

(1956) 09 MAD CK 0032

In the Madras High Court

Case No : Criminal Revision Case No's. 138 and 139 of 1956 (Criminal Revision Petition No's. 126 and 127 of 1956)

In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi

Date of Decision : 19-09-1956

Acts Referred:

Factories Act, 1948 — Section 2, 2(1)

Citation : AIR 1957 Mad 755 : (1957) CriLJ 1418 : (1957) 1 LLJ 280

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : V.S. Rangachari, V.V. Radhakrishnan, for the Appellant;

Final Decision : Allowed

Judgement

Ramaswami, J.—These are two connected revisions arising from the convictions and sentences of the learned Sub-Divisional Magistrate,

Tanjore in S. T. C. Nos. 36 and 37 of 1955.

2. The facts of these cases have been fully set out in the judgment of the lower Court and need not be recapitulated because the short point for

determination in these revision cases is whether the Sangu Soap Works, Kattumavadi Road, Arantangi, is a factory within the meaning of Act 63

of 1948.

3. This Sangu Soap Works can be considered to be a factory only if under S, 2 (m) (ii) of the Factories Act twenty or more workers are working

or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on without the aid of

power or is ordinarily so carried on. The term "manufacturing process" has been defined in Clause (k) of Section 2. Sub-clauses (iv) and (v) of

this clause are new. They did not occur in the old Act of 1934. Sub-clause (i) has

also been made more comprehensive. The present definition is more comprehensive and wider in scope than that of the old Act.

4. As is plain from the definition the whole premises are a factory even though the manufacturing process is being carried on only in a part of the premises. In *Ramanatham v. Emperor*, ILK 50 Mad 834 : AIR 1927 Mad 345 (A), the words "manufacturing process" do not necessarily refer to something produced but to the business carried on. *Owner v. Cottingham Sanitary Steam Laundry Co., Ltd.*, 1910 74 JP 219 (B). Thus, a laundry carried on for the purpose of gain and in which mechanical power is used for driving machines used in aid of the work of washing clothes is within the definition of a factory.

The conversion of raw film into finished product comes within this definition of the section : In *Re: K.V.V. Sarma, Manager, Gemini Studios, Madras*, . Putting ginned cloth into bales and having it pressed in the compound of the factory is a work incidental to or connected with manufacturing process within the meaning of the Act. *Local Government v. Nusarwanji*, AIR 1953 Nag 283 (D). It will depend upon the circumstance of each case whether a particular business carried on comes within the definition of "manufacturing process", the different processes enumerated in the clauses being merely illustrative.

To sum up, to constitute a manufacture there must be a transformation. Mere labour bestowed on an article even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a transformation ensues, and the article becomes commercially known as another and different article from that as which it begins its existence. Whatever is made by human labour, either directly or through the instrumentality of machinery (Abbott Law Dictionary). "Something of a corporeal and substantial nature, something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill is required to satisfy the word manufacture". Per Abbott C. J. in *R. v. Wheeler*, (1819) 2 B & Ald 345 (E). See also *Cibson v. Brand*, (1842) 4 M & G 179 (F).

5. Having considered the definition of "manufacturing process" set out in Clause (k) of Section 2, we come to the definition of a "worker" which is defined in Clause (1), as meaning "a person employed, directly or through any

agency whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process".

In other words the workers under this definition fall under three groups, viz. persons employed directly or through any agency, whether for wages

or not (a) in any manufacturing process or (b) in cleaning any part of the machinery or premises used for manufacturing process or (c) in any other

kind of work incidental to or connected with the manufacturing process or the subject of such process. *Ramdit Mall Vs. Emperor*, see also *Ganpat*

Dattu v. Emperor, 32 Bom LR 329: AIR 1930 Bom 162 (H).

For Commentaries on "manufacturing process and works" see Volume 1 of *Encyclopaedia of Labour Laws and Industrial Legislation*, pages 12

and 14, A. N. Aiyar and T. A. Ramachandran *Factories Act*, page 3 and foll.; R. Mathurbhutham, *the Indian Factories and Labour Manual*, M. L.

J, pages 28-29; Baksi and Mitra *the Factories Act*, page 9, Patwari *the Factories Act*, page 46.

6. In this case the requisite number of twenty workers could have been made up only, if (a) one Subbiah Asari who was found working as a

carpenter and preparing the packing cases, and (b) a boy Alagirisami who was found holding a paint tin, were included as workers. Otherwise the

requisite number of workers would only be 18.

In regard to Subbiah Asari, he may be included as a worker for the purpose of coming to the conclusion whether the Sangu Soap Works is a

factory as defined in Clause (m) of Section 2, because he might legitimately be considered to be engaged in a kind of work incidental to or

connected with the subject of the manufacturing process, viz., packaging of soaps for being sent out for sales : In *Re: M.K.P. Kadar Moideen*,

Manager M.K.P. Rice and Oil Mills Manjakollai, Negapatam, .

The fact that he might have been a casual labourer would make no difference because as pointed in *The State Vs. Alisaheb Kashim Tamboli*, , to

enable a person to be a worker, it may be that he may receive wages upon the basis of time work or it may be that he may receive remuneration

upon the basis of piece work or he may even be an apprentice or merely an honorary worker. The expression "worker" has a very wide import

and would take in all these persons : AIR 1933 283 (Nagpur) ; Pragnarain v. Emperor, AIR 1928 Lah 78 (K); Superintendent and

Remembrancer of Legal Affairs Vs. J.J. Andrews, In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras, .

7. I am unable however to agree that Alagirisami, the boy found holding a tin containing paint would come within the definition of a ""worker"" and

make up the requisite number 20. This boy was found holding a tin of paint does not mean that he was there for the purpose of ornamentation of

the packing for transport which would come within the definition of ""manufacturing process"" because he was found standing outside apparently to

paint the sign-board which would certainly not be a case of doing a kind of work incidental to or connected with the manufacturing process or the

subject of the manufacturing process.

8. In the result, the Sangu Soap Works will not fall within the definition of a ""factory"" and the convictions rested on that foot cannot be sustained.

The convictions and sentences are set aside and the revisions are allowed. The fine amounts, if collected, will be refunded.