

State Vs. H.B. Namjoshi

State Vs. H.B. Namjoshi

SooperKanoon Citation : sooperkanoon.com/339799

Court : Mumbai

Decided On : Sep-12-1955

Reported in : AIR1956Bom189; 1956CriLJ395

Judge : Chainani and ;Gokhale, JJ.

Acts : [Factories Act, 1948](#) - Sections 2(1), 61, 63 and 92

Appeal No. : Criminal Appeal No. 741 of 1955

Appellant : State

Respondent : H.B. Namjoshi

Advocate for Def. : V.S. Desai, Adv.

Advocate for Pet/Ap. : H.M. Choksi, Govt. Pleader

Judgement :

1. This is an appeal by the State against the acquittal of the respondent who was prosecuted under Section 63 read with Section 92, Factories Act.

2. The respondent is the manager of Lokamanya Mills at Barsi. This factory manufactures Cotton yarn. On 4-2-1954 at 4-45 p.m. this factory was visited by the Inspector of Factories, witness Arte. He found a worker Bhanudas Ganoo Baraskar and four other workers working in the factory premises at that time. They were load-Ing bales in a railway wagon on a siding situated inside the Factory

premises.

The notice of periods of work displayed under Section 61, Factories Act mentioned the hours of work as from 7 a.m. to 11 a.m. and from 11-45, a.m. to 3-45 p.m. As the respondent has allowed the above workers to work beyond 3-45 p.m., five complaints were filed against him for committing offences under Section 63 read with Section 92, [Factories Act, 1948](#).

All the five complaints were heard together. The respondent pleaded not guilty. One of the contentions raised by him was that the above persons were not workers within the meaning of the Act, as they were employed under a separate contract, according to which for loading bales they were paid wages at the rate of 2 annas per bale. This contention was accepted by the learned Magistrate who accordingly acquitted the respondent.

2. The view taken by the learned Magistrate cannot be upheld, in view of the decision in -- 'State v. Allisaheb Kashim' : (1955)IILLJ182Bom . It was held in that case that the expression 'employed' as used in Section 2(1), Factories Act. .1948 does not necessarily involve the relationship of master and servant and that a person would be a worker whether he is paid fixed wages or whether his remuneration is determined on the basis of the quantum of work done by him.

3. Mr. Desai has however urged that the respondent cannot be said to have contravened the provisions of Section 63, as the work on which Bhanu-das Gannoo was employed at 4-45 p. m. when the Inspector had visited the factory cannot be said to be work incidental to or connected with a manufacturing process. We are unable to accept this argument. Section 63 provides that no adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory.

Bhanudas was a worker within the meaning of the section as he was employed on bailing work which as a part of the process of manufacturing cotton yarn or a process incidental to it. The railway siding at which he was loading bales at 4-45 p.m. is within the factory premises. There was therefore a contravention of, the provisions of Section 63, Factories Act, for Bhanudas, who was a worker, was

allowed to work in the factory beyond the periods of work mentioned in the notice displayed under Section 61 of the Act.

The fact that the work which he was then doing cannot be said to be a part of manufacturing process or a process incidental to it is in our opinion immaterial. What the section prohibits is the employment of any worker on any work in the factory premises except, in accordance with the notice of the periods of work displayed in the factory.

4. The order acquitting the respondent must therefore be set aside. We convict him under 8. 63 read with Section 92, Factories Act, and impose upon him a fine of Rs. 50/- or in default two weeks' simple imprisonment. The respondent is given a fortnight's time from to-day to pay the fine.

5. Order set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com