

State Vs. Manager, Sutaria Automobiles

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Court : Mumbai

Decided On : Jan-31-1956

Reported in : AIR1956Bom433; (1956)58BOMLR427; 1956CriLJ859; ILR1956Bom613; (1956)IILLJ303Bom

Judge : Gajendragadkar and ;Gokhale, JJ.

Acts : [Factories Act, 1948](#) - Sections 51, 52, 54, 55, 56, 63, 64, 64(1), 64(2), 64-R and 92; [Code of Civil Procedure \(CPC\), 1908](#); Factories Rules - Rule 91

Appeal No. : Criminal Appeal Nos. 1443 and 1444 of 1955

Appellant : State

Respondent : Manager, Sutaria Automobiles

Advocate for Def. : N.M. Shah, Adv.

Advocate for Pet/Ap. : A.A. Mandgi, Asst. Govt. Pleader

Judgement :

Gajendragadkar, J.

1. These two appeals have been preferred by the State against the order of acquittal passed in favour of the respondent in two criminal cases filed against him. In both these cases the respondent was charged with having committed an

offence punishable under Section 63 read with Section 92, Factories Act.

The learned Magistrate who tried this case has held that the offence charged was not proved. That is why he passed an order of acquittal in favour of the respondent. In the present appeals, the State contends that the orders of acquittal passed by the learned Magistrate are based on an erroneous construction of the material provisions of Rule 91 framed under the Factories Act.

2. The facts leading to the prosecution are not in dispute. Mr. Keskar, the Junior Inspector of Factories, Kolhapur, visited the Sutaria Automobiles at 8.10 p.m. on 12-3-1955. The respondent is the occupier and manager of the Sutaria Automobiles. Sutaria Automobiles is a factory within the meaning of the Factories Act and it situated in the Cantonment area of Belgaum. The working hours as notified in this factory were 8 a.m. to 12 noon and 2 p.m. to 6 p.m.

On 12-3-1955 the Inspector found that three workers were working in the factory on motor car No. BYZ-3493 at the time when he visited the factory. He then recorded the statements of the workers and made his inspection remarks in the visit book. The inspector then filed a complaint against the respondent and alleged that the respondent had committed an offence under Section 63 read with Section 92, of the Indian Factories Act.

The respondent admitted these facts, but he urged that the work on which his workmen were engaged at the time when the Inspector visited his factory was in the nature of urgent repairs and he claimed exemption under the provisions of Rule 91, That is how the principal question which falls for decision is whether the work which the workmen in the factory of the respondent were carrying out at the material time can be said to constitute urgent repairs within the meaning of the proviso to Rule 91.

3. Before dealing with this narrow point of law, it may be relevant to refer to one or two facts. The work on which the workmen were engaged was connected with the clutch-plate and the gear of the car in question. The driver of the car went to the factory and stated that he had to go by night for urgent work and that he wanted to put his clutch-plate and gear in order before starting on the journey.

The respondent's case was that this was a case of urgent repairs to the car of his customer, and since it was permissible to him to allow his workmen to work beyond the statutory hours of work for carrying out urgent repairs, he could not be said to have committed any offence as alleged by the prosecution.

4. Section 63 of the Act requires that the hours of work must correspond with the notice given under Section 61 and the register maintained under Section 62. No adult worker, says this section, 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 and the entries made beforehand against his name in the register of adult workers of the factory.

It is well known that the provisions of this Act are intended for the benefit of workmen and they impose certain healthy restrictions on the working of factories in that behalf. Chapter VI deals with the working hours of adults and makes several provisions for the protection of workmen by laying down rules for regulating the work that may be exacted from workmen by factory owners. Under Section 51, no adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Section 52 prescribes the weekly holidays, which workmen must be allowed to enjoy. Section 54 deals with the daily hours of work and it lays down that subject to the provisions of Section 51 no adult worker shall be required or allowed to work in a factory for more than nine hours in any day. This section provides for an exception where more than nine hours' work can be required from workmen subject to the previous approval of the Chief Inspector in order to facilitate the change of shifts.

