

**State Vs. S.D. Gupta**

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**Court :** Allahabad

**Decided On :** Jul-19-1972

**Reported in :** 1973CriLJ999

**Judge :** J.M.L. Sinha, J.

**Appellant :** State

**Respondent :** S.D. Gupta

**Judgement :**

**J.M. L. Sinha, J.**

1. This appeal has arisen out of the order dated 16th January 1969 passed by a Magistrate 1st Class Saharanpur dismissing the complaint filed against the respondent for his prosecution under Section 92 of the Factories Act.

2. The prosecution case, very briefly stated, was as follows:

Sri M. C. Mathur Inspector of Factories Meerut Region, Meerut. inspected M/s New International Industries Pacca Bazar Saharanpur on 10th May 67 and found that the factory was committing a breach of Rule 3 of the rules framed under the Factories Act punishable under Section 92 thereof, A complaint was therefore submitted by Mr. M. C. Mathur to the District Magistrate Saharanpur praying that cognizance of the offence may be taken by him. The complaint bears no date but it

was sent to the District Magistrate through a letter dated 2nd of August 67. It can therefore be presumed that the complaint had been prepared on or before 2nd of August 1967. The complaint was transferred to the City Magistrate for disposal under orders dated 4th August 67 passed by the Additional District Magistrate. The first order on the order sheet of the court of City Magistrate Saharanpur is dated 26th of August 67. By this order the learned Magistrate directed that the case be registered and the respondent be summoned for 16th September 67. It appears that after appearance before the City Magistrate, the respondent raised an objection that his prosecution was barred by time as it was on 26th of August 67, i.e., subsequent to the statutory period of three months, that the cognizance was taken by the Court. This objection found favour with the learned City Magistrate with the result he dismissed the complaint as barred by time. Feeling aggrieved against it the State of U, P. has come up in appeal before this Court.

3. I have heard learned Counsel for either side and have also perused the record of the case. The relevant part of Section 106 of the Factories 'Act, on which reliance has been placed by the Court below for dismissing the complaint as barred, by time, reads 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.' A perusal of the above would clearly reveal that what the section requires is that the complaint should be made within three months. Once the complaint is made within that period cognizance thereof can be taken any time thereafter. This was the view expressed by this Court in case *Gopal Das Saxeria v State* : (1956)ILLJ11All .

4. A perusal of the judgment, of the trial Court indicates that it: was confused on the point whether the section requires the cognizance of the case being taken within three-months or it required only the complaint being made within that period. In any case if on an examination of the relevant: material on record it is found that the-complaint was made within statutory period of three months, the order passed by the learned Magistrate must be held to be erroneous,

5. According to the allegations made in the complaint, it was on 10th May, 67 that the Inspector came to know-about the commission of the offence by the respondent. It would therefore follow-that the complaint could be made till 9th of August 67. A perusal of the record reveals that the complaint duly drafted' and signed was forwarded by the Factory-Inspector to the District Magistrate-through his letter dated 2nd August 67, and, on 4th of August the Additional District Magistrate endorsed an order thereon transferring the complaint to the Court of City Magistrate for disposal. In view of the order passed by the Additional District Magistrate there can be not an iota of doubt that the complaint had reached the-Additional District Magistrate on or before 4th of August 67. Since the limitation for filing the complaint extended up to 9th of August 67 it must be held that the complaint had been made within the-period of limitation.

6. learned Counsel for the respondent contended that the complaint was; sent by the Factory Inspector to the District Magistrate as administrative officer and not as a Court. It was also urged that the order passed by the Additional District Magistrate on 4th of August 67' transferring it to the City Magistrate was also an administrative order. On these premises learned Counsel contended that the complaint should be deemed to have been made for the first time only when it reached the court of the City Magistrate and not any time before it. I have given my careful thought to this argument but I am unable to accept it. It is worthy of notice that the complaint is addressed to the court of District Magistrate Saharanpur, as is apparent from the language on the top of it. The complaint was not addressed to any Officer. Further it was requested in the complaint that cognizance of the case may be taken. The complaint being addressed to the court of District Magistrate this request should also be deemed to be addressed to him. The letter through which the complaint was forwarded to the Court of District Magistrate also contains a request addressed to the District Magistrate for taking cognizance of the complaint. Since the complaint was addressed to the court of the District Magistrate and contained a request addressed to him for taking cognizance of the complaint it could by no stretch of imagination be accepted that the complaint was sent to him in his administrative capacity. In fact interpreting the complaint in that manner in the instant case would amount to misreading it.

