

In Re: S. Sanjeevaraya Setty

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Court : Chennai

Decided On : Mar-04-1963

Reported in : AIR1964Mad8; 1964CriLJ47

Judge : Kailasam, J.

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

Appeal No. : Criminal Revn. Case Nos. 1202 to 1204 of 1961 and Cr. Revn. Petn. Nos. 1157 to 1159 of 1961

Appellant : In Re: S. Sanjeevaraya Setty

Advocate for Pet/Ap. : V. Veeraraghavachariar and ;C. Pitchiah, Advs.;V.V. Radhakrishnan, Adv. for ;Public Prosecutor

Disposition : Petition allowed

Judgement :

ORDER

Kailasam, J.

1. In all the three revisions the same question of law arises and can be dealt with together. In CrI. R. C. No. 1202 of 1961, when P. W. 1 inspected the premises, he found four persons working at the premises at 9-30 a.m. and during the second shift at 9-45 p.m. the same day he found different persons working, and during the

third shift at 10-15 p.m. he found three other persons working. In the other two revision petitions also the officer during the same day in the three shifts, found 10 or more persons working. The learned Chief Presidency Magistrate found that, as it has been proved that ten persons were working on the day, the premises kept by the accused should be construed as a factory Under Section 2(m)(i) of the Act. The learned counsel appearing for the petitioners submitted that this conclusion is erroneous and unsustainable in law. Section 2(m) of the Factories Act defines the word 'factory' as follows :

'Factory' means any premises including the precincts thereof - (1) 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.....'

We are not concerned with the second clause of the definition, as it has been admitted that a manufacturing process was being carried on with the aid of power. The learned Public Prosecutor contended that when ten or more workers are working on any day the premises will be a factory. There are two clauses to the sub-section. One is where ten or more workers are working and the other is where ten or more workers were working on any day of the preceding 12 months. Whereas the words 'were working on any day' are found in the second clause, the first clause reads merely as '10 or more workers are working.' In the absence of the words 'on any day' in the first clause, it cannot be read as, 'ten or more workers working on any day'. The presence of the comma after the word 'working' is significant. Therefore, to come under the first clause the prosecution will have to prove that '10 or more workers are working'. This can only be done by proving that when the officer was on the premises 10 or more persons were working.

2. The evidence of the officer in each of the cases is that he saw ten or more persons in all were working during the three shifts. The evidence will not satisfy the requirement of the first clause of Section 2(m) of the Act that 'ten or more workers are working.' In this view I accept the contention of the learned counsel for the petitioner and allow the petitions. The convictions and sentences in the three petitions are set aside, the accused are acquitted and fines if paid will be refunded.

