State Vs. Shantaram Govind Dolas

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SooperKanoon Citation : sooperkanoon.com/341080

Court : Mumbai

Decided On : Apr-29-1961

Reported in : (1962)IILLJ328Bom

Judge : Badkas and ;V.M. Tarkunde, JJ.

Acts : Minimum Wages Act, 1948 - Sections 18 and 22A

Appeal No. : Criminal Appeal No. 1526 of 1960

Appellant : State

Respondent : Shantaram Govind Dolas

Judgement :

Per Badkas, J.

1. Respondent Shantaram Govind Dolas has been acquitted by the Chief Presidency Magistrate, Bombay, of the offence under S. 22A of the Bombay Minimum Wages Act (Act 30 of 1957) read with rules 22, 26(1), 26(5), 26A and 26B of the Bombay Minimum Wages Rules, 1951. The State has filed this appeal against the said acquittal.

2. The accused has got a bidi shop. The premises of the accused were visited on 4 March, 1959 by the complainant, Minimum Wages Act inspector, Bombay. The premises were found to be manufactory for manufacturing bidis. The complainant

found at the time of the visit seven workers, whose names have been mentioned in the complainant, and that they were preparing bidis for the accused. The manufacturing process was being carried on under the supervisions of one Gajanan Mahadeo Satvilkar who appears to be a manger for looking after the preparation of bidis on behalf of the accused. The complainant, who is a Government labour officer and also an inspector under the Minimum Wages Act, questioned the seven workers, who were working in the manufactory and were preparing bidis, and learnt form them that they were employed for preparing bidis for the accused and that they were being paid at the rate of Rs. 3 per 1,000 bidis. The workers also told that labour officer that they were supplying their own leaves for preparing the bidis. The workers pointed out Gajanan Mahadeo Satvilkar as the person who was looking after the preparation of bidis on behalf of the accused. The complainant them asked Satvilkar whether those seven workers were employed by the accused and Satvilkar replied in the affirmative. Satvilkar also confirmed what the workers had told the complainant about their being the employees of the accused and the rate at which they were being paid. The complainant then called upon Satvilkar to produce registers required under the Act. The complainant also found that the notices of minimum wages were not displayed in the premises. The complainant then wrote the visit remarks with a carbon underneath and gave the original of the visit remarks to Satvilkar and obtained his signature on the original and on the carbon copy. This copy of the original given to Satvilkar has been filed on record as Ex. B. The complainant also took the signatures of the seven workers who were working in the manufactory on a piece of paper had that paper has also been filed on record as Ex. C. As the accused had not maintained attendance cards in V-D (rule 26B), muster roll in form V [(rule 26(5)], wages register in [IV-A, rule 26(1)], and a well-bound inspection book (rule 26A), the complainant has filed this complaint against he accused as, according to her, the accused has committed an offence under S. 26(a) read with the rules under which the above records have to be maintained. It was also noticed that the accused had not displayed notices required to be displayed under S. 18 of the Minimum Wages Act read with rule 22.

3. The defence of the accused in his words is as follows :

'I deny that the persons named in the complaint are my employees.

Some of them come to my place once or twice a month. They purchase tobacco from me. They manufacture bidis from leaves brought by them. They had their own instruments of trade such as pair of scissors, utensils, strings, etc. They sell bidis to me so manufactured by them on may premises occupied by them and I purchase the said bidis from them at the rate of Rs. 5.25 nP. per 1,000 bidis.

In the circumstances I am not bound to comply with any provisions under the Bombay Minimum Wages Rules and Act as mentioned in the complaint.'

4. The complainant examined herself in support of the allegations made in the complaint. The accused has not led any defence; he has only produced one account book on record.

5. The learned Chief Presidency Magistrate held that the Prosecution has failed to prove that the accused was a employer as defined in S. 2E of the Act and that therefore he has not committed breach of any of the provisions of the Minimum Wages Act. It is on this finding that the accused has been acquitted.

