
(2019) 07 SHI CK 0091
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 183 Of 2018

Hemant Mohan And Another	Vs	APPELLANT
State Of Himachal Pradesh		RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Factories Act, 1948 — Section 8, 106

Citation : (2019) 07 SHI CK 0091

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : K.D. Sood, Shubham Sood, Desh Raj Thakur, R.P. Singh

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. Present petition has been filed against cognizance of offence taken by learned Magistrate in a complaint filed by Inspector appointed under Section

8 of Factories Act, 1948, (hereinafter in short "the Act") against the petitioner, being occupier of establishment, for alleged violation of various

provisions of Factories Act and Rules framed thereunder.

2. Main ground for assailing the institution of complaint against the petitioner is that as per complaint Annexure P-3, the same has been filed for

violation of provisions of Factories Act and Rules noticed during the course of inspection dated 23.5.2016, which is in violation of provision of Section

106 of Factories Act, wherein it is provided that no Court shall take cognizance of any offence punishable under the Act unless complaint thereof is

made within three months of date on which the alleged commission of offence came to the knowledge of an Inspector.

3. Learned counsel for the petitioners has pointed out that as per complaint preferred by Inspector, the same has been filed on 21.9.2016, for violation

of relevant provisions of law noticed during the course of inspection dated 23.5.2016, whereas three months after the inspection had expired on

23.8.2016 and therefore, in view of provisions of Section 106 of the Act, the impugned orders passed by learned Magistrate taking cognizance of

complaint so preferred are liable to be quashed.

4. It is contended on behalf of the respondent/State that though the inspection was carried on 23.5.2016, but thereafter vide written order dated

27.5.2016 (Annexure R-4), the petitioner was called upon by the Inspector along with compliance in writing and relevant documents/registers, with

regard to violation noticed during the inspection and the petitioner had responded to the said communication vide letter dated 8.6.2016 which was

received in office of Labour Inspector on 5.7.2016 and on finding the response of petitioner unsatisfactory the complaint was filed on 21.9.2016 which

is within the limitation period in view of proviso of Section 106 of the Act which provides that where the offence consists of disobeying a written

order, made by an Inspector, the complaint thereof may be made within six months of the date on which the offence is alleged to have been

committed.

5. In response to the plea of respondent/State, learned counsel for the petitioner has pointed out that respondent/State is relying upon documents

Annexure R4 and R5 for the first time in reply to present petition, whereas Labour Inspector has never put reliance on those documents and he has

preferred the complaint simply on the basis of inspection carried on 23.5.2016, which is evident from the contents of complaint as well as documents

filed therewith as also depicted in the list of enclosures mentioned in the complaint.

6. Perusal of record of complaint, filed by the Inspector, received from learned Magistrate, it is evident that complaint has been filed on the basis of

inspection carried on 23.5.2016 and there is not even a whisper about issuance of written order dated 27.5.2016 and initiation of complaint by the

Inspector after receiving the response from the petitioner and/or failure of petitioners to comply with directions or for unsatisfactory response of

petitioners. Rather, it is the petitioners, who along with their reply to complaint

have placed on record the response dated 8.6.2016 on record indicating therein that issues raised in inspection dated 23.5.2016 were duly clarified in said reply.

7. Therefore, it is evident from the record, as pleaded by petitioners, that complaint was not on the basis of non-compliance of written order issued to the petitioners but on the basis of inspection dated 23.5.2016 only. Therefore, as noticed supra, in case of filing the complaint on the basis of inspection dated 23.5.2016, the same was to be preferred before 23rd August, 2016 and thus, the complaint is time barred and for this reason, learned Magistrate was precluded from taking cognizance of complaint on the basis of material before him as at the time of taking cognizance neither any written order nor response thereto or any other document or any averment in complaint was before him so as to invoke the proviso of Section 106 of the Act.

8. Even otherwise, if it is considered that there was written order dated 27.5.2016 issued by the Inspector to comply with the provisions of Factories Act and Rules made thereunder, then also after receiving the response of petitioners, with respect to compliance thereof, it was incumbent upon the Labour Inspector to inspect the factory again for pointing out the deficiencies on the part of factory management or non-compliance of written order issued by him, but in the complaint Inspector remained completely silent not only about issuance of written order but also about response received from the petitioners.

9. If the Labour Inspector was claiming the limitation period of six months on the basis of proviso to Section 106 of the Act, then it was incumbent upon him to have referred to this written order as well as response of the petitioners in complaint and also to state in the complaint about the shortcomings in compliance of written order on the basis of response of petitioners and/or after conducting the inspection again for verification of compliance. But it is not the case in the present proceedings.

10. Therefore, without referring to deficiencies in response filed by petitioners, it is not permissible for the respondent/State to justify the action of Inspector on the basis of written order dated 23.5.2016.

11. Learned Additional Advocate General has also contended that in present case there is a continuing offence and therefore, as per Explanation (a) to Section 106 of the Act, the period of limitation shall be computed with

reference to every point of time during which the offence continues and as the petitioners have failed to comply with written order issued to them, the limitation period is continuing.

12. First of all, as noticed supra, Labour Inspector is not relying upon the written instructions issued by him and also there is nothing on record to

establish that even after issuance of written order, the offence, as alleged, was continuing on the part of petitioners. Therefore, for want of cogent and

reliable material/evidence on record, the benefit of Explanation (a) to Section 106 of the Act is also not available to the respondent/State.

13. Perusal of record indicates that Labour Inspector has relied upon document i.e. "report of offence" dated 22.7.2016 under the Act, but again

this report refers the date and time of inspection as 23.5.2016. This report is also silent about issuance of written order, reply received in response

thereto and also about any further verification by the Inspector with regard to continuation of offence. Where the petitioners were claiming the

compliance of communication sent to them by the Labour Inspector, it was necessary for the Labour Inspector to refer the same in its report and

complaint, and also to verify the status of compliance on the part of Management. Had it been so, then definitely the Prosecution Agency was entitled

for the benefit of proviso and Explanation (a) to Section 106 of the Act.

14. Therefore, in view of above discussion, the impugned orders dated 4.1.2017 and 21.8.2017 are set aside and proceedings, arising out of complaint

filed by the Inspector, pending before learned Judicial Magistrate 1st Class, in case No. 490-3 of 2016 titled State of H.P. vs. Hemant Mohan and

another are quashed. Petition stands disposed of. Record be returned forthwith.