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In Re: Appadurai (S.)

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Court : Chennai

Decided On : Feb-11-1966

Reported in : (1966)IILLJ249Mad

Judge : M. Anantanarayanan, Officiating C.J.

Appellant : In Re: Appadurai (S.)

Judgement :

M. Anantanarayanan, J.

1. On the facts of this case, I do not see how it could be contended that the revision petitioner was improperly convicted for the technical offence of the failure to send a return in form 22, punishable under Rule 100(2) of the Madras Factories Rules, 1950, read with Section 92 of the Factories Act. But I certainly agree that the offence is highly technical, and that the petitioner was under a bona fide misapprehension that he need not send the return.

2. In brief, the facts render it clear that the petitioner was throughout contending that this was not a ' factory ' at all, as defined in Section 2(m) of the Factories Act, 63 of 1948. There has teen some difference of judicial opinion on the question whether, it power is employed not directly for a process of manufacture, but indirectly for pumping up water which has to be utilized for a part of the process, the establishment would or would not for a factory under Section 2(m)(i). Apparently, the petitioner was contending that, since he used electricity for

pumping up water, his establishment was not a ' factory ' as denned in the Act. But this argument is not really tenable, in the view of the evidence. The evidence is clearly to the effect that the petitioner also employs a 'teasing' machine for cleaning the goat-hair and wool, which is run by power. This is directly part of the process of manufacture, and hence there can be no doubt that the establishment is a factory as denned.

3. The main argument of learned Counsel for the revision petitioner is that during the half-year in question, the factory did not run even for a single day. If that is true, the only return that the petitioner could have sent in form 22 for the period would be a nil return; the argument is that there can be no legal obligation to send a mere nil return. Unfortunately, this argument is not supported by the facts. The evidence shows that on 11 May 1963 an inspection was made and that the factory was found to be then working-with twelve workers engaged which would Btrictly bring it within the definition. Further tinder the definition, even if this was the state of affairs for a single day, it would be sufficient to attract the rules under which there is an obligation to send a return.

4. Learned Counsel for the revision petitioner argues that this was only on 11 May 1963 whereas the period with regard to which the prosecution was instituted is the half-year ending 30 June 1964. But there is no evidence that the factory did not work even on a single day in this half-year. On the contrary, the specific evidence of D.W. 1 is to the effect that processes such as washing and cleaning of wool are carried out in the factory, by engaging casual workers, on three or four days in a month, particularly during summer months. This necessarily implies that the factory must have worked on some days in the summer of 1964. Hence, the inference of fact is justified that the factory worked, however occasionally, during the period In question. This involves the obligation to send a return. The technical offence is, therefore, made out and the conviction is confirmed, but as the revision petitioner has clearly acted bona fide, and was perhaps under the impression that he need not send the return till the matter of the application of the Act to his establishment, canvassed in the correspondence, was decided against him, I reduce the sentence to a fine of Rs. 10 or to simple imprisonment for one week in default. If the fine already imposed has been paid, the balance will be refunded.

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