

State Vs. M.M. Pinto

State Vs. M.M. Pinto

SooperKanoon Citation : sooperkanoon.com/343125

Court : Mumbai

Decided On : Aug-14-1959

Reported in : (1959)61BOMLR1617; 1960CriLJ798; (1960)ILLJ59Bom

Judge : Mudholkar and ;Naik, JJ.

Acts : [Factories Act, 1948](#) - Sections 2(1)

Appeal No. : Criminal Appeal No. 391 of 1959

Appellant : State

Respondent : M.M. Pinto

Advocate for Def. : H.R. Pardiwalla and ;S.G. Samant, Advs.

Advocate for Pet/Ap. : V.T. Gambhirwala, Asst. Govt. Pleader

Judgement :

Naik, J.

(1) This is an appeal by the State against the order of acquittal passed by the learned Presidency Magistrate. 6th Court, Mazagaon, Bombay. The material facts may, briefly, be stated as follows: on 1-4-1958, Factory Inspector Shinde visited the premises of a concern known as Western India Saw Mills situated at Reay Road, Bombay-10. His object was to inspect the factory under the Factories Act. He found

that thirty workers were actually engaged in doing some job or in the other on the premises of the factory. He also noticed that the manufacturing process of cutting, planing and shapping of wook was going on with the aid of power. The accused responent produced a register Ex. A. which contained 19 names in one place and additional nine names at another place. According to the Inspector, all the thirty persons, who were engaged in the factory, were workers within the meaning of that word in the factories Act 1948. He, therefore, lkodged a complain is the learned Presidence Magistrate's courts, Mazagaon. Bombay, for the violation of the provisions of Section 7(1) read with section 92 of the factories Act, 1948, and also of Rs.4 of the Bombay Factories Rules, 1950.

(2) The defence of the responent was simple. He contended that the Western India Saw Mills was a partnership concern and there were nineteen parters in this concern including himself. According to him, the nineteen names that are mentioned in Ex. A are the names of the partners. He further stated that on the day in question eighteen persons were actaully working. He asserted that as a matter of fact, the nine names appearing in Ex. A are the names of workers who were working on wages in the concern.

He also explained that the remaining three persons, who are shown at serial Nos. 20, 25 and 30 in the register, Ex. B, prepared by the Inspector, were partners of another concern known as Western India Joinery works and that they had come there on the day in question, because some of the partners in the two concerns are common. He also pointed out that the premises for Western India Saw Mills. Western India Joinery works and Western India Spray Painting and polishing works are the same.

(3) The learned Presidency Magistrate accepted the contentions of the defence and acquitted the responent. It is frofm that decision that the state has come up in appeal.

(4) The responent produced two partnership deeds in support of his contention that in all there were nineteen partners in the concern known as Western India Mills Saw and also in the other concern known as Western India Joinery works. The defence has also examined tow witnessess viz., Laxman Ramachandra, D.W.

2 and Ramachandra Hari, D.W. 3 stated that, as a matter of fact, there were five such concerns including the Western India Saw Mills and the Western India Joinery works and that he has looking after the work of attendance of the workers in all these concerns. He also asserted that he was one of the partners in these concerns. The trying Magistrate accepted the evidence of these two witnesses and also relied upon the terms of the two deeds of partnership and came to the conclusion that, as a matter of fact, there were nineteen partners including the respondents in the concern known as Western India Saw Mills.

(5) The learned Assistant Government Pleader frankly conceded that he is not in a position to assail this finding of fact arrived at by the learned Magistrate on the basis of oral and documentary evidence led before him. He, however, contended that even assuming that there were nineteen partners in the concern, still if these partners or any of them engage themselves in doing the work on the premises of the factory, then every one of them could fall within the definition of the word worker given in S. 2(1) of the Act, and inasmuch as the number of such workers exceeded ten, the provisions for the Factories Act are obviously violated.

(5a) In order to appreciate this line of argument, it is necessary to refer to a few provisions of the Factories Act Section 2(1) defines the word worker to mean a person employed directly or through any agency, whether for wages or not, in any manufacturing process, or.....'. The term 'manufacturing process' has been defined in S. 2(k)(l) as any process for

'making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, the definition of the word factory, is contained in S. 2(m)(i) and it means.

'any premises including the precincts thereof whereon ten or more workers are working or, were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on.'

Clause (ii) of this subsection is not relevant for our purpose in this case.