7. As for the latter part of the argument i.e., that the order passed by the Additional District Magistrate on the complaint transferring it for disposal to the City Magistrate should be held to be an administrative order, as it was passed before cognizance was taken, nothing will turn on it. If the complaint is made to a court and the court transfers it to another court for disposal before taking cognizance of it the order of transfer can be treated to be an administrative order as held in the case *Gopal Das Sindfoi v. State of Assam*. AIR 1961 SC 986 : 1961 (2) Cri LJ 39. That cannot however, have any bearing on the fact that the complaint had been made in Court. As already stated earlier the requirement of Section 46 of the Factories Act is that the complaint should be made within a period of three months. If the complaint is made within that period the mere fact that the court in which the complaint was filed dealt it administratively to transfer it to another court for disposal cannot undo the making of it.

8. learned Counsel for the respondent then contended that under Section 8(4) of the Factories Act the District Magistrate is a Factory Inspector for his district. learned Counsel contended that it should therefore be presumed that the complaint was forwarded by the Factory Inspector to the District Magistrate as a superior officer in the hierarchy of his department and. consequently, the complaint cannot be deemed to have been made to a court during the period it was dealt with-by the District Magistrate or the Additional District Magistrate.

9. It is true that under Section 8(4). The District Magistrate is a Factory Inspector for. his district. An officer can always have a dual character. Even though the D. M, is a Factory Inspector he is also a Magistrate exercising jurisdiction throughout the district and in that capacity he constitutes a Court. Under the circumstances the fact whether the complaint was sent by the Factory Inspector to the District Magistrate treating him to be a superior officer in the hierarchy of his department or it was sent to him as a court should rest on the language of the complaint and the letter accompanying it. Indeed it should not rest on . imagination or presumption which have no basis. I have already stated earlier that the complaint in the instant case was addressed to the court of the District Magistrate and the complaint contained a request asking the District Magistrate to take cognizance thereof. In the letter accompanying the complaint also the District Magistrate was

requested to take cognizance of the complaint before a particular date. Neither' the letter nor the complaint even impliedly state that the complaint may be forwarded to the competent court for disposal. The language used in the complaint and' the letter accompanying it leave absolutely no room for doubt that the complaint was sent to the District Magistrate as a court and not as a Factory Inspector,

10. It was also urged that the cases: under the Factories Act were formally heard by the City Magistrate and not by District Magistrate and it should therefore-be presumed that the complaint was sent to the District Magistrate only for administrative action and not for any judicial action. I am once again unable to agree. A District Magistrate exercises the powers of a Magistrate 1st Class throughout the district and in that capacity he is competent to take cognizance of the-offences under the Factories Act as-well. It was therefore open to the Factory Inspector to make the corn-plaint to the District Magistrate. It was; thereafter the choice of the District Magistrate either to proceed with the case himself or send it to any other court for disposal. I fail to find any basis for the contention that the complaint was sent to the court of the District Magistrate for administrative action and not for judicial action.

11. learned Counsel for the respondent contended that a complaint must be presented before the court personally or through a counsel. It was urged that, since the complaint in this case was sent, by registered post it cannot be deemed to be validly presented and the order of the court below should be maintained on that ground. There is more than one reason for which this contention cannot be accepted,

12. A perusal of the order passed toy the court below discloses that it did not dismiss the complaint on the ground that it was not validly presented. Further, the contention, is also not supported by any provision contained in the Cr.PC The expression 'complaint' is defined in Section 4(1)(h) thus:

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 known or unknown has committed an offence but it does not include the report of a police officer.

