
(1990) 07 MP CK 0001
In the Madhya Pradesh High Court
Case No : Criminal R. No. 62 of 1990

Bhaskar Bhai Patel

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Constitution of India, 1950 — Article 254(2)
Criminal Procedure Code, 1973 (CrPC) — Section 204, 26, 29, 386, 4(2)
Drugs and Cosmetics Act, 1940 — Section 36
Factories Act, 1948 — Section 105, 48, 92
Madhya Pradesh Factories Rules, 1962 — Rule 87
Madhya Pradesh Industrial Relations Act, 1960 — Section 61(1)(3), 64, 64(1), 64(2)
Prevention of Food Adulteration Act, 1954 — Section 21

Citation : (1993) 3 LLJ 897 : (1990) MPJR 469 : (1991) 36 MPLJ 513 : (1991) MPLJ 513

Hon'ble Judges : K.I. Shrivastava, J

Bench : Single Bench

Advocate : G.M. Chapekhar and G.S. Patwardhan, for the Appellant; T.N. Singh, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Shrivastava, J.

This revision petition is directed against the order dated 16.11.1989 passed by the Addl. Chief Judicial Magistrate, Indore in Cr. Case No. 6 of 1990 whereby he has u/s 204 of the Criminal Procedure Code, 1973 (for short "the Code") ordered issue of process against the petitioner on the complaint filed by the Factory Inspector, Indore.

Circumstances giving rise to the revision petition are these: The petitioner is an occupier within the meaning of Section 2(h) of the Factories Act, 1948 (for short "the Act"). According to the complaint he contravened the provisions of Section 48 of the said Act and Rule 87 of the Madhya Pradesh Factories Rules, 1962 (for short "the Rules"). He is, therefore, punishable u/s 92 of the Factories Act.

The learned Addl. Chief Judicial Magistrate took cognizance of the offence and passed the impugned order.

It is not in controversy that the impugned order is revisable. In this connection reference may usefully be made to the decision in L.N. Jadhav's case 1983 LLJ 69 and A.K.Su-bbiah's case 1987 CAR 288 : 1987 SCC 557. The last mentioned decision further points out, that the revisional Court has to confine itself to the material before the Courts below.

The submission of the learned counsel for the petitioner is that by Section 4 occurring in Part II (Amendment of the M.P.Audhyogic Sambandh Adhiniyam, 1960) of the M.P. Labour Laws (Amending) and Miscellaneous Provisions Act, 1981 (for short "the Amendment Act of 1981") which received assent of the President on 15.12.1981, Section 61 of the M.P. Industrial Relations Act, 1960 (for short "the Relations Act") has been amended and Sections 63 (cognizance of offences) and 64 (power of Labour Court and Industrial Court in respect of criminal cases) thereof have been substituted. He urges that prior to the aforesaid amendment, Labour Court constituted u/s 8 of the Relations Act, could, as provided u/s 61-D thereof try only offences under the Act. However, by amendment in Section 61 of the Relations Act, the Labour Court in addition to the offences under the said Act has been empowered to try various other offences under the Factories Act and several other Acts, all specified in Schedule II-A introduced by the Amending Act.

The learned counsel goes on to contend that under the scheme of the Act the jurisdiction of the Labour Court for trial of offences is exclusive and the classes of Criminal Courts enumerated in Section 6 of the "Code" have no jurisdiction in relation to offences under the Factories Act. In this connection he has invited my attention to the provision in Section 64 of the Relations Act. According to sub-Section 1 thereof Labour Court shall have all the powers under the Code, of the Judicial Magistrate of first Class and shall follow the procedure laid down in Chapter XXI of the Code for summary trial and the rest of such provisions of the Code shall, so far as may be, apply to the trial. Sub-section 2 lays down that in respect of offences punishable by the Labour Court, the Industrial Court shall have all the powers of the High Court under the Code. Section 64-A of the Relations Act relates to saving of inherent powers of these Courts and Section 65 provides for appeal against the decisions of a Labour Court to the Industrial Court. He has laid great emphasis on the provision embodied in Section 61(D)(3) of the Relations Act which runs thus: -

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974) or any other law for the time being in force, every offence punishable under this Act and the Acts specified in Schedule II-A shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Reference was also made to the provisions in Section 4(2) of Code, according to which offences other than those under the Indian Penal Code, shall also be dealt

with according to the provisions in the Code but subject to any enactment in this regard. Attention was also invited to the provisions in Sections 5 and 26(b) of the Code which run thus:-

5. Saving:- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Courts by which offences are triable: -Subject to the other provisions of this Code,

(a)

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by-

(i) the High Court or,

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

Provision in Section 26(a) pertains to the trial of offences under the Indian Penal Code. In this connection the decision in State of Uttar Pradesh Vs. Sabir Ali and Another, may also usefully be perused. The decision relates to U.P. Private Forests Act, 1948 which required trial of offence by Magistrate of Third or Second Class and it was held that as jurisdiction of Magistrate of First Class was excluded, the trial by him is void u/s 530(p) of the repealed Criminal Procedure Code of 1988. The decision in State of M.P. v. Bhure Khan 1966 MPLJ 1132 is also pertinent.

