
(2005) 04 CAL CK 0035
In the Calcutta High Court
Case No : C.R.R. No. 2477 of 2003

Anil Kumar Sharma

APPELLANT

Vs

Inspector of Factories

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(2), 401, 482
Factories Act, 1948 — Section 88, 88(1), 92
West Bengal Factories Rules, 1958 — Rule 95
Workmens Compensation Act, 1923 — Section 20

Citation : (2006) 1 CHN 594 : (2006) 110 FLR 669 : (2006) 2 LLJ 603

Hon'ble Judges : Asit Kumar Bisi, J

Bench : Single Bench

Advocate : Milon Mukherjee and Sandipan Ganguly, for the Appellant; Kasem Ali Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Asit Kumar Bisi, J.—By the present revision application u/s 397/401 read with Section 482 of the Code of Criminal Procedure, the petitioner has sought quashing of the proceedings of case No.C-1013 of 2003 u/s 92 of the Factories Act, 1948 (in short the Act) pending before the learned Chief Judicial Magistrate, Howrah.

2. The facts leading to filing of the instant revision application may briefly be stated thus :

The petitioner is the Manager of the factory of Harbanslal Malhotra & Sons Pvt. Ltd. situated at 40, Belur Station Road, Belur Math, Police Station Bally, District: Howrah. It has been alleged by the petitioner that on 28th May, 2003 at about 15.00 hours an accident took place in the factory premises due to mishandling/negligent handling of a drum of degreasing solvent by one of the workers namely Joy Prakash Das. As a result thereof Bhola Sharma (since deceased), Joy Prakash Das and Kashi Nath Porel sustained burn injuries. The said persons were

immediately taken by the factory management for treatment to the ambulance room situated within the factory premises and they were given first aid. Thereafter all the injured persons were taken to Uttarpara Government Hospital. As the injuries of Bhola Sharma were found to be serious in nature, he was again transferred to SSKM Hospital, Calcutta for better treatment. Despite the best efforts of the doctors and the factory management Bhola Sharma succumbed to his injuries on 26th May, 2003 at about 22-30 hours. It has been further alleged by the petitioner that immediately on the next working day i.e. 29th May, 2003 the factory management sent information about the accident and injury suffered by Bhola Sharma to the Directorate of Factories, West Bengal by giving notice in Form No. 18 as provided under the West Bengal Factories Rules, 1958 (in short the rules) in compliance with the provisions of Rule 95 of the said rules. Further case of the petitioner is that subsequently on 30th May, 2003 the petitioner sent notice in Form No. 18 as provided under the rules to the Directorate of Factories, Government of West Bengal informing the latter about the injuries suffered by Joy Prakash Das and Kashi Nath Porel as it was found that the said workmen would not be able to resume their work within a period of 20 days from the date of the said accident.

3. It is the grievance of the petitioner that despite compliance with all the requirements under the statute the opposite party who is the Inspector of Factories, West Bengal filed the petition of complaint before the learned Chief Judicial Magistrate, Howrah alleging that the petitioner committed an offence punishable u/s 92 of the Act for contravention of the provisions of Rule 95 of the rules. Thereupon by his order dated 22nd August, 2003 the learned Chief Judicial Magistrate, Howrah took cognizance of the offence on the complaint, found prima facie case u/s 92 of the Act against the petitioner accused and issued summons accordingly.

4. Mr. Milon Mukherjee, the learned Advocate on behalf of the petitioner has contended that since the petitioner duly complied with the relevant provisions of the Act and the rules, continuance of the impugned proceedings against him would be gross abuse of the process of the Court. He has further contended that the accident in the factory premises took place on 28th May, 2003 at 15-00 hours as a result of which three workmen sustained burn injuries and the management of the factory immediately provided for medical treatment to them and took immediate steps for taking those injured persons to different hospitals for their better treatment and in such circumstances it was not possible on the part of the management of the factory to send information to the authority concerned within the office hours of the Directorate of Factories, West Bengal on that date. It has been urged by Mr. Mukherjee that the management of the factory sent the notice of accident to the Inspector of Factories, West Bengal on the next working day i.e. on 29th May, 2003. As contended by Mr. Mukherjee, in such circumstances there was no delay on the part of the management of the factory to give notice of accident and as such there was no contravention of the provisions of Rule 95 of the rules by the petitioner as alleged.