Section 61 requires a notice of periods of work for adults to be displayed in a factory. It is in the light of these provisions that Section 63 has been enacted and the breach of any of these provisions is penalised by Section 92 of the Factories Act. The prosecution case against the respondent is that, inasmuch as the respondent required his workmen to work on the day in question for more than the statutory period of nine hours, he has contravened the provisions of Section 63 and thereby rendered himself liable to be punished under Section 92 of the Act.

Section 64 authorises the Provincial Government to make rules. Sub-section (1) of Section 64 contemplates the framing of rules for the purpose of providing for supervision or management of the factories and the enforcement of the provisions of the Act. Sub-section (2) of Section 64 empowers the Provincial Government to make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed of the types of workers mentioned in that sub-section.

There are nine sub-clauses under Sub-section (2) of Section 64 indicating the types and categories of rules which may be framed by the Provincial Government in pursuance of the power conferred on the Provincial Government by this subsection. Clause (a) of Section 64(2) allows rules to be made for exempting workers engaged on urgent repairs from the provisions of Sections 51, 52, 64, 55 and 56.

Similarly, Clause (b) deals with workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of Sections 51, 54, 55 and 56. It is under these two clauses of Section 64 Sub-section (2) that Rule 91 has been framed by the Provincial Government.

Rule 91 lays down that adult workers engaged in factories specified in column 2 of the Schedule annexed to the rule on the work specified in column 3 of the said Schedule shall be exempt from the provisions of the sections specified in column 4, subject to the conditions. If any, specified in column 5 of the said Schedule.

In other words, the scheme of the Schedule to Rule 91 appears to be that column 1 of the Schedule refers to the section under which the rule is framed; column 2 refers to the class of factories to which the provision applies; column 3 describes the nature of work which is exempted; column 4 refers to the sections from the provisions of which exemption is granted to work mentioned in column 3; and column 5 lays down the conditions subject to which such exemption is granted. Even this exemption is subject to certain provisos which are enumerated in Rule 91.

In the present case we are concerned with proviso (b) to Rule 91. This proviso lays down that, except in the case of urgent repairs, no male adult worker shall be required or allowed to work for more than ten hours in any day. The first entry in the Schedule refers to all factories in column 2, mentions urgent repairs in column 3, exempts urgent repairs from the application of Sections 51, 62, 54, 55, 56 and 61, and lays down the conditions subject to which this exemption can be claimed in column 5.

The effect of column 5, generally stated, appears to be that, even with regard to urgent repairs in respect of which exemption is granted from the operation of the specified sections, notice is required to be given by the manager of the factory to the Inspector as laid down in column 5, and the enjoyment of the exemption is regulated by the order that may ultimately be passed by the Inspector as contemplated by the provisions of column 5.

If the repairs on which the workmen of the respondent were engaged do not amount to urgent repairs within the meaning of the Schedule read in the light of Rule 91, then it would be unnecessary to consider the provisions contained in column 5 against the first entry in the Schedule.

5. The learned Magistrate took the view that the expression 'urgent repairs' used in proviso (b) to Rule 91 as well as in the first entry of the Schedule contains words of general denotation and must be liberally construed. It is true that the expression 'urgent repairs' is not defined in the Act and the repairs in question are only qualified by the adjective 'urgent' and no other. Prima facie urgent repairs may include repairs which are of an urgent character.

The present factory does the work of repairing motor-cars and transport vehicles. There are two kinds of urgent repairs with which this factory may be concerned. It may be that the factory has to undertake the work of urgent repairs to its own constituent machinery; and for the efficient running of the machinery of the factory itself if repairs are required to be made urgently, those repairs would undoubtedly be urgent repairs qua the factory.

On the other hand, it may be that the customers of the factory come to the factory for effecting urgent repairs to their own vehicles and from, the point of view of the customers the repairs that they require are urgent. Mr. Shah for the respondent has argued that the expression 'urgent repairs' in the context should be construed so as to include both classes and categories of repairs. If that be the true construction of the expression 'urgent repairs', then the order of acquittal passed by the learned Magistrate must be confirmed.

