

Ram Nath Vs. State

Ram Nath Vs. State

SooperKanoon Citation : sooperkanoon.com/471647

Court : Allahabad

Decided On : Jun-18-1979

Reported in : 1979CriLJ1145

Judge : J.M.L. Sinha and ;Gopi Nath, JJ.

Appellant : Ram Nath

Respondent : State

Judgement :

Gopi Nath, J.

1. This revision has come to a Division Bench on a reference made by a learned Single Judge who doubted the correctness of the decision in State v. Kailash Chandra Bhargava 1971 ALJ 14.

2. The applicant and one Ramashwar Prasad were convicted under Section 35 of U.P. Dookan aur Vanijya Adhishthan Adhiniyam, 1962 (hereinafter referred to as the Act) by the Sub-Divisional Magistrate, Ballia, and were sentenced to pay a fine of Rs. 75 each or in default to under go simple imprisonment for one month. The prosecution case was that on 20-3-1971 one Sankatha Prasad Tewari, Labour Inspector, visited the Oil and Flour Mills of the applicant and found that the attendance of one Bashir, an employee, was not recorded since 6-3-1971 that col. Nos. 2 to 5 of the attendance register had not been filled in; that the leave register

was not maintained and that extracts in forms Ka, Kha and Ga had not been displayed. The Labour Inspector recorded an inspection note which was signed by Rameshwar Prasad, the son of the applicant, and Bashir, an employee of the Mill. Since similar breaches had been detected earlier as well the Labour Inspector filed a complaint against the two accused for violation of the provisions of the Act and the Rules framed thereunder. The complaint was filed on 9-9-1971. The two accused denied the charges and pleaded not guilty. The trial court found the irregularities established and convicted the two accused under Section 35 of the Act and sentenced them to the fine mentioned above.

3. On appeal the learned Sessions Judge acquitted Rameshwar Prasad but maintained the conviction and sentence of Ram Nath Prasad. One of the questions raised before the court below was that Sri Sankatha Parasad Tewari, Labour Inspector, having been appointed an inspector of the area in question on 19-8-1971 i. e. much after the date of inspection the inspection made by him was invalid and the complaint filed could not be taken cognizance of. The conviction recorded against the applicant consequently was unsustainable in law. This contention was repelled by the appellate court. On merits it found that the applicant had violated the provisions of the Act and the rules in regard to the matter mentioned in the complaint. The conviction and sentence passed against the applicant was accordingly upheld. The conviction of Ramashwar Parasad however was set aside on the ground that only an employer could be run down for the contravention of the provisions of the Act and not a member of his family. Ram Nath Prasad was found to be the employer, hence he alone was convicted. Ram Nath Prasad has filed this revision challenging his conviction by the two courts below.

The order was challenged on the ground that the Labour Inspector being unauthorised to inspect the applicant's Mills on 20-3-1971, the complaint filed by him could not be taken cognizance of the finding on merits were also challenged on the ground that evidence had not been properly considered. The revision was heard by a learned Single Judge. He found that the findings recorded on the question of the commission of irregularities was one of fact and could not be interfered with in revision. On the question of the maintainability of the complaint

learned Single Judge found that the contention of the applicant was supported by the decision in *State v. Kailash Chand Bhargava* (supra). But he did not agree with the view expressed in that case. In *State v. Kailash Chandra Bhargava* (supra) it was held that if a Labour Inspector was not appointed an inspector of the area in which the Mill in question was situated on the date he inspected the premises no prosecution could be launched by him in respect of the breaches committed by the employer. The main question arising for consideration in this revision accordingly is whether a complaint, filed by a Labour Inspector, who on the date of inspection was not duly authorised to inspect the Mill in question, could be taken cognizance of by a court for the offence alleged to be committed by the employer under the Act. Section 190 of the Code of Criminal Procedure hereinafter referred to as the Code, provides for the cognizance of offences and states as follows:

190 (1) Except as hereinafter provided, any presidency Magistrate, District Magistrate or sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence:

(a) upon receiving a complaint of fact which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

The instant case could fall either under Clause (a) or Clause (c) of Section 190(1).

4. There is no bar created under the Act to the taking cognizance of an offence committed under the Act on a complaint or report of an inspector who on the date of inspection of the Mills in question was not authorised to do so. The Code also does not provide for any such bar. An objection regarding a right of inspection is one which relates to the making of inspection, and an employer can object to his Mills being inspected by a person who is not authorised to do so and restrain him from discovering the irregularities committed by him. But once inspection is permitted and irregularities are discovered they do not cease to be irregularities because the discovery was irregularly made, nor does the furnishing of an

information in respect of the same become illegal for the reason that a person not authorised to make an inspection had inspected the premises. The furnishing of an information in regard to the commission of an offence under the Act is a matter distinct from the discovery thereof and it does not have to depend for its legality on the competence of the person making the inspection or the manner the irregularity was discovered. The receipt of information furnishes the basis for the cognizance of the offence. The information can be furnished by any person. The Magistrate can take cognizance even on his own knowledge or suspicion. The complaint in the instant case furnished an information in writing to the Magistrate of the offence committed by the applicant and the Magistrate rightly took cognizance of the same under Section 190(1)(c) of the Code.

5. The observations made in *State v. Kailash Chandra Bhargava* (supra) with deepest respect to the learned Judge deciding the same seem to be a little too wide.

6. As regards the irregularities committed the two courts below have recorded a concurrent finding against the applicant. The finding is one of fact based on the appreciation of the evidence on record, The violation of the provisions of the Act and the rules framed thereunder is thus fully established against the applicant.

7. The revision accordingly fails and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com