

**In Re : Basha Khan**

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**Court :** Chennai

**Decided On :** Dec-07-1965

**Reported in :** 1966CriLJ1140

**Judge :** Sadasivam, J.

**Appellant :** In Re : Basha Khan

**Judgement :**

ORDER

**Sadasivam, J.**

1. The petitioner, Basha Khan, has been convicted under Section 92 of the Factories Act, for violation of Rule 100(2) of the Rules framed under the Factories Act, and sentenced to pay a fine of Rs. 25, in default to simple imprisonment for one week, The charge against the petitioner was that as Manager of the Bashakhan Rice Mills, 83 Bazar Street, Athur, he had failed to furnish on or before 31.7.1904, the half yearly return in form No. 22, for the half year ending with 30.6.1904. The defence of the petitioner was that by virtue of a registered lease-deed Ex. D-1 dated 1.3.1962, he had leased the rice mill and entrusted the management of the mill to the lessees. The petitioner examined D.W. 1, Venkalakrishnan, one of the lessees in support of his case.

2. The learned District Magistrate has negatived the plea of the petitioner as he doubted whether Ex. D-1 had been acted upon at all, but the reasons given by him

for doubting Ex. D-1 are hardly convincing. The first reason is that the petitioner failed to send a reply to the show cause notice. Even in a civil suit this would not justify the inference that Ex. D-1 is not true. The second reason is that the book in which the Labour Inspector had made a remark, has not been produced. If the petitioner was not an occupier or manager of the mills, he could not be expected to produce the book. The third and last reason mentioned in the District Magistrate's order is that the petitioner did not take steps to inform the Factory Inspector, that management of the mill had gone to the lessees in pursuance of Ex. D-1. But here again, the duty cast is only on the occupier as defined in Section 2(n) of the Factories Act to send notice mentioned in Section 7 of the Act, furnishing the particulars mentioned therein including the name of the Manager for the purpose of the Act. It is an undisputed fact that the petitioner is the owner of the rice mills; but he has leased the mills under Ex. D-1 and was receiving the rent every month. The lessees would no doubt be occupiers within the meaning of Section 2(n) of the Act, as they have ultimate control over the affairs of the mills. If they fail to comply with the provisions of Section 7 of the Factories Act, they could be proceeded against for such default. If, however, they complied with the provisions of Section 7 of the Factories Act, and gave the name of the manager, that person could be proceeded against for violation of Rule 100(2) of the Rules framed under the Act. The conviction and the sentence of fine imposed on the petitioner, cannot therefore, be sustained and they are set aside, and the fine, if collected, is ordered to be refunded to the petitioner. The petitioner is acquitted.

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