

(1996) 04 AHC CK 0153

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No's. 1856, 1857, 1858 and 1859 of 1983

J.K. Cotton, Spinning and Weaving Mills Co. Ltd. and Another APPELLANT
Vs

State of U.P. and Others RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Factories Act, 1948 — Section 105, 8, 92
Uttar Pradesh Factories Rules, 1950 — Rule 2

Citation : (1996) 20 ACR 525

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : V.B. Singh and D.N. Misra, for the Appellant; A.G.A., for the Respondent

Judgement

G.P. Mathur, J.—The controversy involved in these four petitions is identical and, therefore, they are being disposed of by a common order. Criminal Misc. Application No. 1856 of 1983 shall be treated as the leading case. When the petition was filed, the State was given time to file counter-affidavit on 8.3.1983 but as no counter-affidavit was filed, the petition was admitted on 24.8.1983. Even after twelve years when the petition was taken up for hearing on 27.3.1996, there was no counter-affidavit on the record of the case.

2. The Deputy Chief Factory Inspector (Chemical), U.P. filed a criminal complaint against the applicant in the court of Chief Metropolitan Magistrate, Kanpur on 2.3.1982 which was registered as Criminal Case No. 922 of 1982. The main allegation in the complaint is that the walls of the factory had not been whitewashed and the toilet and urinal near the weaving Section had not been cleaned. The applicants had thus contravened the provisions of Factories Act and were liable to be prosecuted u/s 92 thereof.

3. Criminal Misc. Application No. 1857 of 1983 has been filed for quashing the proceedings of Criminal Case No. 3085 of 1982 u/s 92 of Factories Act. In this

case, the complaint was filed on the allegation that the Safety Guard had not been attached to the belts and pulleys of the Willowing Machine and the pit near the generator had not been covered. Criminal Misc. Application No. 1858 of 1983 had been filed for quashing the proceedings of Complaint Case No. 116 of 1982. The complaint has been filed for prosecuting the applicant u/s 92 of the Factories Act on the ground that the Form No. 5 regarding the inspection done for measuring the pressure of Beam Dying Machines were not made available to the Deputy Chief Factories Inspector at the time of the inspection on 2.12.1981. Similarly, the accounts books of the canteen were not made available to him. Criminal Misc. Application No. 1859/1983 has been filed for quashing the proceedings of Case No. 921 of 1982. In this case, the complaint was filed on the ground that the dry bulb and wet bulb temperature chart of hygrometers were not available at the time of the inspection.

4. The applicant moved an application before the learned Magistrate in all the four cases stating that the Factories Inspector who had inspected the factory and had filed the complaint had no authority to do so and the prosecution of the applicant is, therefore, illegal. The Chief Metropolitan Magistrate, Kanpur passed an exactly similar order on 22.2.1983 in all the cases which reads as under:

The case is still at the stage of evidence. The points raised by the applicants will be considered after the close of evidence.

5. Sri V.B. Singh, learned Counsel for the applicant has submitted that if the Deputy Chief Factory Inspector who had filed the complaint had no authority to do so, then the prosecution of the applicants is wholly illegal and in such circumstances, the point raised by the applicants should have been decided before proceeding with the case. Learned Counsel has further submitted that if after the entire evidence is recorded, it is found that the complaint had been filed by a person who had no authority to do so, it will be a sheer wastage of public time and harassment to the accused-applicant.

6. The complaint against the applicants has been filed for prosecuting them u/s 92 of the Factories Act. Section 105 of the Act, as it stood at the relevant time, laid down that no court shall take cognizance of any offence under the Factories Act except on a complaint by or with the previous sanction in writing of an Inspector. Sub-section (1) of Section 8 of the Act laid down that the State Government may, by notification in the Official Gazette, appoint a person who possessed the prescribed qualification to be Inspector for the purposes of the Act and may assign to him such local limits as it may think fit. Sub-rule (h) of Rule 2 of U.P. Factories Rules, 1950 defines an "Inspector" and it means an officer appointed u/s 8 of the Act and includes "Chief Inspector" and "Deputy Chief Inspector". It may be noticed here that Rule 14E was inserted after Rule 14D on 26.11.1993 and the same reads as follows:

14E. Qualifications for the post of an Inspector for the purposes of Sub-section (1) of Section 8 of the Factories Act, 1948 (Act No. LXIII of 1948) shall be the

same as prescribed for the post of Inspector of Factories, in the Uttar Pradesh Inspector of Boilers and Factories Service Rules, 1980.

In the present case, the complaint had been filed in the year 1982, i.e., prior to 26.11.1983 when Rule 14E was not in existence. In absence of a counter-affidavit, it is not possible to ascertain whether any qualifications had been prescribed by the State Government for appointment of a person as Inspector at the relevant time. For the same reason, it is not possible for this Court to ascertain as to whether the persons who had filed the complaint against the applicants had been validly appointed as Inspectors. There can be no doubt that if the persons who had filed the complaints against the applicants had not been validly appointed as Inspectors as defined in Section 8 of the Act, they would be having no authority to file the complaint and to prosecute the applicants. In these circumstances, the plea raised by the applicants goes to the root of the matter and should be decided at the initial stage.

7. For the reasons mentioned above, the petitions succeed and are hereby allowed. The order dated 22.8.1983 is quashed. The learned Magistrate shall first decide the plea raised by the applicants regarding the competence of the Deputy Chief Factory Inspector to file the complaint after taking such evidence as he considers proper and in accordance with law.