The contention of the learned counsel for the petitioner is that on a cumulative consideration of the provisions referred to above and Section 6 occurring in Part in (miscellaneous provisions) of the Factories Act which provides that reference in the Factories Act and other Acts to "Magistrate First Class" or other Magistrates wherever they occur shall be construed as reference to the Labour Court constituted under the Central Act or the State Act as the case may be, leads to the inescapable conclusion that the jurisdiction of the Labour Court to try offences under the Factories Act, is exclusive and that being so, the impugned order passed by the Additional Chief judicial Magistrate, being without jurisdiction, is void.

The contention of the learned counsel for the State is that by Act No. 20 of 1987 (for short "the Amending Act of 1987") the Central Government has amended several provisions of the Factories Act including that u/s 92 providing for general penalties for offences and according to the amended provision in the Section, the maximum amount of fine under the Act or under the Rules has been enhanced from Rs. 5,000/- to Rs. 1,00,000/-. He further submits that the Amending Act of

1987 has also inserted Section 96-A in the Factories Act and thereby the offences constituted by the specified contraventions have been made punishable with imprisonment for a term which may extend to seven years or even ten years. According to the learned counsel Section 64 of the Relations Act provides that the Labour Court shall have powers under the Code of the Judicial Magistrate First Class who according to Section 29(2) of the Code can pass sentence of imprisonment only for a term not exceeding three years or fine not exceeding Rs. 5,000/- or both and shall try the cases according to the procedure for summary trial. With reference to Section 26(2) of the Code he urges that no Sentence of imprisonment for a term exceeding three months can be passed in a summary trial and, therefore, the Labour Court cannot inflict the maximum punishment and can have no recourse to the provisions in Sections 322 and 323 or Section 325 of the Code which a Judicial Magistrate of First Class may invoke for ensuring proper punishment provided for the offences.

On the premises aforesaid, the learned counsel for the State contends that there is a clear case of inconsistency between the provisions of the Factories Act, which is a Central Act, as amended by the Amending Act of 1987 and the Relations Act, which is a State Act, as amended by the earlier Amending Act of 1981 so far as the question of imposition of maximum sentences provided for the offences and, therefore, according to the proviso below Article 254(2) of the Constitution of India the provisions of the Amending Act of 1987 must prevail. In support of his submissions he has placed reliance on the decisions in *Deep Chand Vs. The State of Uttar Pradesh and Others*, *State of Orissa Vs. M.A. Tulloch and Co.*, *M. Karunanidhi Vs. Union of India and Another*, and *T. Bera's case* AIR 1983 SC 105 .

The point for consideration is whether there is inconsistency in the provisions of the two Acts as contended and the jurisdiction of the Labour Court stands excluded.

Article 254(2) of the Constitution of India provides that in respect of any of the matters enumerated in List 3 of the VIIth Schedule referred to as "Concurrent List" the Parliament and the Legislature of any State have power to make laws. This power is subject to Article 20(1) of the Constitution. Article 254 ibid deals " with the situation where there is inconsistency between laws made by the Parliament and laws made by the Legislatures of the States.

In the instant case it is not in dispute that the Amending Act of 1981 and the Amending Act of 1987 pertain to "Concurrent List". On the question of inconsistency or repugnancy between laws made by the Parliament and laws made by the Legislatures of the States this is what has been stated in paragraph 15 of the decision in *T. Serai's case* (supra)-

"Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such

conflict, Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and State law in the concurrent field the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The pre dominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly or by itself enacting a law repugnant to the State law with respect to the "same matter". Even though the subsequent law made by the Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g. where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by the Parliament shall prevail over the State law under Article 254(1)."

