

G.S. Joshi Vs. State of Mysore

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Court : Karnataka

Decided On : Feb-19-1971

Reported in : 1972CriLJ1663

Judge : K. Jagannatha Shetty, J.

Appellant : G.S. Joshi

Respondent : State of Mysore

Judgement :

ORDER

K. Jagannatha Shetty, J.

1. The petitioner who is the Manager of the State Bank of Mysore. Madhugiri Branch was prosecuted for an offence under Rule 8 of the Mysore Shops and Commercial Establishments Act (hereinafter referred to as the Act read with Rule 26 of the Mysore Shops and Commercial Establishment Rules hereinafter referred to as the Rules.

2. The case of the prosecution was that when the Labour Inspector. Madhugiri Circle inspected the Bank he found that the Manager did not maintain the Leave with Wages Register in form No. F and, therefore the Labour Inspector filed a charge-sheet against the petitioner on 22-8-1969 on the ground that he the petitioner) had contravened Rule 8 of the Rules and therefore liable for

punishment under Rule 26 thereof.

3. The accused pleaded not guilty to the charge. The Labour Inspector was examined as PW. 1. Relying on his evidence the learned Magistrate was of the opinion that the offence was proved and therefore he convicted the accused under Rule 8 read with Rule 26 of the Rules and sentenced him to pay a fine of Rs 25/- in default to undergo simple imprisonment for three days. This order of conviction and sentence is challenged by the accused in this revision petition.

The contentions which were urged and not found favour before the learned Magistrate have been pressed before me for consideration. It was firstly contended that the Magistrate could not have taken cognizance of the offence as there was no complaint as required under Section 31 (1) of the Act. Section 31 of the Act provides for the procedure stating that no prosecution under the Act or the Rules or orders made there under shall be instituted save on a complaint in writing by an Inspector. The contention of the learned Counsel for the petitioner was that the charge-sheet filed by the Labour Inspector on 22-8-1969 cannot be said to be a complaint within the meaning of the word 'complaint' defined under Section 4 (1)(h) of the Code of Criminal Procedure. Section 4 (1)(h) Cr. P.C. defines 'complaint' as:

4 (1)(h) 'complaint': 'Complaint' means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person whether known or unknown has committed an offence but it does not include the report of a police officer.

The above-said charge-sheet was written by the Labour Inspector and made to the Magistrate. I do not think that it cannot be regarded as a complaint within the meaning of Section 4 (1)(h) Cr. P.C. The first contention therefore deserves to be rejected.

4. It was next contended that the complaint filed by the Labour Inspector was barred by time under Section 32 of the Act. Section 32 reads as follows: '32: Limitation for prosecutions:

No Court shall take cognizance of any offence under this Act or any rule or order made there under unless complaint thereof is made within six months from the day on which the offence is alleged to have been committed.

The offence in this case alleged against the petitioner is the contravention of Rule 8 of the Rules. That rule states that the employer shall maintain leave with wages Register in form No. F and make a return to the Inspector concerned in Form G not later than 1st September of the year subsequent to that to which it relates. It is seen from the evidence of the Labour Inspector that he inspected the Bank on 24-6-1969 and the complaint was filed on 22-8-1969. The Leave with wages Register is required to be maintained regularly under Rule 8 by the Bank. The fact that the Labour Inspector visited the Bank earlier to 24-6-1969 does not establish that the offence under Rule 8 was committed earlier to six months from the date on which the complaint was filed. It was a continuing offence and there cannot be any limitation for the prosecution.

5. Lastly it was contended that the accused is a manager of the Bank Under Section 3 (1)(h) of the Act. a person occupying the position of management in the Bank is exempted from the operation of the Act. The said section reads as follows:

3 (1) Nothing in this Act shall apply to:

(h) persons occupying positions of management in any establishment.' I would have accepted this contention but for the dual capacity of the petitioner. M. R, Shamsunder contended that the petitioner was not only occupying the position of management in the branch of the Bank but also a person having charge of the said branch. He is therefore an 'employer' within the meaning of the said term as defined under Section 2 (h) of the Act. It is in these terms:

2 (h) 'employer' means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes members of the family of an employer a manager agent or other person acting in the general establishment or control of an establishment.

Under Rule 8 of the Rules it is only the employer that is liable for punishment for contravention of the provisions of that Rule. The petitioner was proved to be in-charge of and control over the Branch of the Bank and not a mere person occupying the Position of management of the Bank. Such a person cannot get an exemption under Section 3 (1)(h), He really comes within the meaning of the term employer' as defined under Section 2 (h) of Act and therefore liable for punishment.

6. In the result this petition fails and is dismissed.

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