State Vs. Mirza Bashir Beg.

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Court : Allahabad

Decided On : Oct-13-1972

Reported in : 1973CriLJ1645

Judge : M.N. Shukla and; K.N. Seth, JJ.

Appellant : State

Respondent : Mirza Bashir Beg.

Judgement :
ORDER

M.N. Shukla, J.

1. This Government appeal is directed against the order of the Temporary Sessions Judge, Mathura dated 2-4-1969 acquitting the respondent of the charge of contravening Rules 18 and 20 of the U. P. Dookan Aur Vanijya Adhisthan, Niyamawali, 1963.

2. The case against the respondent was that he was the proprietor of M/s. Quality Tailors situate in Kanhaiya Cloth Market, Mathura and on 18-10-1967 when Sri S.P.. Singh. Labour Inspector, Mathura visited the said shop he found that the proprietor did not maintain leave register, fine and deduction register and inspection book and further that the attendance register was incomplete. According to the Labour Inspector the extracts of the provisions of law relating to

the shops were also not exhibited on the shop. The Labour Inspector, therefore, made an inspection note referring to the aforesaid shortcomings and mentioned Section 32 and Rules 18 and 20 as the provisions of law which had been contravened-

3. Section 32 of the Dookan Aur Vanijya Adhishthan Act is a general provision which enjoins on an employer the duty of maintaining such register and records and displaying such notices as may be prescribed. It is. therefore, necessary to turn to the rules in order to find out as to what registers, records and notices have been actually prescribed. Since in the inspection note of the Labour Inspector himself the only rules referred are Rules 18 and 20 we are concerned in the present case only with such registers and records etc. as are covered by those rules. Rule 18 requires that every employer shall maintain (a) a register of attendance and wages in Form 'G'. and (b) a register of leave in Form 'H'. Sub-rule (2) of Rule 18 says that every employee shall exhibit in his shop or commercial establishment a notice containing such extracts of the Act and these rules in Hindi writen in Devnagri script, as the Chief Inspector may direct. Sub-rule (4) of Rule 18 provides that in any register or record which an employer is required to maintain under these rules, the entries relating to any day shall as far as possible be made on that articular day. Rule 20 provides that every employer shall maintain an Inspector's Visit and Inspection Book in his shop or commercial establishment and shall produce the same before the inspector on demand. The book shall contain all inspection notes recorded or issued by inspector in respect of that shop or commercial establishment.

4. We have to examine as to whe-there it has been established that the respondent contravened Rules 18 and 20 of the Dookan Aur Vanijya Adhisthan Rules. So far as Rule 20 is concerned it casts two duties on the employer namely, to maintain an Inspector's Visit and Inspection Book and to produce the same before the Inspector on demand. The finding recorded by the appellate Court is that the respondent proprietor of the shop was absent at the time of the Inspector's visit and naturally, therefore, the aforesaid book could not be produced before him. In these circumstances we cannot hold the respondent guilty of failure to produce the said book. So far as the question of maintaining such book is concerned, there

are two things which must be borne in mind. Firstly, in his statement under Section 342, Criminal P. C. no question about maintaining such book was iput to him. Moreover, it is clear from the statement of the Labour Inspector himself that the accused (respondent) did send a reply to the notice served on Mm by post. The witness referred to the endorsement of acknowledgment made by a clerk of the Labour Department still the said reply was not brought on record by the prosecution. In this situation a material circumstance on which the conviction of the accused could be based was not put to him and we cannot draw a presumption against him. Hence, no contravention of Eule 20 was committed.

5. The requirement of Rule 18 is that the employer should maintain a register of attendance and a register of leave. Before we deal with this provision we may refer to Sub-rule (2) of Rule 18 according to which the employer is required to exhibit in his slip the extracts of the Act and rules relating to the relevant provisions of law. The essential ingredient of this Sub-rule is that there should be a direction by the Chief Inspector in this behalf. The finding recorded by the appellate Court again is that no such direction was proved by the prosecution. Hence, Sub-rule (2) was not infringed. Coming to Sub-rule (1) of Rule 18 and the registers mentioned in Clauses (a) and (b) thereunder the position which emerges is that from the evidence of the prosecution itself it is clear1 that an attendance register was maintained by the respondent. The accused examined himself as a defence witness in the case and he deposed that he maintained a register of leave also. No question was put to the respondent in his statement under Section 342, Criminal P. C. as to whether he maintained any register of leave or not. Hence, thers is no rebuttal of the statement of the respondent and we do not find any reason why he should not be believed on this point. Thus, the breach of Rule 18 (1) (b) is not established.

