

**Shiva Behari Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/460798](http://sooperkanoon.com/460798)

**Court :** Allahabad

**Decided On :** Sep-28-1953

**Reported in :** AIR1954All255; (1954)ILLJ449All

**Judge :** Randhir Singh, J.

**Acts :** [Factories Act, 1948](#) - Sections 62 and 106

**Appeal No. :** Criminal Revn. No. 27 of 1953

**Appellant :** Shiva Behari

**Respondent :** State

**Advocate for Def. :** M.L. Trivedi, Adv. for ;Addl. Government Adv.

**Advocate for Pet/Ap. :** D.N. Bhattacharjee, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Randhir Singh, J.**

1. The applicant in this case has been convicted under Section 92 of the [Factories Act, 1948](#), for having contravened the provisions of Section 62 of the Factories Act.

2. It appears that one Sri P. C. Joshi, Inspector of Factories, U. P. inspected the factory of the applicant at Sitapur on the 16th March, 1952, which was a Sunday. He found some persons working there and demanded the registers of workers. The registers of workers were not produced by anybody present and the Inspector of Factories had to come away. He reported the matter and ultimately a complaint was sent by the Chief Inspector of Factories to the City Magistrate, Sitapur. This complaint was received on the 11th June, 1952, when it was ordered to be transferred to the Factory Magistrate, for necessary action. The Magistrate to whom this case was transferred ordered on the 17th June, 1952, that summons might issue to the applicant. The case was then tried and the applicant was convicted and sentenced to a fine of Rs. 100/-. He went in revision to the Sessions Judge who maintained the conviction but reduced the sentence to a fine of Rs. 20/-. The applicant has come up in revision.

3. The first point which has been urged on behalf of the applicant is that cognizance of the offence having been taken more than three months after the offence was committed the conviction was bad in view of the provisions of section 106 of the Factories Act. Section 106 of the Factories Act is as follows :

'No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector : Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.'

It appears, therefore, that no court shall take cognizance of any offence punishable under the Factories Act unless a complaint thereof was made within three months of the date on which the commission of the offence came to the knowledge of the Inspector. It has been argued on behalf of the learned Counsel for the applicant that the Magistrate who finally took cognizance of the case issued his first order on the 17th June and as such took cognizance of the offence on the 17th June, a day after the expiry of three months of the date of the offence. This section does not enjoin that cognizance should also be taken within three months

of the offence. All that it requires is that a complaint should be made within three months. In the present case the complaint which resulted in the conviction of the applicant was received by a Magistrate who was competent to take cognizance of the case on the 11th June, 1952. This was within three months of the date when the offence came to the knowledge of the Inspector. If a complaint is made in proper time, but the Magistrate does not choose to issue orders on the complaint for some time, the complaint cannot be said to be bad. There is thus no force in the contention of the learned Counsel for the applicant on this point.

4. Another point which has been pressed on behalf of the applicant is that the Inspector of Factories should have given reasonable time and opportunity to the applicant to produce the register. Section 62 of the Factories Act is as follows :

'(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing-

(a) the name of each adult worker in the factory;

(b) the nature of his work;

(c) the group, if any, in which he is included;

(d) where his group works on shifts, the relay to which he is allotted;

(e) such other particulars as may be prescribed.'

This Act, therefore, requires that a register of adult workers shall be maintained by the manager of every factory to be available to the Inspector at all times during working hours or when any work is being carried on in the factory. The words of the section, therefore, clearly indicate that this register should be available to the Inspector at all times, that is, should be produced immediately on demand. If the manager of the factory does not happen to be on the premises at the time of the inspection, he should make arrangements that the register is made available to the Inspector whenever the Inspector chooses to go and inspect the factory. The evident intention of the legislature is that the register should be at the place where

work is going on. The applicant in the present case admitted that he was not present at the time of the inspection and came to the factory about half an hour after the Inspector had come. He also admits that the register was not made available to him at the time when he demanded it. There had, therefore, been a clear breach of section 62 of the Factories Act. The contention of the learned Counsel that time should be allowed to a manager of a factory, who is not even present at the time of the inspection at the factory to produce the register at some future time, does not appear to be correct.

5. No other point has been pressed in revision.

6. The application for revision is, therefore, dismissed.

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