

Prabhulal Potadia Vs. State

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Court : Orissa

Decided On : Aug-03-1965

Reported in : 1966CriLJ228

Judge : R.K. Das, J.

Appellant : Prabhulal Potadia

Respondent : State

Advocate for Pet/Ap. : Mr. Mohanty

Judgement :

ORDER

R.K. Das, J.

1. The petitioner was convicted under Section 92 of the Indian Factories Act and sentenced to pay a fine of Rs. 100/. in default to undergo R. t. for one month, by a Magistrate, 1st Class, Cuttack. On appeal the conviction and sentence was maintained by the Sessions Judge. Hence this revision.

2. On 28-1-62, the Inspector of Factories, Orissa, inspected a brick kiln of the accused petitioner, standing on the Cuttack, Bhubaneswar road. He found a number of persons working there all engaged in the process of manufacturing bricks. The Inspector of Factories found the kiln to be a 'factory' within the

meaning of the Indian Factories Act, 1948, but the same was being run without registration' and without the written approval of the Chief Inspector of Factories. He therefore submitted a prosecution report (Ext. 1) against the petitioner and after cognizance was taken under Section 92 of the Indian Factories Act, the accused was summoned to stand a trial.

3. The plea of the accused was that the kiln in question does not come within the meaning of 'factory' as defined in Section 2(m) of the said Act and the labourers engaged in the kiln were not in his employment, but were engaged by a contractor and were working under him independently, as per an agreement Ex. A. In support of his case he examined two witnesses DWs. 1 & 2,

4. In support of the prosecution case two witnesses were examined. P.W. 1 is the Inspector of Factories, and P.W. 2 is the Chief Inspector of Factories, Orissa. It is the evidence of P. W. 1 that he inspected the kiln on 28-1-62 at about 8 a.m. accompanied by P. W. 2. They found a number of persons working in 2 kilns which were actually in operation and the smoke was coming out of six chimneys provided in the kilns. They also found a 5 Horse Power Diesel Engine working for supplying water to the manufacturing process. About 50 workers, both men, women and children were found working in the field. He ascertained that the usual number of workers employed was about 300. During the time of their inspection, they found six workers were charging coal into the kiln, three were unloading sand from truck, three were carrying sand to the moulding section and several other workers were found engaged in other miscellaneous work. They also found some trucks were engaged in carrying materials to the kiln. Thereafter they submitted a prosecution report against the petitioner for the reasons already stated.

5. The main question for consideration is whether the kiln in question is a 'factory' within the meaning of the Indian Factories Act (LXIII of 1948) (hereinafter referred to as the Act) requiring to be registered as prescribed under Rules 3, 4 and 5 of Orissa Factory Rules made under Section 6 of the Act.

The expression 'factory' has been defined in Section 2(m) as follows:

factory' means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include mine subject to the operation of the Mines Act or Railway running shed.

Thus the only difference between Clauses (i) and (ii) quoted above is regarding the number of workers working in any manufacturing process and whether such manufacturing process is being carried on with or without the aid of power.

6. The word 'worker'-has been defined in Section 2(l) of the Act as follows:

'worker' means a person employed, directly or through any agency whether for wages or not, in manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process.

Thus, a person whether employed directly or through any agency in any manufacturing process is a worker within the meaning of this Act.

7. It is the evidence of P. Ws. 1 and 2 that they found about fifty persons actually working in the kiln when the process of manufacture of bricks was going on. They also found a 5 H. P. Diesel engine pump engaged in supplying water to the manufacturing process of bricks. learned Counsel for the petitioner contended that the pump was being used for supplying water for the use of the workers engaged in the kiln and that it was not used in aid of any manufacturing process of bricks. This, however, is difficult to accept in view of the evidence in this case. It is the evidence of P. W. 1 that the pump was being used for pumping water to the moulding section. It is admitted that the use of the water forms an important part in the moulding o bricks from out of clay. Thus, it cannot be doubted that the aid of

power was taken in supplying water to the manufacturing process of bricks.

8. 'Power' has been defined in Section 2(g) to mean. electrical energy, of any other form of energy which is mechanically transmitted and is not generated by human or animal energy. Thus, it cannot be disputed that the 5 H. P. diesel engine which was operating to supply water to the moulding section of the kiln for the manufacture of bricks was mechanically transmitting the energy which was not generated by human or animal energy. But this question become irrelevant to some extent as we find the evidence in this case that more than twenty; workers were engaged in the process of manufacture of the bricks so as to bring it within the meaning under Section 2(m)(ii) of the Act, and whether the manufacturing process was being carried on with or with, out the aid of power is of little significance.

Thus, the prosecution has established a prime facie case that the kiln in question was a 'factory' within the meaning of the Act and once it is established that the kiln in question is a factory wit hit the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and the onus to prove the contrary shifts to the accused. Section 103 runs thus:

If a person is found in a factory at any time except during intervals for meals or rest, when work is going on, or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the Sections made thereunder to have been at that time employed in the Factory.

The inspection was made in the morning at about 8-30 a. m It is not the case of the defence that that was the time for interval for meals or rest. On the other hand the evidence shows that the manufacturing process was going on with full speed as the pump and the workers were found engaged. That being so, it must be taken that those persons who were found working in the process of manufacture of bricks, were employed in the factory.