13. Now, a complaint in writing sent to a Magistrate with a view to his taking action is very much a complaint within the meaning of Section 4(1)(h) reproduced above. There is nothing in Section 4(1)(h) which may even impliedly mean that the complaint must be made 'to the Magistrate personally.'

14. The next relevant section in the Code of Criminal Procedure is Section 190 (1) (a) which reads as follows:

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 'facts which constitute such offence:

(b) ...

(c) ...

It may be noticed that the words used in sub-clause (a), are 'upon receiving a complaint.' The word 'receiving' should include receiving by post. It will thus appear that there is nothing even in Section 190 which may lead to the conclusion that a complaint must necessarily be presented to the Magistrate by the complainant himself or through his counsel.

15. learned Counsel for the respondent referred me to the second part of Section 200 Cr.PC which reads as follows:

A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present if any. upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also ,by the Magistrate.

The learned Counsel contended that the above provision of law requires that a complainant must be examined immediately after he presents the complaint and unless the complaint is presented personally the compliance of this provision of law will not be possible. learned Counsel urged that Section 290 thus impliedly lays down that the complainant must present his complaint personally to the

Magistrate.

16. I have given my careful thought to the contention raised but I am unable to accept it. A careful reading of Section 200 Cr.PC would show that it is only when a Magistrate takes cognizance that he has to examine the complaint. So long he does not choose to take the cognizance, he need not' examine the complainant. This view finds full support from the case AIR 1961 SC 986 (987) : 1961 (21 Cri LJ 39. As observed in this case a court may, after receiving the complaint and before taking cognizance thereof choose to order investigation by the police under Section 156 Cr.PC or may transfer it to another Magistrate, which will be an administrative act. It is not necessary to examine the complainant under Section 200 Cr.PC in either of these two situations. Since the examination of the complainant immediately- on presentation of the complaint, is not mandatory, it cannot be accepted that Section, 200, impliedly enjoins that the complaint should be presented to the court by the complainant in person.

17. It may also not be out of place to mention that wherever the legislature intended presentation of an application personally to a court it expressly said so. A reference in this connection can be made to a couple of provisions contained in the Code of Civil Procedure. Rule 1 of Order III thereof States:

Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such Court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting as the case may be, on his behalf.

By the above provision the legislature made it clear that every suit, plaint or application to be filed in court shall be presented either by the party himself or through his counsel or recognised agent. Order XXXIII Rule 3 which relates to application for permission to sue in forma pauperis reads thus:

Notwithstanding anything contained in these rules, the application shall be presented to the court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an

authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party, attended in person.

18. It will thus appear that in the above provision of law also, since the legislature intended that the application should be made personally by the party concerned or his agent, it said so in clear words.

19. Since there is no provision in the Cr.PC stating either expressly or impliedly that the complaint must be presented to the Magistrate by the complainant personally it cannot be held that a complaint sent by post is not valid and cannot be taken cognizance of,

20. learned Counsel for the respondent referred me to the case Baldeo Das v. State : AIR1952 All937 in which Brijmohan Lai, J. made the following observation:

Sending by post is not the proper method of presenting the complaint, the complainant should have either personally presented the complaint before the City Magistrate or should have engaged a lawyer to perform the duty of presenting the complaint in person. A complaint sent by post is not a validly presented complaint unless the rules permit it in any locality ...

On a perusal of the entire report however I find that the above observations are, if I can say so with respect in the nature of obiter dicta. A complaint relating to an offence under Section 92 of the Factories Act was addressed to the City Magistrate. The commission of the offence had come to light on 13-8-49 and the period of filing the complaint, therefore, expired on 12th November 49. Though the complaint was addressed to the City Magistrate it was received in the office of the District Magistrate, and the Office Superintendent, through an order dated 12th November 49, sent it to the court concerned for disposal. The complaint reached the court of City Magistrate on 5th December, i.e., after the expiry of the period of limitation. Since the complaint was not addressed to the District Magistrate nor the order on the complaint transferring it carried the signature of the District Magistrate. Brij Mohan Lai, J. held that the complaint should be deemed to have made only on the date on which it reached the court of the City Magistrate, and

therefore was barred by time. The complaint was not sent by post to the court of City Magistrate. The observation reproduced earlier therefore was not necessary for the disposal of the case and appears to have been made only in reply to an argument that the fault lay with the District Magistrate in not transmitting the complaint to the court without delay. I am of the opinion that the observation is of no help to the respondents.