6. It is now urged on behalf of the State that the learned lower Court has not at all considered the nature of the transactions between the accused and the workers which, according to the learned Assistant Government Pleader, clearly indicated that the workers were employed by the accused for manufacturing bidis and that the accused has hired the labour of these workers. Kumari Vimal Patil, who is the complainant in this case being the Government labour officer and inspector under the Minimum Wages Act, has given evidence that she has visited the premises of the accused on 4 March, 1959. She was also stated that she found seven workers named in the complaint manufacturing bidis in these premised. She has deposed to enquiries made by her from the workers and also from Gajanan Satvilkar who according to her was the person in charge of the preparation of bidis. She has stated that Satvilkar has told her that person working were the employees of the accused. She has also stated that the various registered and other documents were not produced thought demanded and that she wrote visit remarks on a paper with a carbon underneath and gave the original of it to Gajanan Mahadeo

Satvilkar. She has proved Ex. C which are produced on record.

7. Bidi-making is a scheduled employment and the Minimum Wages Act applies to every scheduled employment under the said Act, Government is empowered to fix minimum wages in respect of scheduled employment. Kumari Patil, the complainant, has deposed that the minimum wages fixed for preparing 1,000 bidis are Rs. 3-6-0 if the leaves are supplied by the employees and if the leaves are not supplied by the employees the wages are Rs. 2-8-0 per 1,000 bidis. The cost of leaves required for making 1,000 bidis is 14 annas.

8. It would appear from the evidence of Kumari Patil that seven workers were found engaged in the process of manufacturing bidis in the promises of the accused. This work of making bidis was carried on under the supervision of Gajanan Mahadeo Satvilkar who appears to be the manager of this manufactory on behalf of the accused. The accused in his statement has also admitted that he pays Rs. 5.25 nP. per 1,000 bidis to these workers. The case of the accused, however, is that he purchases the bidis from these workers at the above rate and that he has not hired the services of these workers for making bidis. If, even, on the basis of the statement by the accused, the transaction is properly analysed, it is clear to us that the accused has employed these workers for making bidis by hiring their labour. It has been admitted by the accused that these workers go to the premises of the accused and prepare bidis. He has also admitted that they supply their own leaves and also use their own instruments. What the accused has, however, to say is that these workers purchase tobacco form his and that with the tobacco they prepare the bidis and then sell those bidis to the accused at the rate of Rs. 5.25 nP. per 1,000 bidis. The question to be considered is whether there is any sale and purchase of tobacco at all between the accused and the workers and whether there is any sale and purchase of bidis between the workers and the accused. The accused has admitted that he pays Rs. 5.25 nP. to the workers for 1,000 bidis. This amount would necessarily include the cost of tobacco which is consumed in the preparation of bidis. When rate of bidis in fixed, it necessarily implies that the price of tobacco is also fixed. It is also a known fact as to how much tobacco is required for preparing 1,000 bidis. Unless the price of tobacco is already determined, it is not possible to fix the rate at which the bidis

should be purchased. The tobacco can vary in quality. The rate of tobacco can also vary according to its quality. Therefore, what actually would happen in a transaction of this type so that the person who wants the bidis to be prepared by the workers supplies tobacco to the workers by the workers supplies tobacco to the workers and then from the price fixed per 1,000 bidis he deducts the price of tobacco consumed in the preparation of bidis and then pays the balance to the workers. So, what the workers get is remuneration for making bidis. This figure in fact us a pre-determined figure and must be known to both the parties because the price of tobacco is known and the quantity of tobacco consumed for preparing bidis is also known in the instant case. The accused says that he was paying the workers Rs. 5.25 nP. per 1,000 bidis. He was supplying tobacco to the workers. So necessarily he would deduct from this amount of Rs. 5.25 nP. the price of tobacco used in the making of bidis and would pay the balance which would be the remuneration of the workers. Though these various steps in the transactions are suggested, they have got their existence only in words. In reality there is no sale of tobacco nor purchase of tobacco. The accused only supplies tobacco to the workers. After the bidis are prepared there is also no sale of bidis by the workers to the accused. Thus in fact the workers prepares bidis with the tobacco supplied to them by the accused and in turn receive from the accused by way of the wages their remuneration which is due to them. It is not the case that these workers could take away the bidis with them and that they could refuse to sell the bidis to the accused. If that freedom was reserved to the accused, there could be no purpose or point for them to go to the premises of the accused and to prepare the bidis under the supervision of the manager of the accused. The accused will not be benefited in any way by simply supplying tobacco to the workers. Thus in reality and in substance the accused is supplying tobacco to the workers and is getting the bidis prepared by them by paying them certain wages, and with a view to avoid the provisions of the Minimum Wages Act, he is giving fictitious form to this transaction of preparing bidis by the workers, the transaction between the accused and the workers, if properly analysed on the basis of the facts stated by the accused in his statement, we feel no doubt that the transaction in question is not a transaction of sale and purchase either of tobacco or of bidis and that it is a transaction of employment of workers for making the bidis. The accused cannot evade the law by such subterfuges.