6. Form G of the register contemplated by rule 18 (1) (a) indicates that there has to be a register of attendance and wages and also of fines or other deduction etc. The inspection note and the charge against the respondent are plainly inaccurate inasmuch as they assume that there has to be a separate register of attendance, wages and fines etc. The requirement of law only is that the one register containing all these things should be maintained. As we have already observed, it

is clear from the prosecution evidence itself that a register of attendance was maintained by the respondent. Hence, he cannot be held guilty of failure to maintain such register. The only flaw found by the Labour Inspector appears to be that the entries in the aforesaid register were incomplete. In his inspection note the Labour Inspector points to two specific shortcomings with regard to the entries. Firstly, it is said that the attendance of the workers employed in the shop had not been marked in the register for the period from 12th to the 16th October, 1967. Secondly, it was mentioned that one employee namely Mushtaq Husain had not signed the said register for the period from 20th to 30th August, 1967. So far as the omission to mark the attendance from 12th to 16th October, 1967 is concerned, it appears to us that this would not strictly amount to any offence under the Act. We have already referred to Sub-rule (4) of Rule 18 which prescribes that the entries relating to any date shall as far as possible be made on that particular day. The inspection itself had been made by the Labour Inspector on 18-10-1967 and, therefore, this omission of the attendance related to a comparatively recent date and had this circumstance been actually put to the respondent in his statement under Section 342, Criminal P. C. he would have offered a satisfactory explanation for the same. This was, however, not so put and hence in our opinion no Infringement of the rule was necessarily Involved. The same argument would be applicable to the other shortcoming mentioned in the inspection note. It is significant that in the present case the material circumstances on which the conviction of the respondent could be legitimately founded were not put to him in his examination under Section 342, Criminal P. C. No such question was put to him as to whether Mushtaq Husain had not signed on the 20th to 30th August, 1967. Prima facie where all the employees were working only on contract basis, noting their daily attendance would not serve any purpose. The other relevant circumstances could have been elicited from the respondent in his examination under Section 342, Criminal P. C. We have already referred to the very significant fact that the respondent did send some kind of reply by post to the notice served on him. That material document has not been produced by the prosecuting agency. Hence, we feel that a satisfactory explanation on many vital points if they had been properly put to the respondent, would have been available to us.

7. Thus, on facts we do not find this a fit case for interfering with the finding of acquittal recorded by the appellate Court. Before parting with the case, however, we would like to express our opinion that the view of law taken by the learned Sessions Judge is clearly erroneous. We cannot endorse his conclusion that 'money given to a ipersoit for executing a certain work on contract or on piece-rate basis can never be included within the definition of 'wages'.The learned Judge failed to comprehend the legal characteristics of employment on contract basis. He also misconstrued the definition of the terms 'employee' and 'wages' as used in the Uttar Pradesh Dookhan Aur Vanijya Adhishthan Adhiniyam, 1962 (U. P. Act No. XXVI of 1962). Section 2(6) of the Adhiniyam defines 'employee'. It reads:

2 (6) 'employee' means a person wholly or mainly employed on wages by an employer in, or in connexion with any trade, business or manufacture carried on In a shop or commercial establishment, and includes.

(a) caretaker, mall or a member of the watch and ward staff:

(b) any clerical or other staff of a factory or individual establishment, which is not covered by the provisions of the Factories Act, 1948; and

(c) any apprentice or a contract or piece-rate worker.

It is clear that Clause (c) of the above sub-section expressly, includes a contract worker in the definition of an employee.

8. Sub-section (18) of Section 2 defines 'wages'. It provides :

(18) 'wages' means all remuneration (whether by way of salary, allowances or Otherwise) expressed in terms of money, or capable of being so expressed, which would if the terms of employment, express or implied, were fulfilled, be ayi able to an employee, and includes-

(a) any bonus;

(b) any sum payable to the employee by reason of the termination of his employment; and

(c) any additional remuneration payable under the terms of his employment.

The substance of wages is remuneration payable to an employee. It may be expressed in terms of money or at least 'be' capable of being so expressed. The provision is specific that the remuneration may assume any form, not necessarily salary or daily wages. The language used in the section is very wide inasmuch as it says that the remuneration may be by way of salary, allowances or otherwise. The use of the words 'or otherwise' is very significant and includes within the ambit of wages all kinds of remuneration. It is. therefore, not possible to understand as to how emoluments payable to a contract worker can be excluded from the definition of wages'. We have already referred to the definition of 'employee' which specifically includes a contract worker. The appellate Court fell into the error of holding that Clauses (a), (b) and (c) of Sub-section (18) of Section 2 were also necessary ingredients of the term 'wages'. Those features were separately mentioned as included within the purview of wages but they were not essential ingredients of wages. The basic content of wages was expressed in the opening words of Sub-section (18) of Section 2 which refers to remuneration 'whether by way of salary, allowances or otherwise'. Thus, on reading together the definitions of the terms 'employee' and 'wages' in the Act it becomes manifest that contract workers are employees and the emoluments payable to them are wages. Consequently, a duty was cast on the respondent employer in the instant case of maintaining a register and records etc. prescribed by Rules 18 and 20. The contrary conclusion drawn by the appellate Court is based on a mis-appreciation of law though, however, on an appraisal of evidence we have arrived at the inference that it has not been established in the present case that the respondent had failed to maintain the aforesaid registers and thereby brought himself within the mischief of Section 32 of the Act and Rules 18 and 20 of the Rules.

9. In the result this appeal fails and is dismissed.