

Emperor Vs. Narayan Anant Desai

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Court : Mumbai

Decided On : Sep-18-1924

Reported in : (1924)26BOMLR1245

Judge : Marten and ;Fawcett, JJ.

Appeal No. : Criminal Application for Revision No. 217 of 1924

Appellant : Emperor

Respondent : Narayan Anant Desai

Judgement :

Marten, J.

1. In this case it is now common ground that the accused is charged and convicted solely under Sections 41(g) and. 18 (2) of the Indian Factories Act, 1911. Section 41(g) provides for the case where any order of an Inspector (inter alia) under Section 18 is not complied with. Then Section 18(2) runs:

If in any factory there is any other part of the machinery or mill gearing which may in the opinion of the Inspector be dangerous if left unfenced, the Inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for fencing such part in order to remove the danger, and requiring him to carry them out before a specified date.

2. Why I lay stress on the particular sections under which the accused is now charged and convicted is, that the original application of February 27, 1924, by the Inspector of Factories, asked for a summons under Section 41(f) for breach of Section 18(3) of the Act. Then the summons that was actually served on the respondent, and which we have seen, is under Section 41(f) for breach of Section 18(2). The summons was clearly wrong because Section 41(f) does not apply to Sub-section (2) of Section 18 at all.

3. Then as regards the original application made by the Inspector of factories, Section 18(3) applies to a different matter altogether, viz., that 'all fencing must be constantly maintained.' But the allegation here is not that the fencing was not maintained, but that it was not put up at all. So that also was a mistake. Similarly to avoid any misunderstanding, I wish to make it perfectly clear that the charge is not under Section 18(1)(c) which provides that 'Every part of the machinery and electrical fittings including live wires and switches which the Local Government may by rule require to be kept fenced shall be securely fenced.' It is admitted by the Government Pleader that that Sub-section does not apply here.

4. That being so, we are left with Section 18(2), and the abort point for our decision is this: Did the Inspector serve on the manager of the factory an order in writing specifying the measures for protection which the manager of the factory was to carry out? Now the actual document relied on by the prosecution as being such an order is a note made by the Inspector of Factories, Mr. Johnstone, on July 30, 1923, in what is called the 'Inspection Book' which has to be kept under the rules. It runs: 'Visited. The manager has agreed to visit the Wolverhampton Works and to see the press guards in operation. Similar guards or guards automatic in operation which will prevent an accident similar to the one to Ram Sing to be fitted within five months.'

5. I should explain that the Wolverhampton Works here have nothing whatever to do with any works at Wolverhampton in England, but are some local works of that name in Bombay. Similarly the accident to Ram Sing was an accident in this factory of the accused which had happened prior to the visit of the Inspector.

6. I should also have explained at the outset that this factory is a metal stamping press, and though there is no express evidence on the point, the Government Pleader has explained to us that the machinery in question consists of a vertical rod going up and down into a cup which is fed by the workman with the object of stamping the article as the rod goes up and down. Consequently if the workman makes a mistake and does not withdraw his hand in time, it may be crushed. The automatic guards referred to by the Inspector were intended to be of such a nature that they would prevent such an accident happening to the workman. Nothing turns on that, and I only mention it to show what were the surrounding circumstances.

7. Now under the Act there are some other material sections.

8. Section 37 provides for rules being made by Government. Then if one turns to the rules framed under the Act, viz., the Factories Amended Rules, Bombay, 1923, it will be found that under Rule 4 the manager has to maintain an inspection book. Under Rule 5 the Inspector at each inspection has to satisfy himself of certain things. Then after the first sentence in Sub-rule (c) there is the following provision, viz., 'A note of all defects or illegalities discovered together with orders for their remedy or removal passed by him under the Act or These Rules shall then be prepared in triplicate. One copy shall be entered in the inspection book. In confirmation of such orders the Inspector shall subsequently send to the occupier or manager a note of all defects and illegalities discovered in Form O and a copy of the said list shall be sent, at the same time, to the District Magistrate concerned, and to the authority to whom the inspector is subordinate.'

9. Then if one turns to Form O one finds that it is a formal notice which runs as follows: 'Upon a recent inspection of your factory it was found, to the extent indicated below, that certain provisions of the above Act and Rules were not being carried out. I, therefore, request that the necessary steps be taken at once to comply with the law.'

10. Then there is one other section which I should refer to, viz, Section 50, as to the right of appeal. It enacts that 'any person on whom an order under.. .Section 18 has been served may, within fourteen days from the date of service of the order, appeal against such order to the Local Government or to such authority as it

may appoint in this behalf, who may confirm, modify or reverse any such order.'

11. Then Sub-section (3) provides that in the case of such an appeal, the appellate authority may, and if so requested by the appellant shall, hear the appeal with the aid of two assessors. So that section as to appeals lays stress on the date of the service of the order.

13. Now the service of an order or notice is a well-understood expression in our law Courts, and we have numerous provisions in the Procedure Code for service of notices or orders. They are intended to make it certain that a particular process or an order of the Court is brought to the specific notice of the individual affected. Accordingly a mere knowledge that proceedings may be instituted or something of that sort is not sufficient to take the place of the imperative directions in our Code as to service on the actual individual. To take one instance. One knows that in civil proceedings for contempt of Court one of the essential points is that the initial process for committal or attachment should be served personally on the respondents. The same applies with equal force to anything in the nature of criminal or penal proceedings.

