

Hari Krishna and anr. Vs. State

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Court : Allahabad

Decided On : Mar-18-1959

Reported in : AIR1959All794; 1959CriLJ1396; [1960(1)FLR562]; (1960)ILLJ42All

Judge : M.C. Desai, J.

Acts : [Factories Act, 1948](#) - Sections 2, 92 and 100

Appeal No. : Criminal Revn. No. 1432 of 1957

Appellant : Hari Krishna and anr.

Respondent : State

Advocate for Def. : B.N. Katju, Adv. (Brief Holder)

Advocate for Pet/Ap. : J.N. Agarwal, Adv.

Disposition : Application partly allowed

Judgement :

ORDER

M.C. Desai, J.

1. The two applicants, who are partners of a firm owning premises in which the manufacturing process of converting paddy into rice by mechanical power is being carried on, have been convicted under Section 92 of the Factories Act. The first

question is whether the premises are a factory or not. It is admitted by the applicants that they have employed seven workmen in the manufacturing process. When the premises were inspected by the Factory Inspector he found twenty workmen in the premises. Seven were admittedly the workers employed by the applicants for the manufacturing process and ten have been found by the courts below not to have been so employed.

The remaining three persons were, according to the applicants, employed temporarily to repair the compressor which had gone out of order, but the manufacturing process was going on. Since the three men were employed in repairs of the compressor, which are incidental or connected with the manufacturing process, they have been held to be workers within the meaning of Section 2(k) of the Factories Act; I do not see anything wrong. Consequently there were ten workers working in the premises and the premises are a factory. Its occupier would therefore, be guilty under Section 92 for infringement of the provisions of the Factories Act.

2. The next, and more important, question is whether both the applicants are occupiers. Section 100 of the Act lays down that

'Where the occupier of a factory is a firm any one of individual partners thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable', provided that the firm may give notice to the Inspector that it has nominated one of its members to be the occupier of the factory for 'the purpose of this Chapter and he shall be deemed to be the occupier until further notice cancelling his nomination is received by the Inspector or he ceases to be a partner.

3. Under Section 92 it is the occupier and manager of the factory who is punished for contravention of the provision of the Act. Here the occupier of the factory is a firm consisting of the two applicants as its partners and the question is whether both could be prosecuted and punished under Section 92. Under Section 100 'any one' of the applicants could be prosecuted and punished, i.e. either one or the other could be prosecuted and punished but not both, 'Any one' means any single individual; the expression does not include more than one individual.

The Legislature seems to have intended that when an offence punishable under Section 92 is committed by a firm all its partners should not be prosecuted and punished. There is reason for this; it would be wrong to punish each and every partner of it when the object of punishing would be amply achieved by punishing only one of them. The proviso to Section 100 itself suggests that the Legislature intended only one person to be prosecuted and punished and not more; the firm has been given the right to notify to the Inspector that it has nominated one of its partners to be the occupier of the factory and once this is done only the nominated partner is to be taken to be the occupier of the factory and hence liable to be prosecuted or punished under Section 92. The Legislature is thus satisfied with the prosecution and punishment of only one partner and that is why in Section 100 it has used the words 'any one.'

Surely in the absence of a firm's notifying to the Inspector that it has nominated any of its members to be the occupier all the partners could not have been intended to be liable to be prosecuted and punished. If the Legislature had intended that more than one partner could be prosecuted and punished, it would have used the words 'any one or more' instead of the words 'any one.' Even the words 'any one' of the individual 'partners' would have served the purpose because they would have included any single individual as well as any number of individuals. When the Legislature used the word 'one' it was not necessary to use the word 'only,' the word cannot mean anything but 'only one.'

The word 'any' was used along with 'one' to show that the prosecution had the choice of selecting one of the partners to be prosecuted and punished. The Legislature having intended that one of the partners was to be prosecuted and punished the question arose: which one; and the reply given by the Legislature was 'any one,' meaning thereby that the prosecutor had the right of selecting any one of the partners for prosecution. The prosecution of both the partners of the firm in the present case was, therefore, illegal. Sri B. N. Katju for the State states that Kailash Chand applicant No. 2 may be punished under this Chapter.

4. I allow the application of Hari Krishna and set aside his conviction and sentence and acquit him and direct that the fine if realised be refunded. The sentence of fine

of Rs. 250/- and Rs. 250/- for the two offences committed by Kailash Chand under Section 92 by not obtaining a licence for the factory and by not getting the premises tested by the Factory Inspector seems to be excessive. He does not normally employ at least 10 workers and it was only because he employed extra workmen to carry out repairs that the premises became a factory. A smaller amount of fine would amply meet the ends of justice. Consequently I maintain the conviction of Kailash Chand under Section 92 of the Factories Act but reduce his fine to Rs. 50/- under each count. The balance of the fine, if realised, shall be refunded.

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