(6) It is not disputed that manufacturing process with the aid of power was going on in the premises of the Saw Mills. The only point to be considered is whether the number of workers engaged in that process exceeded ten, and for this purpose we have to consider the meaning and scope of the definition of the word worker contained in S. 2(1) of the Act. The learned Assistant Government pleader emphasized the expression 'whether for wages or not' in sub-s (1) and argued that the essence of the matter consisted in the fact that a person is actually engaged in the work is entirely immaterial. The worker may receive wages or may even work free or he may have an interest in the factory proprietary or otherwise. In support of this argument, he drew our attention to the decision of a Division Bench of this court reported in *State v. Allishaeb Kashim Tamboli*, : (1955) IILLJ182Bom That decision overruled the previous decision of Mr. Justice Bavdekar sitting as a single judge in *Ra,mnath Shankarlal v. state* Cr. Revn. Appln. No. 685 of 1952 with Cr. Regn. appln. No. 686 and 687 of 1952. In the unreported case decided by Mr. Justice Bavdekar the view taken was that the word 'employment' presupposes the relationship of master and servant. This view did not find favour with the Division Bench in : (1955) IILLJ182Bom and it came to the conclusion that whether the relationship of master and servant prevailed or not, what is necessary is that the person is actually engaged in carrying on the manufacturing process in a particular factory. The following observations of Mr. Justice Vyas at p. 147 (of Bom LR): (at p. 218 of AIR) are apposite:

'The definition of a worker in clause (1) is clearly enacted in terms of a person who is employed in and not in terms of a person who is employed by Under the definition, it is immaterial how or by whom he is employed so long as he is actually employed 'in' a manufacturing process.'

The logical corollary of the above view is that there can be an employee without an employer and all that is necessary is that there should be some employment in the sense of engagement. There need not even be a contract of employment.

(7) Mr. Justice Dixit, who also took the same view of the definition of the term 'worker' as that taken by his colleague, Mr. Justice vyas, however, emphasized the expression for wages or not. The words or not have apparently been used with a

view to include apprentices and honorary workers within the definition of the term worker Mr. Justice Dixit, however, took the view that the words 'or not' suggest that the idea of relationship of master and servant is not of the essence of the matter. A similar view was taken by the Nagpur High Court in the State v. Jiwabhai ILR (1953) Nag 67: AIR 1953 Nag 172 giving a wider connotation to the work employed under S. 66(1)(b) of the Factories Act. The learned judges observed that the word employed in their opinion, did not only connote employed on wages but also being occupied or engaged in some form of activity. On the other hand, the Allahabad High court took a contrary view in state v. Shri Krishna Prasad, : (1954)ILLJ273All holding that there must be a relationship of master and servant before a person engaged in carrying on a particular process can be considered to be a worker.

(8) The meaning and scope of the definition of the term 'worker' contained in S. 2(1) of the Act came up for consideration before the Supreme Court in Chintaman Rao. V. State of M.P. : 1958 CriLJ803 . the supreme Court held that the concept of employment involves three ingredients: (1) employer, (2) employee and (3) the contract of employment The employer is one who employs, i.e, one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. It follows from the above that the term employed is a relative term and always has relation on the one hand to the employer and on the other to the contract of employment. In the course of the judgment of the court which was delivered by Mr. Justice Subba Rao, emphasis was laid on the presence of the circumstance viz, whether the workers are amenable to the control and supervision of the manager or not. Mr. Justice Subba Rao, pointed out that if it is found that the workers are carrying on the work under the management and supervision of the manager of the factory then it can be safely concluded that each of them is a worker within the meaning of that term in the Factories Act. the decision of the Supreme Court is directly on the point and is, therefore, binding on us. Although the decision in : (1955)ILLJ182Bom was not referred to before the Supreme Court, nor was it considered, still the former must be deemed to have been overruled, by necessary implication inasmuch as the

Nagpur decision, in which a similar view was taken, was expressly overruled.

(9) The position, therefore, boils down to this that the 18 persons who were found working in the factory on the date of inspection were not workers within the meaning of S. 2(1) of the Factories Act. although they were actually carrying on the work on the premises of the factory. they were partners of the concern and as such cannot be considered as the employees because so far as they were concerned, there was neither any employer nor any contract of employment. They were doing the work in their capacity as partners. The same view holds good in the case of three other persons who were partners in another concern whose premises are the same as the premises of the offending concern. The learned Assistant government Pleader contended that if the term 'worker' is narrowly interpreted as suggested above, then, that will leave a loophole by having recourse to which the provisions of a social legislation like the Factories Act could be successfully violated. We are unable to accept this line of reasoning. Section 85 of the Act gives ample powers to the State Government to declare that all or any of the provisions of the Act shall apply to any place wherein a manufacturing process is carried on in spite of the fact that the number of persons employed therein is less than ten in one case and less than 20 in the other and also in spite of the fact that the persons working therein are not employed by the owner. but are working with the permission of or under an agreement with the owner. In a given case if the Government is satisfied that a partnership agreement has been entered into with a view to avoid the application of the provisions of the Factories Act, it can certainly step in and declare the concern to be a factory within the meaning of the Factories Act. The result is that the appeal fails and is dismissed.

BD/G.M.J

(10) Appeal Dismissed.