The learned counsel for the petitioner urges that the arguments of the learned counsel for the State that there is inconsistency or repugnancy between the Amending Act of 1981 passed by the State Legislature and the Amending Act of 1987 passed by the Parliament may apparently appear to be sound but cannot bear a careful scrutiny. He submits that the two Acts are not on the same subject-matter. The Amending Act of 1987 pertains only to enhancement of punishment for certain offences whereas the Amending Act of 1981 does not at all deal with that subject and as it has received the assent of the President it will in the State, prevail over the provisions of the Central Act, to the extent of any inconsistency between the two.

Emphasising that the jurisdiction of the Labour Court to try offences under the Factories Act is exclusive, it was further contended on behalf of the petitioner that the provision in Section 64 of the Relations Act that the Labour Court shall have powers of the Judicial Magistrate of First class under the Code has reference only to the other power of the Magistrate First class and not to his competency u/

s 29 of the Code to pass sentences and the Labour Court, as Court of exclusive jurisdiction according to the Legislative intent, has the competence to inflict the maximum sentences punishment provided for the offences. In support of this submission reliance was placed on the observations in Para 5 of the decision in *State of U.P. v. Sabir Ali* (supra). The relevant observations are in these words: -

"It was argued before us that there is no point in prescribing that the Magistrates of the Second and Third Class can try subsequent offences because their powers u/s 32 do not extend as far as the punishment prescribed by Section 15 (1). This question does not arise directly but it may be said that two views are possible: One is that by implication the powers of these Magistrates are extended beyond what is prescribed u/s 32."

On a careful consideration, I find that the aforesaid contentions appear to be without merit and must be repelled. Chapter in, Sections 26 to 35 of the Code relate to power of Courts. Section 26 lays down which offences are triable by which of the Courts and Section 29 occurring in the Chapter provides as to the sentences which Magistrates may pass. When the State Legislature invested the Labour Court with powers of the Judicial Magistrate First Class under the Code it clearly intended the powers u/s 29 of the Code. Further when the Legislature intended for the Labour Court only the powers of judicial Magistrate First Class u/s 29 of the Code, it may not be successfully urged that the Legislature by implication invested the labour Court with the powers to pass maximum sentences for the offences under the Factories Act even beyond the competence of Judicial Magistrate First class u/s 29 of the Code.

It may also be pointed out at this very stage that though Section 64(2) of the Relations Act provides that in respect of offences punishable under the Factories Act the Industrial Court shall have all the powers of the High Court under the code, even then the Industrial Court, in view of the Provisions in Section 64(1) of the Relations Act, has to work within the framework of the code and the second proviso to Section 386 *ibid* lays down that the Appellate Court shall not inflict greater punishment for the offences which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

It has to be remembered that jurisdiction to try an offence is not always dependent on the power or competence to inflict maximum punishment which the offence entails. Offence of voluntarily causing grievous hurt by dangerous weapon or means punishable u/s 326, Indian Penal Code carries the punishment of imprisonment for life or imprisonment for a term which may extend to ten years. These punishments are far beyond the competence of even the Chief Judicial Magistrate but under the First Schedule of the code, the offence is triable by Judicial Magistrate First Class.

To me, it appears that while enhancing by the Amending Act of 1987 the punishment in respect of certain offences, the question of limited competence of

the Labour Court with the powers of the Magistrate of the First class as respects the sentences which could be passed, was not at all considered and Section 105 (cognizance of offences) of the Factories Act remained unamended. Same provision on the lines of Section 36 of the Drugs and Cosmetics Act, 1940 and of Section 21 of the Prevention of Food Adulteration Act, 1954 whereunder it is lawful for a Magistrate of the First Class to pass any sentence authorised by the Act in excess of his power under the Code, ought to have been enacted. In this connection, the decision in *The State of Uttar Pradesh Vs. Khushi Ram*, may also be referred to. Therein it has been held that where a Magistrate competent to award full sentence commits the case to the Sessions Judge, the trial and conviction by the latter is not without jurisdiction.

It has to be remembered that Courts cannot, in the garb of interpretation, legislate on the point. For this legislative lacuna appeal must lie to the Legislature.

Trial without jurisdiction constitutes a total irregularity. It has rightly been observed that a right judgment by a wrong Court is no judgment in the eye of law. Section 461(1) of the Code provides that if any Magistrate not being empowered by law, tries an offender, his proceedings shall be void.

In the ultimate analysis, I find that the impugned order is beyond the jurisdiction of the learned Additional Chief Judicial Magistrate and, therefore, being void, must be set aside.

In the result, the revision petition is allowed, the impugned order is set aside and the proceedings are quashed.[(vide) *A.K. Subbiah "scafe (supra)]*.