

Maya Chandra and ors. Vs. the Inspector, Minimum Wages Office and ors.

Maya Chandra and ors. Vs. the Inspector, Minimum Wages Office and ors.

SooperKanoon Citation : sooperkanoon.com/886646

Court : Kolkata

Decided On : Jun-05-1978

Reported in : 1979CriLJ534

Judge : Jyotirmoyee Nag, J.

Appellant : Maya Chandra and ors.

Respondent : The Inspector, Minimum Wages Office and ors.

Judgement :

ORDER

Jyotirmoyee Nag, J.

1. This Rule is directed against the issue of summons by the learned Sub-divisional Judicial Magistrate, Hooghly, under Section 22-A of the Minimum Wages Act, 1948 against the petitioners. Upon a complaint being filed by the Inspector under the Minimum Wages Act, the present prosecution has been started against the petitioners. There are five Petitioners before me of whom petitioner No. 3 is dead. Three of them are partners of M/s. Rupali Cinema situated at Netaji Subhas Road, Chinsurah, Hooghly. The fourth petitioner is described as the General Manager and the fifth petitioner is Manager of the Cinema House. The Inspector under the Minimum Wages Act visited the establishment of the Cinema Industry of which the present petitioners are the partners and General Manager and Cinema Manager respectively on the 4th of April, 1977. He noticed certain contraventions

of the provisions of the Minimum Wages Act, 1948 and he served notices on the petitioners on 23-4-77 who are employers, according to him, in respect of the employees of the Cinema Establishment and asked them to show cause why legal action should not be taken against them. When this notice was received by the petitioners the petitioner No. 4, the General Manager of the said Cinema Hall, submitted an application on 4-5-77 to the Inspector of Minimum Wages Act raising certain controversial points. The point that was raised is that they are maintaining registers under the Shops and Establishment Act which provides all the necessary information required under the Minimum Wages Act and, therefore, there was no necessity to maintain a duplicate set of registers for the purpose of Minimum Wages Act. Accordingly they submitted that in substance there was no contravention of any of the provisions of the Minimum Wages Act and Rules, In the petition of complaint it is stated that the registers for fines, deductions and overtime were not maintained and hence they had contravened the provisions of the Act and hence liable for prosecution under the said Act.

2. The first point taken by Mr. Nalin Chandra Banerjee on behalf of the petitioners is that the partnership firm itself has not been made a party accused in the case. Section 22C of the Minimum Wages Act describes 'a Company' as a body corporate which includes a firm or association of individuals.' Under this section if an offence is committed under the Act by a Company which includes a partnership firm then 'every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.' Sub-section (2) of Section 22C provides that where an offence under the Minimum Wages Act is committed by a company and it is proved that the offence has been committed with the consent or connivance of the Director or Partner or Manager or Secretary or any other Officer of the Company of the Partnership Firm, then those officers shall also be liable to be prosecuted and punished. Accordingly Mr. Banerjee argues that the liability of the Directors or the Partner is derivative and arises out of their association with the Company and as such the Company should also be made a party in the complaint. It is further argued that the prosecution shall have to prove that the Directors or the Partners who are proceeded against were

responsible to the Company for the conduct of the business of the Company and were in charge of the company. There is no averment in the petition of complaint that the petitioners Nos. 1 and 2 were responsible to the Company or Firm for the conduct of the business of the Co. and/or were in-charge of the affairs of the company. Further there is no averment in respect of petitioner No. 4 to fulfil the requirements of Sub-section (2) of Section 22C of the Minimum Wages Act. In this connection Mr. Banerjee has referred to a Division Bench decision of this Court reported in (1977) 4 Cal HC (N) 374 at p. 378 : 1977 Lab IC 1203 at p. 1205. In that decision it has been held that it, is necessary before issue of summons against any partner or Director of a firm or company to state that they are responsible to the company for the conduct of business of the company or in what way they are responsible to it and failure to do so is fatal to the prosecution. In this case I find that the prosecution suffers from the very same defect.

3. It is argued on behalf of the prosecution that what part the various accused persons play in connection with a firm or company is a matter of evidence to be disclosed at the trial. I however can not agree with this contention. Unless the necessary details are given in the petition of complaint to connect them with the offences, cognizance should not have been taken by the learned Magistrate.