9. In our view, therefore, the accused is an employer and the workers are his employees and that they are employed by the adduced for hire for the work of making bidis. The learned Chief Presidency Magistrate observed that it was presumed in this case that because the workers were working in the premises of the accused they should be considered to be employees of the accused. There is no question of drawing any such presumption. The fact that the workers were the employees of the accused can be legitimately inferred from what the accused has stated and the circumstances in which these workers were working at the premises of the accused. It is not the case of the accused that he has rented out the premises to the workers or that he was receiving anything in return for the use of the premises by the workers for preparing bidis. The learned Chief Presidency Magistrate has thus failed to draw legitimate conclusions which ought to have been reasonably drawn on the basis of the facts disclosed on record. The finding of the learned lower Court cannot, therefore, be sustained and interference is called for.

10. Minimum Wages Act is a beneficial legislation enacted in the interest of the workers. Such ingenious devices employed by the employers have to be carefully examined for getting at the real facts of any transaction between the employers and the workers.

11. In our view, therefore, the accused is an employer and that he had employed the workers for making bidis and thus the case was governed by the provisions of the Minimum Wages Act. It is an admitted position that the accused of Gajanan Mahadeo Satvilkar, the person in charge of the working of this manufactory, did not produce the various registers of documents mentioned in the complaint. It has also been proved that the accused did not display the notice as required under S. 18 of the Minimum Wages Act. Rule 26B requires that every employee engaged in any scheduled employment other than public motor transport shall be provided with a card in form V-A. Rule 26(5) requires that an employer shall maintain a muster roll in form V. Rule 26(1) requires that he shall maintain a register of wages which shall include particulars as mentioned under that rule. Rule 26A provides

that an employer shall maintain a bound inspection book and shall produce it when so required by the inspector. Rule 22(1) requires an employer to display notices containing the minimum rates of wages fixed together with abstracts from the Act, the rules framed thereunder and the name and address of the inspector, at such places as may be selected by the inspector. As none of these provisions have been complied with by the accused, he has definitely committed a breach of these rules and S. 18 of the Act.

12. Section 22A provides :

'Any employer who contravenes any provision of this Act or of any rule of order made thereunder shall, if no other penalty is provided for such contravention by this Act, by punishable with fine which may extend to five hundred rupees.'

13. Thus, the accused, having contravened the provisions of S. 18 read with rule 22 of the At and rules 26B, 26(1), 26(5) and 26A, is liable to be punished under S. 22A for each of these breaches of the Act and the rules. The accused is thus accordingly convicted under S. 22A on each of these counts. It appears that the accused is the first offender in this matter. Though it is not shown since how long the accused has been carrying on this manufactory and not complying with provisions of the Act and the rules, we are inclined to take a lenient view of the wrong committed by him. As such, the accused would be sentenced substantially for his having committed the breach of rule 26(1) for his failure to maintain the register of wages as prescribed under that Rule and is accordingly sentenced to pay a fine of Rs. 75 or in default to undergo simple imprisonment for one week. On other counts he is sentenced to pay a fine of Rs. 5 each.

14. In the result, therefore, the accused shall stand convicted under S. 22A of the Act read with rules 26B, 26(5), 26(1) and 26A of the Bombay Minimum Wages Rules, 1951, and S. 18, rule 22, and is sentenced to pay a fine of Rs. 75 or in default to simple imprisonment for one week for breach of rule 26(1) and to a sentenced of payment of fine of Rs. 5 for breach of S. 18, rule 22, and rules 26A, 26(5), 26B and in default of payment of fine in respect of each of these convictions to simple imprisonment of seven days. The fine will be paid within fifteen days.