

(1998) 09 MAD CK 0084

In the Madras High Court

Case No : Criminal Revision Case No. 946 of 1997

Bhageerathan N.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Factories Act, 1948 — Section 104(1), 104(2), 67

Citation : (1999) 1 LLJ 840

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : V. Sairam, for the Appellant; C.M. Gunasekaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Mr.N. Bhageerathan, is the petitioner herein challenging the conviction and sentence imposed for the offences u/s 67 of Tamil Nadu Factories Act and Rule 1 Section 14(1) and 15 of Child Labour Act and thereby sentenced to pay a fine of Rs. 10,000/-, in default to undergo 2 months' simple imprisonment in C.C.No.49 of 1995, on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Nagercoil, confirmed in C.A. No.45 of 1996 on the file of Principal Sessions Judge, Nagercoil.

2. The prosecution case is that on March 22, 1995 at about 2.00 p.m. the complainant/the Assistant Inspector of Factories along with other officials went and inspected the factory by name "Raghul Cashews", dealing in the process of removing the cashewnuts from the shells and found three children namely Jayanthi, aged about 11 years. Therasamma, aged about 12 years and Punitha, aged about 11 years were working along with the other workers.

3. The complainant/P.W. 1 on the basis of the Inspector's report Ex.P.1, sent a show cause notice Ex.P.2 and received the reply Ex.P.4 which was not satisfactory. Again P.W.1 sent Ex.P.5 the intimation to the accused for launching the prosecution and thereafter, the complainant requested through Ex.P.6

requisition seeking for sanction and that after obtaining sanction in Ex.P.7, the complainant had filed a complaint.

4. After having considered the materials produced by the prosecution through P.Ws.1 and 2 and Exs.P.1 to P.10, the trial Court concluded that the offences referred to above were true and thereby, the petitioner was liable to be convicted and sentenced to pay a fine of Rs. 10,000/- in default to undergo simple imprisonment of 2 months.

5. Having been aggrieved by the judgment of the trial Court, the petitioner had filed an appeal. In the appeal as well, the conviction and sentence were confirmed. Hence, this Revision.

6. Mr. Sairam, the learned counsel for the petitioner, while challenging the judgments of both the Courts below would press into service the following contentions:

(i) Section 105(1) of the Factories Act provides that no cognizance could be taken in respect of the offences under this Act by the Court, unless there is a complaint by the Inspector of Factories or by any other person with the previous sanction of the Inspector. In the instant case, the Assistant Inspector filed a complaint, without any previous sanction from the Inspector of Factories.

(ii) Though in this case, the previous sanction had been produced and marked as Ex.P.7 only during the course of trial, this sanction does not authorise any specified person to file a complaint. Therefore, the said sanction is not valid and proper.

(iii) Admittedly, when the complaint was filed, P.W.2, Dr. Balusamy, was not cited as a witness. P.W.1 also would admit in the cross-examination that he did not examine P.W. 2. P.W. 2 was examined only in the Court to prove that the children, who were found working in the factory, were below the age of 14 years. Therefore, the evidence of P.W.1 need not be given any importance.

7. In reply to the above submissions, the learned Government Advocate, in support of the impugned judgment would contend that though the complaint was not filed along with the sanction, the evidence had been let in before the trial Court through P.W.1 and Exs. P.6 and 7 to the effect that the sanction was sought and obtained from the sanctioning authority even prior to the date of the complaint. He would also submit by referring to the relevant Section that P.W. 2's evidence assumed significance in this case, especially when the doctor certificate was issued even before the filing of the complaint and as such, the non-mentioning of the name of P.W.2 in the complaint would not affect the credibility of the prosecution.

8. I have given my anxious consideration to the respective submissions made on either side.

9. Mr.Sairam, the learned Counsel for the petitioner on the strength of decision

rendered in State of Maharashtra Vs. Pankaj A. Gupta, would submit that the cognizance, which was admittedly taken without the sanction was invalid would become ab initio void. With regard to this proposition there is no dispute.

10. Section 105(1) of the Act specifically provides that no Court shall take cognizance of any offence under this Act except with the previous sanction in writing of, an Inspector.

11. Admittedly, in this case, the Court took cognizance on the complaint filed by P.W.1, who is the Assistant Inspector of Factories, under the previous sanction. Rightly the petitioner raised a preliminary objection before the trial Court with reference to the illegality committed by the learned Judicial Magistrate. It transpires that the said application was heard by the learned Judicial Magistrate and the same was dismissed holding that there is no illegality. As against that Order, the petitioner filed a revision before this Court and the illegality was pointed out before this Court. During the enquiry, the Government Advocate, who is representing for the respondent, submitted that the sanction order is already available and it could be produced during the course of trial. On the basis of the said representation, the matter was remitted back to the trial Court to give an opportunity to both the parties with reference to the sanction and to decide the case after trial is over.

12. So in that view of the matter, P.W. 1 gave evidence before the trial Court by producing Exs. P.6 and 7 stating that the complainant applied for sanction from the sanctioning authority even before the filing of the complaint and on receipt of the said requisition, the sanctioning authority granted sanction in Ex.P.7. These Exs.P.6 and P.7 have been written and signed before the filing of the complaint. Therefore, the trial Court as well as the lower appellate Court would hold that the complaint was filed by the officer, who was competent to file the same with the previous authorisation from the sanctioning authority, though it was not filed at the time of filing of the complaint.

13. Mr. Sairam, the learned counsel for the petitioner cited a decision rendered in State by Public Prosecutor v. P. Kaleeswaran 1998 MLW (Cri) 501. No doubt, it is true that in the said case, it was held by JUSTICE ARUNACHALAM (as he then was) that though the sanction was available in the records, since there was no evidence adduced by P.W.1 to show that he was authorised to file such a complaint, the trial was vitiated and the accused was entitled to be acquitted. In fact, in that case the trial Court itself acquitted the accused on the said ground. In the appeal filed before the High Court the said point was confirmed. Anyway, in my view, this decision would not help the petitioner.

14. Yet another ground is that the authorisation is not proper, inasmuch as it does not show the particulars of the person on whom the authorisation was given to file a complaint. In fact, on perusal of Ex.P.7, it is clear that P.W.1 has been specifically authorised by the sanctioning authority to file the complaint for the offences. Therefore, this point also fails.

15. Thirdly, Mr. Sairam, the learned counsel for the petitioner would point out that P.W.2, Doctor, though not cited in the complaint as a witness was examined only in the Court. However, it must be pointed out that P.W.2 was allowed to be examined as a witness by the Court and the petitioner also chose to cross-examine him. As a matter of fact, P.W.2, in support of his certificate Ex.P.10, would clearly state that the three children were examined by him and they were found to be aged below 14 years.

16. Moreover, Section 104(1) of the Tamil Nadu Factories Act provides that if an act of employing under a certain age would be an offence under this Act and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such person is not under such age.

17. In the instant case, there are prima facie materials in the evidence of P.W.1, through the Doctor's Certificate and in the evidence of P.W.2 the Doctor, who examined the children to the effect that they were aged below 14 years. So in the light of the materials, it is duty of the accused to establish that the children were not aged below 14 years. But, this was not done.

18. So, in view of the materials through the evidence of P.W. 1 and P.W.2 and in the light of Section 104(1) and (2), there is no difficulty in holding that the prosecution had proved its case beyond reasonable doubts. Thus, none of the grounds urged by the learned counsel for the petitioner would appeal to me, since, in my view, there are no merits in this case.

19. In result, the Criminal Revision case is dismissed.