

Shubh Karan Jagnani Vs. State

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Court : Delhi

Decided On : May-26-1970

Reported in : 6(1970)DLT563; (1970)IILLJ544Del

Judge : S. Rangarajan, J.

Acts : [Factories Act, 1948](#) - Sections 63

Appeal No. : Criminal Revision Appeal No. 144 of 1973

Appellant : Shubh Karan Jagnani

Respondent : State

Advocate for Pet/Ap. : K.L. Kohli and; D.R. Sethi, Advs

Judgement :

S. Rangarajan, J.

(1) This criminal revisions arise out of the recommendations made by the learned Additional Sessions Judge concerning the four prosecutions initiated by the Factory Inspector under the Factory Act, 1948 against the Factory Manager of the Birla Cotton Spinning & Weaving Mills Ltd. Three Workers of the said Mills are concerned in each of the four complaints; all the complaints relate to what the Inspector of factories found on the occasion of his visit to the Mills on 15-3-69. Since all the recommendations "relate to the same visit and the allegations made

in each of the four complaints are practically the same, all these four criminal revision petitions are disposed of by this common order.

(2) It is sufficient to extract the allegations made in one of the four complaints to understand what, according to the Inspector of Factories, was the offence committed by the Factory manager of the Biria Cotton Spinning & Weaving Mills Limited. That Shri Subh Karan Jagnani, manager is accused No. 1 and D.R.Maida occupier is accused .No. 2 for purpose of Factories Act 48. That the above stated factory was inspected by the Inspector of Factories, Delhi, on 15-3-69 where the following breach of the provisions of the Factories Act 1948 was observed. That the following workers were found working in Weaving Dept. at 5.40 p.m. otherwise than in accordance with the notice of period of work displayed from 1.30 p.m. to 9.30 p.m. with rest interval from 5.30 p.m. to 6. p.m.) (1) Manohar LalWeaver (2) KishanLalWeaver (3) Panna LalWeaver. That the accused is/are guilty of contravening the provisions of section 63 of the Factories Act and punishable under section 92 of the said Act with imprisonment for a term which may extend to three months or fine which may extend to five hundred rupees or with both.'

(3) It is also necessary to read section 63 of the Factories Act which is as follows:- Section 63. 'No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.' A mere perusal of the said section shows that what is made punishable is the act of the management, the Factory Manager in this case, requiring or allowing any adult worker to work in any factory otherwise than in accordance with the notice of the periods of work displayed in the factory.) It is stated that in this case the workers rest-period was between 530 p.m. to 6 p.m The Factory Inspector, found the adult workmen referred to in each of the four complaints working at 5.40 p.m. on 15-3-69, when he visited the factory.

(4) The learned Session Judge, has made a recommendation that the proceedings initiated against the Factory Manager may be quashed since the allegations in the complaint do not make out any case punishable under section 63 read with section

92 of the Factory Act

(5) The learned Additional Sessions Judge was unable to find any averment in any of the complaints filed by the Inspector or Factories to the effect that any of them had been allowed or required to work during the rest period. He considered that the complaint had been illdrafted and did not bring out the idea of the complicity of the management.

(6) The learned counsel for the petitioner, namely the Factory, manager has drawn my attention to the decision of the Supreme Court in R.P. Kapur v. State of Punjab with reference to the circumstances under which criminal proceedings, which have been initiated, could be quashed. Gajendragadkar J. (as he then was) referred to three categories of such cases where a Court can exercise its inherent jurisdiction under section 561-A of the Code of Criminal Procedure and can quash such proceedings. The present case is stated to fall under category 2. It will be sufficient to cite what is stated in the head note regarding this aspect. 'Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in the entirety, do not constitute the offence alleged in such cases no question of appreciating evidence arises it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not,' There is no specific allegation in the complaint that the workmen concerned were either required or allowed to work during the rest period as between 5.30 p.m. and 6. p.m. The mere presence of the persons in the factory during the rest period, or their working then have not been made punishable under section 63 read with section 92 of the Factories Act.

(7) Shri D. R. Sethi, learned counsel for the State stressed on paragraph 5 of the complaint which asserts that by reason of what was stated in paragraphs 3 and 4 of the complaint, an offence punishable under section 63 read with section 62 of the Act is what was stated to have been made out. But without any further allegations to that effect. in the complaint this is not a permissible inference from the said complaint. It has not been stated that the concerned Workmen were found working during the rest period in circumstances such as to suggest that they had been either required or allowed to work. In the absence of such allegations no

offence punishable under section 63 read with section 92 of the Factories Act could be stated to be made out.

(8) The learned Additional Sessions Judge himself referred to the decision of the Supreme Court in *Chinubhai Haridas v. Slats of Bambay* What fell for consideration in that case was the scope of section 38(3) of the Factories Act which used the expression 'no person shall enter or be permitted to any chamber, tank, vat, pit, pipe, flue etc.' It was observed as follows:-

'THE true view of sections 36(3) in our opinion, is that the primary duty is cast on the worker or any other person prohibiting his entry into any such pit etc. At the same time the occupier is also liable if his permission to the entry, whether express or implied, can be inferred on the facts and circumstances of the case ; but this permission cannot in all cases be inferred by the mere fact of the entry.'

(9) It is worth recalling that the expression used in section 63 of the Act is 'required or allowed to work'. There being no allegation that the workmen concerned were either required or allowed to work during the rest period, this is a case where sufficient allegations have not been made in the complaint to make out an offence punishable under section 56 read with section 92 of the Act.

(10) Shri D. R. Sethi, learned counsel for the State contends that this is a matter which the complainant should be allowed to prove during the course of the trial. But in the absence of even any allegation in the complaint laying the basis for such proof being adduced , do not think, it will be fair to allow the inspector of Factories to put in such evidence.

(11) The learned counsel for the petitioner has farther drawn my attention to decision of the Mysore High Court in *V. Ayodhyaraman v. State of Mysore* In that case there was a prosecution under section 72(3) (b) of the Motor Vehicles Act 1939. The petitioner was the owner of a lorry which was driven by the driver loaded in excess over the permitted weight. It was held that the mere fact that the lorry was overloaded could not by itself make out an offence against the owner. It was pointed out that it is the duty of the prosecution to establish that the petitioner (owner) had knowledge of the fact that the vehicle was loaded in excess of the

registered laden weight or that he had issued instructions or permitted his driver who was in charge of the vehicle to load the same in excess of the registered laden weight. H. Hombe Gonedra J. as he then was referred to a decision of the Madras High Court in re: W. K Deveraja Mwdaliar Horwill J. in that case observed that such knowledge could be proved by adducing evidence that the lorry had just left the owners premises or that all the goods on the lorry had come from there. In the absence of any such evidence it is not correct to hold that the owner of the vehicle had permitted the driver who is in charge of the vehicle to overload the same.

(12) I may state that I would not have accepted, the recommendation of the learned Additional Sessions Judge to quash the proceedings if there had been the slightest basis in the complaint by referring to circumstances or materials on which an inference which is necessary to be drawn under section 63 of the Factory Act. namely, that the workmen concerned were required or allowed to work during the rest period, could be drawn.

(13) In the result the recommendation of the learned Additional Sessions Judge is accepted and the four complaints which have been laid by the Factory Inspector against the Factory Manager of the Birla Cotton Spinning & Weaving Mills Limited under section 63 read with section 92 of the Factories Act are quashed. The revision petitions are accordingly accepted.

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