5. Mr. Kasem Ali Ahmed, the learned Advocate on behalf of the opposite party has contended, on the other hand, that it is the mandatory requirement of Section 88 of the Act that where in a factory such accident occurs the Manager of the factory must send notice thereof to the authorities concerned. He has further drawn my attention to Rule 95 of the rules which imposes statutory liability on the Manager of the factory to give notice of the occurrence forthwith by telephone, telegram or special messenger to the authorities concerned. As argued by Mr. Ahmed, in the instant case the accident occurred on 28th May, 2003 at about 15-00 hours whereas the notice of accident in Form No. 18 in respect of Bhola Sharma who succumbed to his injuries was submitted on 29th May, 2003 at 14-50 hours and the notices of accident in Form No. 18 in respect of the other two injured persons were submitted on 30th May, 2003 at 15-00 hours. It is urged by Mr. Ahmed on behalf of the opposite party that the petitioner being Manager of the factory where such accident took place failed to give notices of accident in Form No. 18 forthwith as required under the rules and thereby committed an offence punishable u/s 92 of the Act for contravention of the provisions of Section 88 of the Act and Rule 95 of the rules. He has further argued that since the impugned order dated 22nd August, 2003 is an interlocutory order no revision will lie against the said order. He has cited *Madhu Limaye Vs. The State of Maharashtra*, in support of such contention challenging maintainability of the instant revision application.

6. The argument advanced by Mr. Ahmed challenging maintainability of the instant revision application is not sustainable since it is settled law that in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary and in that event nothing contained in Section 397(2) of the Code can limit or affect the exercise of the inherent power by the High Court. This is the view expressed by the Supreme Court in *Madhu Limaye (supra)* at page 51, para 10. In the case on hand I find that the Id. Chief Judicial Magistrate, Howrah has found prima facie case u/s 92 of the Act and issued summons upon the accused presently the petitioner. The petitioner has come up in revision seeking quashing of the entire proceedings on the allegation that no prima facie case is made out in the complaint and continuance of the proceedings is an abuse of process of the Court. In the face of such materials on record it can in way be held that the instant revision application is not maintainable.

7. From the factual matrix it emerges that on the fateful day i.e. 28th May, 2003 at around 15-00 hours the accident took place in the premises of the factory styled M/s. Harbanslal Malhotra & Sons Pvt. Ltd. and three workers namely Bhola Sharma, Joy Prakash Das and Kashi Nath Porel sustained burn injuries. All the injured persons were taken by the factory management to Uttarpara Government Hospital and since the injuries of Bhola Sharma were serious in nature he was transferred to SSKM Hospital, Calcutta where he succumbed to his injuries on 28th May, 2003 at about 10-30 p.m. The materials on record denote that the

notice in Form No. 18 was submitted by the Manager of the factory to the Directorate of Factories, Government of West Bengal on 29th May, 2003 intimating to the authority concerned the factum of death of Bhola Sharma. So far as the other two injured persons are concerned intimation was given to the authority concerned by submitting the respective notices in Form No. 18 on 30th May, 2003.

8. The argument advanced by Mr. Ahmed on behalf of the opposite party is that such intimation ought to have been given forthwith as per requirement of Rule 95 of the rules.

Rule 95 of the rules as enacted inter alia reads as follows:

Notification of accidents--Fatal and Serious.

When there occurs in any factory an accident to any person which results in (a) death, or (b) such injury that there is no reasonable prospect that he will be able to resume his employment in the factory within 20 days, such accidents shall be called in all prescribed communications "Fatal" or "Serious", as the case may be, and the Manager of the factory shall give notice of the occurrence forthwith by telephone, telegram or special messenger to --

- (1) the Inspector of Factories,
- (2) the District Magistrate or, if the District Magistrate by order so directs, the Sub-Divisional Officer,
- (3) the Commissioner for Workmen's Compensation appointed u/s 20 of the Workmen's Compensation Act, 1923,
- (4) the relatives of the injured or deceased person, and
- (5) in the case of fatal accidents only, the Officer-in-Charge of the police station within the local limits of which the factory is located.

Reports by special messenger shall be as nearly as possible in Form No. 18 and those sent by telephone or telegram shall be confirmed within 48 hours by written report in that form :

Provided, however, that the defence installations may send reports of accidents in their own form from IAFO 1973, subject to the condition that any change in the form shall at once be communicated to the Chief Inspector in writing.

