

State Vs. Madhogaria

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Court : Kerala

Decided On : Aug-05-1958

Reported in : AIR1959Ker200; 1959CriLJ717; (1959)IILLJ50Ker

Judge : Sankaran and; Varadaraja Iyengar, JJ.

Acts : [Factories Act, 1948](#) - Sections 2

Appeal No. : Criminal Appeal No. 26 of 1958

Appellant : State

Respondent : Madhogaria

Advocate for Def. : M. Krishnan Nair and; C.K. Parameswara Panicker, Advs.

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

Varadaraja Iyengar, J.

1. This appeal is by the Public Prosecutor, on behalf of the State, against the judgment of acquittal dated 30-9-1957 passed by the Sub-Divisional Magistrate, Alleppey in a complaint before him under the Factories Act 68 of 1948.

2. The accused is B. Madhogaria, Manager of the Firm of Tharachand Sivkumar at Alleppey, On 11-9-1956. at 1 P. M. the Inspector of Factories, Alleppey, visited

the premises of the firm and there found 33 workers engaged in cutting and drying arecanuts and garbling pepper. This according to the Inspector constituted the conduct of a manufacturing process by 20 and more persons and so amounted to the running of a factory. And, as the accused had not registered his premises as a factory or obtained the requisite licence or permission and had not also given the due notices,' he was liable to be prosecuted for various offences under the Factories Act and the Rules thereunder. So he obtained permission dated 6-12-1936 from the Chief Inspector of Factories and Boilers and filed the complaint herein on 10-12-1956. The accused pleaded not guilty.

3. The Inspector of Factories as P. W. 1, testified to the facts and also proved the mahazar Ext. P. I which he had prepared at the time of his inspection. P. Ws. 2 and 4 were workers who were actually engaged in the process of drying arecanuts when P. W. 1 visited the premises. They gave evidence that there were 32 persons employed at the time. P. W. 3 was the welfare assistant who accompanied P. W. 1 at the time of the inspection. He also proved Ext. P. 1 and further swore that there were then 32 workers engaged in cutting and drying arecanuts and garbling pepper. The accused gave statement that he had not employed more than ten persons at a time in the business and also examined D. W. 1 to confirm him.

4. On this evidence, the Magistrate framed for himself two points for determination: (i) whether the company was a factory under the Act and (ii) whether the accused had complied with the provisions of the Act. On the first point the court found that the business which the accused was admittedly carrying on did not amount to a 'manufacturing process' within the meaning of Section 2(k) of the Act and this was enough, without consideration of the next question as to the number of persons employed, to say that the accused was not running a factory. The second point did not in the circumstances, also arise for consideration and so the court entered its verdict of acquittal as above-mentioned.

5. Learned Public Prosecutor urges before us that the court below had not correctly applied to the facts of this case, the definition of 'manufacturing process', and he submitted that the case will, have to go back, for full and final decision. We

think this argument is entitled to succeed.

6. Now Sub-clause (1) of Section 2(k) which alone, is relevant for our purpose says:

'k. Manufacturing process' means any process for --making, altering, repairing, ornamenting, finishing, packing, 'oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale transport, delivery or disposal.'

The learned Magistrate in arriving at his conclusion thought that

'to constitute a manufacture, there must be a transformation. Mere labour bestowed on an article, even if the labour is applied through machinery will not make it a manufacture unless it has progressed so far that transformation ensues and the article becomes commercially known as another & different article from that as which it, begins its existence.'

The learned Magistrate was here quoting from a decision of Ramaswami. J., in *In re Chinniah*, AIR 1957 Mad 755: 1957-1 Lab L. J. 280. But that case did not turn upon any aspect of 'manufacturing process', it depended rather upon the number of workers employed. It is not clear either why any question of transformation is material at all, in view to the very comprehensive scope of the definition. Indeed the question came up for consideration recently in this Court in *Patel v. Inspector, of Factories*, 1958 Ker LT 161: (AIR 1958 Kerala 237), as to whether garbling and packing of pepper is included in the manufacturing process within the meaning of Section 2(k) of the Act and, it was held:

'The legislature has made a deliberate attempt to make the definition all comprehensive so as to bring within it all conceivable activities in the course of commerce and industry. The process of washing and cleaning pepper in the course of garbling and the subsequent packing of the same with a view to its sale, transport, delivery or disposal clearly amounts to a 'manufacturing process' as defined in the first part of the definition of that expression.'

Reference may also be made to the State v. Alisaheb. AIR 1955 Bom 209, where the point was raised that Beedi making was not a manufacturing process for the reason that the expression 'process' suggested a transformation. Dixit, J., with whom Vyas, J., agreed said:

'It seems to me that the language of the definition as contained in Section 2(k) does not justify this contention. The process ' of making 'beedis' is simple. One has to take the leaves and then to turn out the 'beedis'. The process would therefore, be one of either making or packing and it is undeniable that one or the other of these things is done with a view to its use, sale, transport, delivery or disposal.'

There can be no doubt therefore that cutting and drying arecanuts and garbling of pepper, in which the accused was engaged was a 'manufacturing process' under the definition and the learned Magistrate was wrong in saying otherwise and disposing of the case on that basis.

7. We therefore set aside the judgment of the court below and remit the case back for fresh disposal according to law and in the light of the observations made above.

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