4. The next point that is taken on behalf of the petitioner is that, as the petitioners were maintaining the registers under the West Bengal Shops and Establishments Act, 1963 and the registers to be maintained under that Act satisfied all the conditions of the registers to be maintained under the Minimum Wages Act, 1948 accordingly it is not necessary to maintain duplicate sets of registers under the two different Acts and failure to do so would not make the petitioner liable for prosecution under the Minimum Wages Act. In this connection Mr. Banerjee has referred me to Form under the Appendix of the Act and Rules. This Form has been prescribed under the West Bengal Shops & Establishment Rules, 1964. It provides for certain columns indicating the informations that are necessary to be given regarding (a) rate of wages of the employees (b) additional wages for overtime (c) deductions and reasons therefor and (d) the total amount paid as wages and there is a column for remarks also. It is argued by Mr. Banerjee that there is no separate column for fines as required under the Minimum Wages Act. Deductions include

finer. When deductions are made by the employer he has to give reasons for them and if any deduction is made by way of fines he has to indicate the same. There is a column, as I have already stated, for additional wages for overtime and therefore there is no point for the complaint made by the Inspector that the petitioners have not complied with the requirements of Minimum Wages Act regarding maintenance of registers in respect of fines, deductions and overtime.

5. The learned Advocate appearing for the State has submitted that under the Minimum Wages Act the Inspector appointed under the Act has power only to call for the registers that are maintained under the Minimum Wages Act and the Rules and he cannot as of right call for the registers that are maintained under the Shops and Establishments Act, 1963. But I find from the petition of complaint that the Inspector himself has stated that 'obviously we accept such registers which serve the purpose of the registers like Shops and Establishment, attendance register and wages register of the employees under the Shops and Establishment Act and these have been acknowledged and signed by me after verification on the very day while the other shortcoming registers maintainable under the Minimum Wages Act could not be produced which obviously are not maintainable under the Shops and Establishment Act (Register for Fines, Deduction, Overtime, etc.) and in view of the aforesaid contravention....the prosecution has been filed.' The Inspector in the present case appointed under the Minimum Wages Act certainly erred in stating so. As I have already pointed out, Form M satisfies all the requirements of deductions which include fines as well as overtime. Apart from this there is another form to which reference may be made, that is Form U which is maintained under the Shops and Establishment Rules, 1964. Therefore, taking Form M and Form U together all the requirements of the Minimum Wages Act are satisfied. Accordingly I think the present prosecution is misconceived. It has been pointed out by Mr. Banerjee that the notice that was issued to the petitioners also does not satisfy the requirements of the Minimum Wages Act. Rule 26-B. Sub-rule (2) of the Minimum Wages Rules provides as follows:

Any infringement of the provisions of the Act or these rules noticed by the Inspector and communicated to the employer during the course of an inspection or otherwise shall be rectified by the employer and compliance report in respect

thereof shall be submitted to the Inspector on or before the date specified by him in this behalf.

Therefore, the attention of the employer should be drawn to any laches in the maintenance of registers and the employer should be asked to comply with the requirements of the Act and the Rules within a specified time. If the employer does not comply with the requirements as stated in the notice then he will be liable for prosecution. In the instant case no such notice was given. The only notice that was given to the petitioners is to show cause why they should not be prosecuted in law for non-compliance with the provisions of the Act and the Rules regarding maintenance of registers. The petitioners were not given such notice nor was a date specified by the Inspector with which they had to comply with the order of the Inspector in respect of the maintenance of the registers. According to the provisions of this Rule the first notice should give a specified date for compliance with the requirements of the Act and the Rules and if a second notice is served thereafter that may be for showing cause why legal action may not be taken against them. Accordingly the notice that was issued by the Inspector to the petitioners does not comply with the requirements of Rule 26-B Sub-rule (2) and therefore that notice is also bad as no opportunity was given to the petitioner to rectify the laches if any pointed out by the Inspector.

6. In view of what I have stated above, I agree with Mr. Banerjee that the prosecution is bad, first, for not making firm a party accused in the present case and further for want of an averment in the petition of complaint as to the respective responsibility of the petitioners vis-a-vis the Co. Secondly, that as the petitioners had maintained registers according to the Shops and Establishments Act, 1963 and the Rules thereunder those registers would suffice for the requirements of the Minimum Wages Act and Rules and, therefore, they would not be liable for prosecution under the Minimum Wages Act or its Rules; for the Act cannot contemplate (maintenance of) separate registers in spite of the fact that a set of registers under another Act provide the same information as required under the Minimum Wages Act and thirdly that the notice issued on the petitioners prior to the prosecution does not conform to the requirements of Rule 26-B Sub-rule (2) and as such the present proceeding against the petitioners cannot go on.

7. I accordingly quash the proceedings, being case No. 447 of 1977 pending before the Sub-Divisional Judicial Magistrate, Hooghly, and make the Rule absolute.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com