14. Here in my opinion the fair meaning of the words in section 18(2) 'serve on the manager an order in writing' is that such an order as is referred to in Form O should be served definitely on the manager of the factory: and that it should specify exactly what measures the manager is to take in order to remove the danger. Then if the manager disobeys that order, he does so at his peril. He also knows that he has a certain limited time within which to appeal if he objects to the order. But a mere note of a visit like the one here which begins by saying that the manager has agreed to visit certain works, can hardly be said to be an order, at any rate not the first part of it. And one can well understand that if every thing that the Inspector chooses to write in an inspection book is necessarily to be taken as an order against which the factory owner must appeal within fourteen days to the Local Government, then a considerable amount of trouble and confusion may be caused. I think Section 18(2) contemplates that the Inspector is to make up his mind definitely what is the order which he requires to be carried out under this Act, and for breach of which he will prosecute the factory owner or manager under the

Act, and that equally definite notice is to be given to the latter.

15. In my opinion there was no service of any order in writing by the Inspector in the present case within the meaning of Section 18(2). Merely writing that note in that book was not contemplated by the Act as sufficient. And I think the mere fact that the manager was aware of what the Inspector wanted him to do is not, in my opinion, a sufficient compliance with the specific requirements of this penal Act. It is not suggested that there was any service by registered post under Rule 69.

16. I may add that no explanation has been given to us why originally the Inspector charged the accused under a different section, and not under Section 18(2) at all. It is said this was a mistake, but it was a curious mistake for the authorities to make in launching criminal proceedings or semi-criminal proceedings against the accused, if they really thought that any such orders in writing had been made and served on the manager.

17. Accordingly in my opinion the decision of the learned Magistrate was wrong, and I would accordingly set aside the conviction and sentence and, direct the fine if paid to be refunded.

18. I wish to add this. I am fully alive to the great importance of Factory Acts being properly enforced for the protection of workmen, and I have no doubt that in India it is particularly necessary that their beneficial provisions should be carried out. On the other hand one must also bear in mind that the employers' position has to be considered too. It may be that without any negligence on their part defects will exist in their factories, but if they are to be proceeded against in a criminal Court for alleged negligence, then it would seem only fair that the matter should be clearly brought home to them. That I have no doubt is the reason why the legislature has distinctly specified what the Inspector has to do under Section 18(2) and also under Rule 5(c) and Form O. Whether the particular accused in the present case was negligent or not does not concern this question of general principle on the construction of the Act.

19. I am glad to add that the accused's counsel has been able to tell us that our decision in no way affects the order of compensation which was passed by the

learned Magistrate, viz., Rs. 200. His client, he says, will pay double that amount to the injured workman. His reason for appealing to us has not been to evade payment of any fair compensation, but to avoid a conviction under the Indian Factories Act.

Fawcett, J.

20. It may be noticed that in every case of an order of an Inspector that is covered by Clause (g) of Section 41, the section authorising the order requires the Inspector to serve on the manager of the factory a notice of his requisitions. The same condition is also laid down in Section 8A, which is not a section specified in Clause (g) of Section 41. This Clause (g), as printed in the compilation handed to us, mentions Section 19B, but that is a mistake for Section 19A which has been corrected by Act XI of 1923.

21. The legislature obviously lays stress on this service of a notice, and there cannot, in my opinion, be a punishable breach of an order under any of these particular sections unless the condition precedent mentioned in those sections is complied with, that is to say, that the requisite notice has been served on the manager of the factory. That is in accordance with the ordinary rule of construing penal statutes.

22. In regard to what is ordinarily contemplated by the service of a notice, I may refer to the provisions of the Indian Income Tax Act, 1886. That is an Act which allowed the Collector to serve notices on certain persons. For instance, Sections 12 and 13 say that the Collector shall cause a notice to be served on either the company or the person concerned, and provision is made that in case of such person failing to comply with the provisions of those sections, he can be punished under Section 34. But the Act contains a section, viz., Section 46, as to service of notices, and the main provision is Section 46(1): 'A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866, or by the delivery or tender to him of a copy of the notice.' Then follow certain provisions in regard to presumption of posting, etc., which I need not specify.

23. Then in the General Clauses Act 1897 we have Section 27 which is a section dealing with the manner of service by post. It provides that if you properly address, prepay and post a notice by registered post, then the presumption is that service has been effected. Consequently in later Acts, for instance, the Indian Income Tax Act VII of 1918, the provision in Section 46 as to service of notices merely required that 'a notice or requisition under this Act may be served on the person therein named either by post or by the delivery or tender to him of a copy of the notice or requisition in the manner provided by the Code of Civil Procedure, 1908, for the service of summons.'

24. A similar provision will be found in Section 63 of the last Income Tax Act of 1922. So that it is obvious that there is a recognised degree of formality in regard to service of notices, and this is clearly provided for by the rules, especially Rule 5(c), Rule 69 and Form O of the forms attached to the rules. The Act itself also in Sections 41 and 53 shows the necessity for care as to proper service of a notice.

25. I think, therefore, that the conviction of the petitioner under Clause (b) of Section 41 of the Indian Factories Act 1911 cannot be sustained, and I concur in the order proposed by my learned brother.