

The State Vs. A.H. Khan

The State Vs. A.H. Khan

SooperKanoon Citation : sooperkanoon.com/336869

Court : Mumbai

Decided On : Mar-08-1965

Reported in : AIR1966Bom107; (1965)67BOMLR566; 1966CriLJ397; ILR1966Bom66

Judge : Patel, J.

Acts : [Factories Act, 1948](#) - Sections 10 and 101

Appeal No. : Criminal Reference No. 135 of the 1964 with Cri. Ref. No. 136 of 1964

Appellant : The State

Respondent : A.H. Khan

Advocate for Def. : S.B. Sukthakar, Adv.

Advocate for Pet/Ap. : S.B. Bhasme, Asst. Govt. Pleader

Judgement :

ORDER

(1) These two reference are made by the District Judge, Sholapur, under S. 438 of the Criminal procedure code recommending that the conviction and sentences recorded In the both the cases should be set aside. The convictions of are one under S. 66[1][b] and S.92 read with the Ss 63 and 66[1][d] of the Factories.

(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 57/60, Gurwar peth, Sholapur. He owned similar factories at several other places bearing the same name while he himself was based in Poona. The factory Inspector visited the factory on the 9th 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 Bidi's 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 3-00 p.m. to 7-00 p.m. These six women workers were found to be working at 8-10 p.m. The accused was prosecuted in that all the six cases, viz., the case Nos. 56, 57 and 59 of 1964 under Ss. 66[1][b] and 58.60 and 61 of 1964 under S. 63 read with the S. 92. Within three days of the date of the notice of the term of the S. 101 of the Factories Act standing 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 who was guilty of the offence, and not himself. In fact this is the complaint made to the court by the accused three days before the hearings so as to enable the court to get the Manager before it. The accused then also gave evidence in support of this 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 after-thought. One does not know whether the Manager was summoned before the court in the term 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. In accordance with his findings, he has recommended that the conviction of the accused be set aside.

(3) Mr. S.B. Sukthankar, who appears on behalf of the accused, has supported the reference, while Mr. Bhasme, learned assistant Government pleader, has opposed the reference very strongly. Mr. Bhasme contended that in the first instance that under the Factories Act the liability of the manager and occupier of the concern is to be on the occupier in under S. 101 for either of them to allege and prove that it was the other who was guilty of the offence and he get himself acquitted. In other words that the liability of the manager and the

occupier is absolute and they have breach even under S .101 of the ac, if any defended of the Rules of he purposes upon the committee. Mr. Bhasme relied for the this purpose upon the definition of 'Occupier' in clauses (n) of S. 2 of the Factories act.

(4) Section 7 of requires an occupier to give notice within 15 days of the occupation of the Factory to the Chief inspector containing the particulars mentioned in the sub = clauses there under . by Clauses (b) of the name and the address of the occupier has to be given and by clauses (f) the name of the Manager of the factory has to begin sub = section 5 provides has to be given. Sub - section 5 proved is that the during such period for which on person has been designated as manager of a factory or during the which the period for which on person has been designed as manager of factory or during which person designed does not manage, the factory any person fond acting's manager, or if on such person is found the occupier of the himself shall be deemed to the be the manager of no such the deemed to the e poses of the act. Section 92 provided that the save as otherwise prodded in the act and the subject to the provisions of S. 93 if in our in respect of the provisions of the Act or the any rule made thereunder the occupiers and managers of the factory shall each the be guilty of an offenses and b punishable. Section 93 has no applications as it concerns the owners of the premises. Section 101 is herded 'Exemption o of occupiers or manager from liability I uncertain cases. It reads.:

'Where is the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be him entailed, upon complaint duty made by him and on giving to the prosecutor not less than three clears on days notice in writing of his intention so to do, to have any her persons whom he charged as the actual offenders brought before the charges, and if after the commission of the offenses has been provided the occupier or manager of the factory, as the case may be privies to the satisfaction of the court:-

(a) That he has used the due diligence of 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 offense as shall be liable to the like punishment as if he as were the occupier or management as if he were the occupier or managers as the case may be shall be discharged from any liability under this Act in respect of the such offenses.'

The two proviso are procedural and do not deal with the question of liability . the first proviso enables the occupier or the manager who has raised the defense and complained to examine himself on the oath and also any compliant s witness he may bring in support of this cases. The second proviso requires the court to adjourn the matter from the time to time for a period the not exceeding three months , if the occupier or the before the court. It also further provides that the is the actual offender cannot be brought before the courts. It also further provided or the that the actual offender cannot be brought before the court, theocrat must the proceed to hear the charges against the person actually charged and the it the offenses is proved then convict him.

(5) Mr. Bhasme contends that the Factories act in an Act enacted for improving the working conditions of the workman and therefore the same must be constructed liberally so as to the advance the purposes of the Act. He says that this can be achieved only if it is held that the both the occupant and the manager are liable. There is nothing in the definition of the 'occupier' which can possibly advance the contention. He says S .101 ought to the confined to the a plea where either the them contended that the 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 hi is a beneficent provisions and ought to the liberally constructed, in the my view the has to the constructed sensibly and the reasonably. One cannot lose sight of the fact that S. 92 which provides the penult for breach of the act, and the rules itself other creates of the exception, for it says 'Save as is otherwise expressly provided in the this Act' which indulged S .101 following it. The section assumes the possibility of prosecution of either the managers or the occupier alone and the is gives an option to either than them to prove that the some one else other than this court charged is guilty oft offense. The purposes of contractions of the statutes is to get ate intention o the market. In doing the so this courts must be guided primarily by the words ma bye modified primarily by the

words of the Statute. It may be that the meaning may extend by the context in which they are used. For arriving at the correct meaning the court must read the words thereof. If the arguments advanced are accepted, I will have no to omit much from consideration which I have no right to do.

(6) It is also contended that in prosecution under the Factories Act there is no scope and the application of the doctrine of the means read and the therefore want of the intentions even if any, is not 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 want of mens rea to take shelter under S. 101. It requires that the accused has used the diligence for the enforcement of the execution of the Act and has not either the knowledge of the offense being committed or has not consented to its commission or connived at it is not therefore that the S. 101 creates an exception in to prove something much more than that.

(7) I am supported in this view of by the judgment of the Division Bench of this court in the Criminal Appeal No. 1380 of 1955 with the Criminal Appeal Nos. 1381 to 1385 of 1955, dated 29-2-1955 [Bom] [Shan and vyas, JJ], where the courts below had applied S. 101 and upheld and the contention of the occupier that the manager 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.

(8) Mr. Bhasme then contended that the accused has not provided 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. Every thing 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.

(9) Mr. Bhasme then contended that in any event the learned session of Judge cannot be right when he says that the accused has made the cut reefed defence under S. 101 of the Act. He refers to Exhibits 7, which is a letter written by the accused himself from Poona on the 24th October 1963, where

intake conveyed to the statement made by the his Manager at the time when the and that the Factory on the 9th October 1963 and the incident had occurred because the electric light had failed and only six workers were then working at the factory. In my view, the approval by the accused of the statement made manager cannot conflict with his defense which the has now raised. The learned session judge has considered all the circumstances connected with the matters and the as expressed and opinion of that the defense of the accused was true. I have also had the advent of referring the learned Magistrate judgment of and it appears to me that is approach of is erroneous. I agree that the defenses of the accused is true.

(10) Having regard to all these facts , I accept the references. I accordingly set aside the order of the conviction of and sentence of passed by the learned magistrate of the in both the cases and make the rule absolute.

(11) LI/ DHZ

(12) Rule made absolute.