

In Re: Chandrasekaran

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Court : Chennai

Decided On : Jun-25-1958

Reported in : 1961CriLJ284

Judge : Anantanarayanan and; Srinivasan, JJ.

Appellant : In Re: Chandrasekaran

Judgement :

Anantanarayanan, J.

1. This revision petitioner was convicted of an offence under Clauses 1 and 7 of Rule 1 Gread with Rule 18 of the Rules framed under Section 49 (1) of the Madras Shops and Establishments Act (XXXVI of 1947), and sentenced to a fine. The matter comes before us on a reference by Ramaswami, J. who felt that an important point was involved, namely, whether the small unit set up by the lorry company in this case for the servicing of their vehicles could be properly designated as a 'shop' or 'commercial establishment' within the ambit of the Act.

2. We might immediately set forth here the definition of 'shop' occurring in Section 2(19) of the Act, which is as follows:

'shop' means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store rooms, godowns, or warehouses whether in the same premises or otherwise, used in connexion with

such business but does not include a restaurant, eating house or commercial establishment.

In this context itself, we might refer to the definition of 'commercial establishment' which occurs in Section 2(3) and which implies establishment which is not a shop but which carries on certain specified activities or 'which is a clerical department of a factory or industrial undertaking' etc.

3. The point now before us is obvious, and can be elucidated with reference to facts of this case. The admitted facts are that the revision petitioner is the proprietor of a transport company which plies passenger buses between certain places. He also runs or maintains a servicing unit in separate premises, devoted entirely to the repair of his transport vehicles. Admittedly, he does not render any service to the public within these premises, and the members of the public are not at liberty to come to this shop for the repair of other motor vehicle.

4. The point would appear to be fairly clear, even from a prima facie scrutiny of the definition that we have extracted above. As the learned Public Prosecutor argues, the words 'trade or business' have to be interpreted in a fairly wide sense, and would include any business, as distinct from an avocation or profession carried on for profit, and any subsidiary part of such business which is integrally related to the main business itself. Adopting this reasoning, a premises devoted to the repair of these transport vehicles would certainly be a place where a portion of the main business of employing transport vehicles for passenger traffic is being conducted.

Any other view would involve anomalies, and would set up a fictitious line of distinction between the main business itself, and the essential components or parts of that business. We are aware of the fact that in this definition, 'offices, store-rooms, godowns and warehouses' are designated, but, as the language shows, these categories are not intended to be exhaustive, but intended to be read ejusdem generis; the operative word here is 'includes'.

5. Upon this logic, therefore, the answer to this reference would clearly appear to be that the servicing unit maintained by the revision petitioner constitutes a premises where a part of his business is carried on, and is thus a 'shop' within the

scope of the definition, unless it is taken out of the ambit of that definition by some other definition in the same Act, or by any other definition in some other Act such as the Factories Act or the Payment of Wages Act.

6. Our attention has now been drawn to a Bench decision of this Court in the Public Prosecutor v. Shanmugham Pillai, 1960 M.W.N. Gri 83, where, with reference to the facts of that case, Somasundaram and Ramaswami JJ. have held that the premises concerned constituted an industrial establishment in which articles were produced with a view to their use, transport or sale, as defined under the Payment of Wages Act, 1936, in other words, constituting a factory, and hence did not fall within the definition of 'shop' under Section 2(16) of the Madras Shops and Establishments Act, It is true that, in this decision, a passage is found embodying the view that a shop under the Madras Shops and Establishments Act would prima facie imply a place where goods were sold by retail and stored for sale, and would not include a workshop used in connection with such trade or business.

But, obviously, these observations have to be read in conjunction with the reasoning towards the concluding portion of the judgment where the learned Judges give the main ground why in their view the shop or the premises in that particular case did not constitute an establishment within the meaning of Section 2(16). That was the ground of exclusion, because the premises did constitute a factory to which a quite different Act applied.

That is not the case here, and hence we do not think that this decision should be interpreted as at all applicable to the present facts. On the contrary, we take it as authority for the view, that where the facts are such that the premises in question would constitute an industrial establishment under the Payment of Wages Act, 1936, or a factory, the definition in Section 2(16) would not apply. That is indisputably so because Section 2(16) itself excludes 'commercial establishments' and the definition in Section 2(3) would exclude a factory to which the Factories Act and or the Payment of Wages Act applied,

7. Hence we would answer the question by holding that the premises in this particular case did constitute a shop within the meaning of Section 2(16) of the

Madras Shops and Establishments Act (XXXVI of 1947), The conviction and sentence are accordingly confirmed, and the revision petition is dismissed.

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