the electric light had failed and only six workers were then working at the factory tory. In my view, the approval by the accused of the statement made by the manager cannot conflict with his defence, which he has now raised. The learned Sessions Judge has considered all the circumstances connected with the matter and has expressed the opinion that the defence of the accused was true. I have also had the advantage of referring to the learned magistrate's judgment and; it appears to me that his approach is erroneous. I agree that the defence of the accused is true.

13. Having regard to all these facts, I accept the reference. I accordingly set aside the order of conviction and sentence passed by the learned Magistrate in both the cases and make the rule absolute.

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