

Ashfaq Husaln and ors. Vs. State

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Court : Allahabad

Decided On : Sep-04-1958

Reported in : AIR1959All555; 1959CriLJ1038; [1960(1)FLR556]; (1959)IILLJ33All

Judge : M.C. Desai, J.

Acts : [Factories Act, 1948](#) - Sections 2 and 100

Appeal No. : Criminal Revn. No. 1011 of 1956

Appellant : Ashfaq Husaln and ors.

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : S.D. Agarwala, Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.C. Desai, J.

1. The three applicants have been convicted under the U. P. Factories Act for infringement of Rules 3, 6 and 13 of the U. P. Factories Rules. An inspector of factories inspected the premises and found the applicant Matloob Husain present

in the factory and 24 persons working. The premises were not licensed as a factory. Consequently the Chief Inspector wrote a letter to the District Magistrate forwarding two complaints against Matlooh Husain and the other two applicants one complaint for breach of Rule 3 and the other complaint for breach of Rules 6 and 13.

The letter of the Chief Inspector along with the two complaints was sent by the District Magistrate to the City Magistrate for disposal and thereupon the City Magistrate started proceedings against the applicants. There is no force whatsoever in the contention that the City Magistrate took cognizance of the offence on one complaint only. The two complaints were attached to the letter of the Chief Inspector and both were presented by the same counsel in court.

The orders were written by the City Magistrate on one of the complaints and merely because nothing was written on the other complaint it was argued that no cognizance of it had been taken. Actually cognizance had been taken of both complaints' and infringement of all the three rules was mentioned as the offence committed in the prescribed form under summary trial.

Then it was argued that all the three could not be prosecuted but only one of them. The three persons had been prosecuted on the ground that they were joint owners of the Kharkhana 'which has been held a factory.' They are simply joint owners; they do not form any association or partnership. Section 100 of the Act has therefore no application. What it lays down is when a firm or other association is the occupier of a factory any one of the individual partners or members may be prosecuted and punished.

Even if this means that any one of the individual partners members can be prosecuted and punished, it is only when the occupier is a firm or other association of individuate. Two or more persons not forming a firm or other association, who are occupiers of a firm, cannot claim the benefit of Section 100. Joint owners cannot be said to be an association of individuals,

The word 'occupier' is defined in Section 2 (n) of the Factories Act to mean the person who has ultimate control over the affairs of the factory. Singular includes

plural and if two or more persons have ultimate control over the affairs of a factory they are all occupiers. The definition does not indicate that only one person can have ultimate control over a factory. In the case of joint owners who have equal powers none of them singly can be said to have ultimate control over the affairs of the factory and all must be held to have such control. Therefore they are all occupiers.

It is only when the affairs are entrusted to a managing agent that he will be deemed to be the occupier. In the absence of a managing agent all the owners must be held to be occupiers. Neither Section 92 nor Section 93 contains anything to suggest that only one person can be an occupier under the definition clause.

2. I do not find anything illegal or improper in the applicants conviction and sentence and dismiss the application.

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