

In Re: Seshadrinatha Sarma (S.)

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Court : Chennai

Decided On : Feb-25-1966

Reported in : (1966)IILLJ238Mad

Judge : M. Anantanarayanan, Officiating C.J.

Appellant : In Re: Seshadrinatha Sarma (S.)

Judgement :

M. Anantanarayanan, J.

1. In this revision proceeding, the petitioner (Seshadrinatha Sarma) has been convicted, upon two counts, under Rules 3 and 4 (1) of the Madras Factories Rules read with Section 92 of the Madras Factories Act, and sentenced to a fine of Rs. 200 on each count. Three grounds of considerable interest have been urged before me by learned Counsel for the revision petitioner, with regard to the propriety of the conviction. The first ground is that the prosecution is barred by virtue of Section 106 of the Factories Act, 1948. The second ground is that, on the facts, this is not a factory at all, because though ten or more workers were admittedly working in the establishment during the relevant period, no manufacturing process was being carried on within the premises. It is strenuously contended that that has been the case of the revision petitioner throughout, that he even attempted to file an appeal from the decision of the Inspector or relevant executive authority to the effect that the premises constituted a 'factory ' and that

the Government merely replied to the revision petitioner that he might seek legal advice if he so desired. The third ground is related in a certain sense to the facts which have been urged upon the second ground. It is that, in any event, there is no element of mens res made out by the prosecution, and that proof of this element also is essential, on the authority of *Nathulal v. State of Madhya Pradesh* : 1966 CriLJ71 .

2. I shall first dispose of the ground relating to limitation, and, admittedly, this is dealt with in Para. 12 of the judgment of the learned Sessions Judge. On this aspect, all that can be said is that the facts upon which the ground was sought to be pressed were not made out, and that the evidence relating to these facts is not before the Court. It is impossible to hold, on the record as it stands, that the offence came to the knowledge of the inspector in 1960, and that no action was then taken thereon, thereby attracting the terms of Section 106 that the complaint must be made within three months of the date on which the alleged commission of the offence came to the knowledge of the inspector. In the present case there was a visit on 14 February 1964, and the prosecution claimed that the offence came to the knowledge of the inspector only on that date ; the prosecution is admittedly in time, if this is the relevant date. A document on which learned Counsel for the revision petitioner sought to rely, was not marked at the trial, and was not admitted as additional evidence. Under those circumstances, I must certainly hold that no facts were established which would show that the prosecution was time-barred . applying the principle of Section 106 of the Act.

3. The second point is of greater interest. The definition of 'manufacturing process ' to be found in Section 2, Sub-clause (k), of the Act, came up for some discussion by Ramaswami, J., in *In re Chinnlah, Manager, Sangu Soap Works* : (1957)ILLJ280Mad . I must initially point out that the definition, as it stands, is very wide in its terms. Section 2(k), Sub-clause (i), would include:

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, etc.

The learned Judge (Ramaswami, J.) was aware of the implication of such a wide definition, and the learned Judge thought that, in order to constitute a manufacture there should be, essentially, some kind of a transformation of the substance:

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 and different article from that as which it begins its existence.

I am not quite free from doubt whether, with great respect to the learned Judge, the concluding part of this observation could be sustained, on the basis of the wide phraseology of Section 2(k)(i). But, this apart, the actual facts of the present matter make it clear beyond doubt that a 'manufacturing process' with the use of power was involved in this case. Admittedly, what is happening here is that the liquid known as latex is converted into sheet-rubber, by a mechanical process which deprives this liquid of the water-content and transforms it into sheet-rubber; not merely this, but machinery, and power are both employed to achieve this. There has been some discussion upon the definition of the word 'rubber' occurring in the Rubber Act 24 of 1947. But I do not think that the law requires that this matter of terminology should be gone into by Court. So long as there has been an indisputable transformation of substance by the use of machinery, and the transformed substance is commercially marketable, we have a process of 'manufacture' as defined. This ground has necessarily to fail, on the facts of the present case.

4. The third ground is also of considerable interest because of the dicta of the Supreme Court in *Nathulal v. State of Madhya Pradesh* : 1966 CriLJ71 (vide supra). In the present case, it has to be conceded, on the facts, that the revision petitioner tried to take the stand that the premises did not constitute a 'factory' within the meaning of the Act. That was his contention, and he even sought to question the decision of the inspector by filing an appeal. If mens rea is an essential ingredient of the present offence for which he has been convicted, there is much to be said for the argument that the evidence on record does not prove that this ingredient was present. In the Supreme Court judgment after a reference

to Section 40 of the Penal Code, their lordships have enunciated the true principle in the following words:

Doubtless a statute may exclude the element of mens rea, but it is a Bound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a, statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated.

In the Supreme Court case, the offence concerned was under Section 7 of the Essential Commodities Act, 10 of 1955, and their lordships examined the provisions of the Act, in order to form an inference about the legislative intent behind it. They point out the heavy penalty, such as imprisonment for a period up to three years, which could be imposed for the offence, and stress that it could not have been the intention to punish an innocent person who might have carried on his business without the knowledge that he was contravening the law. Upon the provisions of that statute, the inference was drawn that an intentional contravention was alone rendered punishable.

5. But, with regard to the Factories Act, 1948, it seems to be very clear that the element of mens rea will have to be excluded, by necessary implication. The object of the legislation is certainly social welfare ; but that, as pointed out by the Supreme Court, is not at all) conclusive. But the further point is that the object is not merely to deal with persons who contravene certain offences, as denned in the Act. The object is to bring under the purview of the legislation, certain kinds of establishment employing labour, beyond a certain limit, and concerned in production; that is for the sake of the welfare of labour and so that various restrictions and conditions might be imposed on the proprietors of that establishment, in the interests of the public, and the health and welfare of the

labourers employed. In other words, unless this piece of legislation could be implemented by taking into account every such establishment which objectively fulfils the definition of a ' factory,' quite irrespective of the knowledge or ignorance, bona fides or otherwise, of the proprietor or proprietors concerned, the very purpose of the statute would be defeated. No doubt, the infringements have been brought within the scope of criminal jurisdiction; but that is clearly for the purpose of effective and speedy relief, and the main intention is to impose conditions on establishments of this kind, on broad grounds of social welfare, and not at all merely to deal with persons in charge of such establishments because their activities might be anti-social. It appears to me to be incontrovertible that, if proof of the element of mens res is to be added to the other factors that the prosecuting agency would have to prove for offences under the Act, the Act may be virtually unenforceable over a wide area. On this ground, I must hold that the element of mens res is excluded by necessary implication, from the offences in the Factories Act, at any rate, from the offences we are now concerned with, viz., under Rules 3 and 4 (1) of the rules read with Section 92 of the Act.

6. It follows that the revision proceeding will have to be dismissed, on the merits. But I am satisfied that this was a case in which proprietor was really struggling to obtain acceptance of his contention that he did not come within the purview of the Act at all. Moreover, the reply ultimately made by Government might well have encouraged him in the belief that the matter was not free beyond doubt. Under these circumstances I think that a nominal fine will more than meet the ends of justice. Hence, I reduce the fine, upon each count to one of Rs. 50 or, in default, to simple imprisonment for two weeks. The balance of fine, if paid, will be refunded.