9. Section 88(1) of the Act lays down that where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the Manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

10. As mentioned hereinbefore, the workman Bhola Sharma who sustained

severe injuries due to accident on 28th May, 2003 at 15-00 hours succumbed to his injuries at SSKM Hospital, Calcutta on 28th May, 2003 at 10-30 p.m. Copy of the notice of accident in Form No. 18 along with the forwarding letter which forms part of the Annexure P-I to the revision application reveals that notice of accident was given to the authority concerned on 29th May, 2003 at about 2- 50 p.m. Mr. Ahmed on behalf of the opposite party has laid emphasis on the word "forthwith" as used in Rule 95 of the rules. Mr. Mukherjee on behalf of the petitioner has argued that the term "forthwith" should receive a liberal or reasonable construction and the word "forthwith" means without any unreasonable delay. He has cited Keshav Nilkanth Joglekar Vs. The Commissioner of Police, Greater Bombay, and Bidya Deb Barma Etc. Vs. District Magistrate, Tripura, Agartala, , in support of his contention.

11. The meaning of the word "forthwith" has elaborately been explained in Keshav Nilkanth Joglekar (supra) where the Supreme Court quoted the observations made in Hudson v. Hill at page 31 (para 7) in the following manner :

...In Hudson v. Hill (1874) 43 LJC P 273 (F) which was a case of charter party, it was observed at page 280:

Forthwith" means without unreasonable delay, the difference between undertaking to do something "forthwith" and within a specified time is familiar to everyone conversant with law. To do a thing "forthwith" is to do it as soon as is reasonably convenient.

12. In the case of Keshav Nilkanth Joglekar (supra) the Supreme Court has held that an act which is to be done forthwith must be held to have been so done, when it is done with all reasonable despatch and without avoidable delay.

Similar is the view expressed by the Supreme Court in Bidya Deb Barma (supra).

13. In view of the authorities cited above it has become well-settled that when the statute requires an act to be done "forthwith", it should be understood as allowing a reasonable time for doing it. Applying the ratio of the abovenoted decisions of the Supreme Court to the instant case I find that since the accident took place on 28th May, 2003 and despite best efforts made by the management the said Bhola Sharma succumbed to his injuries at SSKM Hospital on 28th May, 2003 at 10-30 p.m. it cannot be said that there was unreasonable delay in submission of the notice of accident in Form No. 18 regarding the accident and death of Bhola Sharma by the Manager of the factory to the Chief Inspector of Factories, Directorate of Factories, West Bengal on 29th May, 2003 at 2-50 p.m. The word "forthwith" as used in Rule 95 of the rules must be judged in the light of the aforesaid context.

14. So far as the other two injured Joy Prakash Das and Kashi Nath Porel are concerned the respective notices of accident in Form No. 18 were submitted by the Manager of the factory to the Chief Inspector of Factories, Directorate of Factories, West Bengal on 30th May, 2003. As per provision of Section 88(1) of

the Act the Manager of the factory has to send notice to the authorities concerned in the prescribed form in case the workman sustains bodily injury by reason of which the person injured will not be able to work for a period of forty-eight hours or more immediately following the accident. So in case of such injured person the management has to send notice of accident to the authorities concerned when such injured person was disabled for forty-eight hours or more. Since the injuries sustained by Joy Prakash Das and Kashi Nath Porel were not fatal and the respective notices of accident of those two injured persons were sent on 30th May, 2003 it can in no way be held that the statutory requirements in the matter of sending notice of accident of such injured persons were not complied with by the Manager of the factory. Rather Mr. Mukherjee on behalf of the petitioner has pertinently drawn my attention to column 16(a) of the notice of accident in Form No. 18 which clearly indicates that if the accident is not fatal it is required to be stated whether the injured person was disabled for forty-eight hours or more. The accident in the present case took place on 28th May, 2003 and the management had to wait at least for forty-eight hours to state whether the said two injured persons were disabled for forty-eight hours or more and ultimately submitted the notices of accident in the required form on 30th May, 2003. Thus it is quite evident from the materials on record that the provisions of Section 88 of the Act and rule 95 of the rules have duly been complied with by the Manager of the factory.

15. For the foregoing reasons I find that no prima facie case u/s 92 of the Act for alleged violation of Section 88 of the Act and Rule 95 of the rules has been made out in the complaint. There is justifiable ground for quashing of the impugned proceedings.

16. The revision application is accordingly allowed. The proceedings of case No.C-1013 of 2003 u/s 92 of the Factories Act, 1948 pending against the petitioner before the learned Chief Judicial Magistrate, Howrah be quashed.

17. Let a copy of this order be sent down to the learned Chief Judicial Magistrate, Howrah forthwith.

18. Xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.