21. In *Hidayatullah v. Emperor* AIR 1936 Pesh 66 (Which is a Division Bench Decision) telegrams were sent by one Hidayatullah to the Deputy High Commissioner Peshawar and Asst. Commissioner alleging that the Sub-Inspector had committed certain offences against him, A question arose in that case whether the telegram sent could constitute complaint or not.

It was observed:

learned Counsel for the petitioner has urged that in no circumstances can a telegram amount to a complaint as defined in Section 4 (1) (h). Cr.PC and bases his contention on Section 200 Cr.PC which directs that a Magistrate taking cognizance of an offence on a complaint shall at once examine the complainant pointing out that a person who sends a telegram cannot be at once examined. In view of the fact that the definition of a complaint includes an allegation made in writing and does not in itself necessitate the presence of the complainant, we are unable to accept this contention and we do not consider that it is supported by (1898) ILR 22 Bom 949 and (1910) 7 All LJ 618 : 11 Cri LJ 351 which were cited by counsel in, support thereof.

22. Yet another case relevant on the point is *State v. Satya Narain* : (1960) ILLJ 583 Pat . This case related to an offence under Section 92 of the B'actories Act. The complaint in this case was sent to the District Magistrate by registered post. A question arose for consideration whether the complaint was validly presented. The court observed:

There is no provision either in the Factories Act which makes it necessary for the Inspector of Factories to make his complaint before a competent court to be present personally or through a lawyer. He is a public servant and. as laid down in

proviso (aa) to Section 200 of Cr.PC the examination of a complainant on solemn affirmation is not required if the complaint is made by him as a public servant in the discharge of his official duty. This obviates the necessity of the public servant at the time of filing a complaint for the purposes of being examined under Section 200.

23. For all the reasons stated above the contention raised on behalf of the respondent that the complaint having been sent by post in the instant case was not validly presented cannot be accepted.

24. learned Counsel for the respondent lastly contended that the order-sheet does not show that Sri. M. C. Mathur Factory Inspector, who had filed the complaint was present before the court below on the last date when the case came up for hearing and consequently the normal course to be adopted by the Magistrate was to dismiss the complaint for default of the complainant. learned Counsel urged that the order of the dismissal of the complaint recorded by the learned Magistrate may be maintained on that ground.

25. There is more than one reason for which the argument cannot be accepted. A perusal of the order passed by the learned Magistrate clearly, indicates that he did not dismiss the complaint for the default of the Factory Inspector. That is also apparent on a perusal of the order sheet. The case was fixed for arguments since sometime prior to 7th October 68, On that date viz. 7th of October, the Inspector of Factories informed the court that he would not submit any arguments. On the subsequent dates the case was listed for arguments, obviously of the other party. There was nothing to be done by the Factory Inspector. Consequently, his presence was not at all necessary. Under Section 247 of Cr.PC if the complainant is absent on any date fixed for hearing, the Magistrate has two courses open to him. He may either dismiss the complaint and acquit the accused or adjourn the hearing of the case to some other date. Since the Factory Inspector had already made a statement on an earlier date that he would not submit any argument and since his presence was obviously not necessary on the subsequent dates, the presumption is that the Magistrate would not have dismissed the complaint on that ground. In case, he had negated the contention raised on behalf of the

respondent regarding limitation, he would have in all probability listed the case on some other date. for recording the prosecution evidence.

26. None of the contentions raised On behalf of the respondent therefore carry any substance.

27. In the result disagreeing with the court below I find that the complaint in the instant case had been made within the prescribed period of three months and that the finding of the court below to'the contrary is erroneous.

28. This appeal is accordingly allowed. The judgment and order dated 10th January 69 passed by the court below are set aside and the case is remanded for fresh trial according to law.

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