If, on the other hand, the expression 'urgent repairs' does not include repairs to the vehicles brought to the factory by its constituents, then the order of acquittal must be set aside. In construing this expression, regard must also be had to the general consideration that failure to comply with these rules is made an offence, and so, if the expression is capable of two constructions in the context, the construction which is in favour of the accused should be adopted.

On the other hand, if it appears that by adopting the construction for which the accused contends the relevant provisions of the Act themselves would be rendered nugatory, that is a fact which must be given due importance in construing the expression. The legislation containing the material clause is undoubtedly a Labour welfare legislation. Legislature has put this Act on the statute book for the purpose of protecting work, men engaged in factories, and It cannot be disputed that provisions made in such a statute should ordinarily receive beneficent construction from the Courts.

The object of the Legislature must be borne in mind and the means adopted by the Legislature in carrying out the object must be studied by reference to the provisions enacted in that behalf. In trying to give effect to the object of the Legislature, attempt must never be made to strain the language or to put on the words used an unnatural or unreasonable construction. The words used must be given their plain grammatical construction, but in doing so the context in which the words occur, must not be overlooked.

6. In construing the expression 'urgent repairs', it would be necessary to bear in mind the provisions of Section 64, Sub-section (2), and the clauses under Sub-section (2) to which I have already referred. Rule 91 has been framed under the

authority conferred on the Provincial Government by Clauses (a) & (b) of Section 64 Sub-section (2), and these two material clauses can be conveniently compared with the other clauses under which similar authority has been conferred on the Provincial Government.

All factories falling under the Act are given exemption from the operation of the section mentioned in column 4 of entry 1 in the Schedule annexed to Rule 91 for effecting urgent repairs. It seems obvious that the object of giving exemption in respect of urgent repairs is not to expose the factory itself to any serious jeopardy. If the factory finds that, in order to run and function efficiently its machinery requires immediate and urgent repairs; then the rule, grants exemption to the factory from the operation of the specific sections.

The existence of the factory and its efficient running are so much connected with the employment of the workmen themselves that it is in the interests of the workmen that urgent repairs for the necessary working and upkeep of the factory should be immediately attended to. That is why the context seems to require that the urgent repairs must be in relation to the factory itself. If we were to accept the more general construction for which Mr. Shah has contended, it would easily lead to anomalous results.

Every constituent of the factory may clamour for attention on the ground that repairs to his own vehicle are urgent and should be immediately carried out. The urgency to which the rule refers is not the urgency felt by the constituents of the factory, but the urgency relating to the factory itself. The general scheme of the conditions mentioned in column 5 of the first entry in the Schedule also indicates that it is the urgent repairs to the factory, and not the urgent repairs to the vehicles brought by the constituents of the factory, that are contemplated by column 3 in the said entry.

7. It would, we think, be permissible to state that the construction of the expression 'urgent repairs' found in column 3 of the first entry, which we are disposed to accept, is supported by the construction which may reasonably have to be placed on the other entries in column 3 in respect of corresponding entries in column 2 of those entries. We must, therefore, hold that the view taken by the learned

Magistrate as to the meaning of the expression 'urgent repairs' in the material rule is not justified.

In our opinion, the respondent cannot Invoke the provisions of Rule 91 because admittedly he required his workmen to work beyond the statutory hours of work, not for the purpose of effecting urgent repairs to his own factory, but for attending to a call from his customer which the respondent chose to treat as urgent.

8. The appeal accordingly succeeds, the order of acquittal is set aside and the respondent is convicted under Section 63 read with Section 92, Factories Act. Two appeals have been preferred in respect of the employment of two different workmen, namely. Frank Fernandes and Khatal Ahmed. We think the ends of justice would be met if the respondent is ordered to pay a fine of Rs. 5/- in respect of each one of these offences.

9. Appeal allowed.

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