(1976) 01 PAT CK 0010

In the Patna High Court

Case No : Criminal Miscellaneous No. 478 of 1973

J.S. Ran and Others APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 05-01-1976

Acts Referred:
Shops and Establishment Rules, 1953 — Rule 14, 17, 19

Citation : (1976) 9 PLJR 344

Hon'ble Judges : Narain, J

Bench : Single Bench

Advocate : S.B. Sanyal, Choudhary S.N. Mishra and Binod Prasad, for the Appellant; Kameshwari Singh and Daya Nand Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Narain, J.—Criminal Miscellaneous Nos. 478, 862 and 863 of 1973 have been heard together as they arise out of the same prosecution Criminal Miscellaneous No. 478 is on behalf of nine Directors of M/S Glaxo Laboratories (India) Ltd., which has its registered Head Office at Bombay. Criminal Miscellaneous No. 862 is on behalf of the tenth Director and Criminal Miscellaneous No. 863 is on behalf of the other directors of the Company. The petitioners of Criminal Miscellaneous Nos. 478 and 862 reside in Bombay and those of 863 in England.

2. The Company has an establishment in this town, the Area Sales Executive of which is Dr. Samir Dey

3. On the 19th of January, 1972 the establishment at Patna was inspected by the Labour and Inspecting Officer and irregularities in the matter of maintenance of leave and wage register, pay and overtime register, fines and deduction register and service cards were noticed and as such a complaint was filed in the court of the Subdivisional Magistrate alleging contravention of Rules 14, 17 and 19 of the Rules framed under the Shops and Establishment Act, 1953 (hereinafter referred

to as the Rules). The complainant was directed against the aforesaid twelve Directors and Dr. Samir Dey. Cognizance has been taken ; against a ll these thirteen persons.

4. The complaint petition says that a show cause notice was served on Dr. Samir Dey on the 21st of February, 1972 and he was asked to remove the defects by the next day but since the defects were not removed the complaint was filed. It appears that an inspection of different registers of the Establishment was done in January, 1965 by an Officer of the Shops and Establishment Department and be allowed the system to continue and which obtained on the 19th January, 1972. Name of Dr. Samir Dey occurs in column No. 8 of the application for registration, Form No. 1 framed under Rule 3, the heading of which is?Name. Designation and Permanent Address of the Employer (Manager, Agent or any other person) who is in the immediate charge of general management or control of the establishment, A petition was filed by Dr. Samir Dey before the trying Magistrate saying that it was he who was in sole and exclusive charge of the affairs of the establishment at Patna and that the petitioners who are residents of different places and even beyond India had no knowledge as to the day to day administration of business and were in no way responsible for maintenance of the registers.

5. Mr. S.B. Sanyal on behalf of the petitioners has vehemently argued that regard being had to the fact that show cause notice was served on Dr. Samir Dey only and there being no mens tea on the part of the Directors, cognizance taken against them should be quashed

6. Cognizance has been taken for offences under Sections 32 and 34 of the Shops and Establishment Act (hereinafter referred to as the Act). Section 32 of the Act makes a person liable if he "fails without sufficient cause to comply with any lawful direction made by an inspecting Officer." It will be noticed that in the present case Dr. Samir Dey, a qualified man, was placed in charge of the Establishment at Patna and he was made responsible for the day to day work of the Establishment. Again, it was upon him that the notice to remove the defects was served Therefore, there existed sufficient cause for the Director?petitioners not to comply with the directions given by the inspecting authority.

7. Section 34 says inter alia, that any employer who contravenes any provisions of the Act or any rule shall be punishable with fine. Now the word employer has been defined in Section 2 (5). It means.

a person who owns or exercise ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the general management or control of such establishment

In the present case Dr. Samir Dey was the person who was in the immediate charge of the general management or control of the establishment. The point for consideration is whether the Directors should also be made liable for the offences alleged.

8. It would be appropriate at this stage to refer to the duty of the Director of a Company. It was held in (1) Dovey and the Metropolitan Bank (of England and Wales), Limited Vs. Jhon Cory (1910 AC 477 and page 486) that I cannot think that it can be expected of a Director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditors himself. The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending the details of management

The above observation aptly applies to the present case and the Directors, some of whom reside even in England, are not expected to see day to day affairs carried on at Patna. No doubt the above observation was made in a civil case but it applies with greater force in a criminal case where the concept of mens rea also is a factor to be reckoned with. In (2) Hickerby Vs. Elliot (1970 All ELR 189 at page 194) ratio of Re City Equitable Fire Insurance Co. Ltd, was quoted with approval which laid down that a Director is under no obligation to make certain, that an official of the company is complying with the law. For the above reasons the petitioners who are Directors of the Company, cannot be prosecuted for non-maintenance of the register etc. the duty of which squarely fell upon Dr. Samir Dey, the man in charge of the establishment.

Again for their prosecution, according to the scheme of the Act, the Directors must be imputed with the knowledge of the contravention of any rules or instructions given by the Inspecting authority Manifestly they had no knowledge that any rule or lawful instruction given was being violated. That being so, I think it would be an abuse of the process of the Court if, prosecution against the petitioners are allowed to continue. The cognizance taken against the petitioners is accordingly, quashed and the criminal miscellaneous cases are allowed.