P. Ws. 1 and 2 could not find any register showing the employment of the workers and the payment of wages to them. The petitioner, however, has not been prosecuted for non-maintenance of the register, but for running the factory without

obtaining a licence as required under Section 6 of the Act read with Rs. 3,4 and 5 of the Orissa Factory Rules. Rule 3 requires the approval of the plan of the factory by the State Government or the Chief Inspector of Factories. Rule 4 requires that the occupier of every factory shall submit an application in the prescribed form for registration of the factory and grant of licence and under R. 5 licence for the factory shall be granted by the Chief Inspector of Factories in the prescribed form and the said licence shall remain in force till the 31st of December of the year for which it is granted. Section 6 of the Act requires that the approval, licencing and registration of the factory has to be obtained in accordance with the Sections made by the State Government in accordance with the said section,

9. Admittedly the petitioner had not made any application for registration. The main contention of Mr. Mohanty, learned Counsel for the petitioner was that it is not a factory within the meaning of the Act, and as such the petitioner was not bound to comply with the provisions of the Act. His contention was that the labourers engaged in the kiln were not directly employed by the petitioner, but were independently engaged by the contractor as per the agreement, Ext. 4 and hence there was no relation, ship of employees and employer between the petitioner and the workers found working in the kiln on the date of inspection by P. Ws. 1 and 2.

10. It is the case of the petitioner that by an agreement, Ext. A dated 30-10-01, one Mata Prasad Chauhan of Jenapur was appointed a contractor to manufacture about 20 lakhs of bricks for him at the taste fixed by him and it was this Mata Prasad who had engaged the workers and was paying their wages and therefore there was no relationship of the Employer and employees between him and the Workers engaged in the kiln. The Contractor Mata Prasad, the executant of Est. A would have been the best person to speak about the agreement, Ext. A and the nature of work to be executed under the . But he has not been examined, nor any of the labourers have been examined to prove that they were engaged by the said Mata Prasad Chauhan and not by the petitioner. D, W. 2 wanted to prove this document which is in Hindi, but he frankly admitted that he does not know Hindi and cannot read the document. It further appeared that some terms of the contract were written in different ink. It is on that ground the courts below rejected Ex. A as not representing a genuine transaction between the petitioner and the said Mata

Prasad. No account books have been produced to show that the payments were made directly by the contractor and not by the petitioner to the labourers. Courts below rightly refused to place any reliance on the evidence of D. Ws. 1 and 2 as false.

11. learned Counselor the defence relied upon a decision of the Supreme' Court reported in Chintamany Roy v. State of Madhya Pradesh : 1958 CriLJ803 in support of his case. In that case it was said that the various provisions contained in different sections of the Act give a clear indication that a worker under definition of the Act is a person who enters into a contract or serves under the management and does not include an independent contractor or his coolie or servants who are not under the control and supervision of the employer. Whether a particular person under whatever designation he may be known, is a worker or not under the Act depends upon the term of the contract entered into between him and the employer. Hence no general proposition can be laid down that under no circumstances an independent contractor can be considered to be a worker as defined under the Act.

12. In the present case nothing has been brought out to show that the labourers were engaged by an independent contractor and there was no relation-ship of employer and employee between the petitioner and the workers in the kiln. The evidence of the defence may at best show that the petitioner engaged some Sardars for collection of labourers at different places for the purpose of employment in his kiln, but in the absence of anything more it cannot be said that those labourers were in the different employment of those Sardars and were not the employees of the petitioner in whose kiln they were working. The definition of the 'worker' as stated above clearly includes not only persons employed directly by the employer but also those who are employed through any agency. It may at best be that through the agency of Sardars the labourers were procured to work in the kiln of the petitioner.

There is also some evidence to show that the men of the petitioner including D. W. 1 were supervising the work that was being done in the kiln. One of the tests for the determination of the relation, ship of the employer and the employees is the

existence of the right of the employer to supervise and control the work of the employees, It is also in evidence that the engine (or distribution of water, the trucks for collection of sand etc. and the kiln for manufacturing process all belonging to the petitioner were all engaged in manufacturing bricks.

On facts the case before the Supreme Court is clearly distinguishable from the present one. In that case there was an agreement between the management of a Bidi factory and an independent contractor was to receive tobacco from the management and supply them in rolled form to the management. The contractor was not under the control of the factory management and he could manufacture Bidi whenever he pleased and his activities were not subject to the control and supervision by the management of the Bidi factory. Moreover, under the terms of the contract he was not enjoined to work in the factory itself. In that case the admitted position was that the coolies were not employed by the management and that they were employed by the contractor,

13. In the present case the prosecution has been able to prove that the kiln in question is a factory within the meaning of the Act, as the essential element, that is, the premises were being used for a manufacturing process and the requisite number of workers were engaged in such process and that the relationship of the employer and the employee existed between the management and the workers- The kiln of the petitioner, though a factory within the meaning of the Act, was admittedly run without registration and without written approval of the Chief Inspector of Factories. Thus the petitioner clearly contravened Section 6 of the Factory Act and the Rules 3, 4 and 5 made there, under, and is thus liable under Section 22 of the said Act.

In the result, the conviction and sentence of the petitioner are maintained and the revision dismissed.