

(1968) 02 AP CK 0009
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 271 of 1966

Public Prosecutor	Vs	APPELLANT
C.B. Thyagarajan		RESPONDENT

Date of Decision : 21-02-1968

Acts Referred:

Factories Act, 1948 — Section 85(1), 85(2), 92

Citation : AIR 1968 AP 362 : (1968) CriLJ 1570 : (1969) 2 LLJ 209

Hon'ble Judges : Kondaiah, J

Bench : Single Bench

Advocate : N. Harishesha Reddy, for the Appellant; P. Innayya Reddy, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal by the State is against the acquittal of the accused-respondent by the Sessions Judge, Chittoor in allowing the Criminal Appeal No. 127/65, holding that the finding of the trial Court that the accused has contravened Section 92 of the Factories Act was unsustainable.

2. The case for the prosecution is that in the year 1963-64, the accused-respondent, without obtaining the requisite licence, has been working his flour mill, known as Ambika Mills, on the premises No. 419/7, renumbered as 9-2-20 in Jandamanu Street, Chittoor to which the provisions of the Factories Act are declared u/s 85(1) of the Act to be applicable, as a manufacturing process was being carried on, when Murali Mohan Mills was functioning, and hence contravened the provisions of Section 92 of the Factories Act.

3. The plea of the accused is that the declaration contemplated in Section 85(1) is not in respect of the premises but manufacturing process carried on in the premises and he has started his mill only in 1963 and that as there is no declaration by the Government thereafter, he is not liable to be punished for any offence.

4. The trial Court held that the accused has failed to obtain a licence and contravened the provisions of Section 92 of the Factories Act and sentenced him to pay a fine of Rs. 100. On appeal the Sessions Judge, Chittoor set aside the conviction and sentence awarded by the trial Court, holding that there was no declaration u/s 85(1) with regard to the manufacturing process, and acquitted the accused. Hence, this appeal.

5. The Public Prosecutor contends that the order of the Court below is erroneous and the provisions of Section 85 (1) and (2) have not been construed properly and the acquittal is liable to be set aside. Mr. Innayya Reddy, for the accused, contends that the manufacturing process carried on by the owner should be declared u/s 85(1) and that there is no such declaration in the instant case and in any event, there should be a declaration u/s 85(1) at every time when there is a change of ownership of the manufacturing process or the very manufacturing process was being replaced by a different manufacturing process by the same owner, and there is no reason to set aside the order of acquittal.

6. The short point that arises for determination is with regard to the scope and interpretation of the provisions of Section 85 (1) and (2) read with Section 2(m) of the Act. It is profitable and necessary to consider the relevant provisions of the Factories Act.

Section 2(m): "Factory" means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve 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-

Section 85(1): The (State) Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that-

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner :

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be occupier, and any person working therein, a worker.

Explanation : For the purposes of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

7. By Section 2(m), a factory is defined as any premises whereon and in any part of which a manufacturing process is carried on by ten or more workers with, and twenty or more workers without the aid of power, on any day of the preceding twelve months. Section 85(1) read with Sub-section (2) extends the definition of "factory" to a further class of cases. It is to be considered in the present case whether the extended definition of "factory" within the meaning of Sub-section (2) read with the provisions of Sub-section (1) of Section 85 of the Act, is applicable.

8. Where the State Government declares by a notification in the official Gazette that all or any of the provisions of the Act shall apply to any place wherein a manufacturing process is carried on, irrespective of the number of workers working in such premises, such premises shall be deemed to be a "factory" for the purpose of this Act. From a reading of the provisions of Section 85(1) it is clear that the notification contemplates a declaration that all or any of the provisions of the Act shall apply to any place, wherein a manufacturing process is carried on, but the declaration is not with regard to the manufacturing process. When once there is such a declaration as contemplated u/s 85(1) of the Act, by virtue of Sub-section (2) in respect of which there is a declaration u/s 85(1) such place shall be deemed to be a factory for the purposes of the Act.

9. In the present case, the persons working in the manufacturing process belonging to the accused are only two or three with the aid of power. The proviso to Section 85(1) of the Act is not attracted, as the manufacturing process is not being carried on by the owner with the aid of his family. The definition of "factory" u/s 2(m) of the Act is not applicable to the present case as the workers are admittedly less than ten.

10. Admittedly, the premises in question has already been declared prior to the year 1960, when Murali Mohan Mill was functioning there, u/s 85(1) of the Act, as a place wherein a manufacturing process was being carried. Hence, no further declaration u/s 85(1) after the change of the manufacturing process or the change of the ownership of the manufacturing process need be made subsequent to the year 1960 in respect of the same premises. The intention of the Legislature appears to be obvious that any subsequent owner of any manufacturing process will have to obtain the requisite licence for the manufacturing process, if it is situated in any premises which was already declared u/s 85(1) of the Act. I am unable to agree with the contention of Sri Innayya Reddy that a fresh notification u/s 85(1) declaring the applicability of the provisions of the Act to the premises in question so as to attract the provisions of Section 92 of the Act, is necessary. In the circumstances and for the reasons stated above, I have no hesitation to hold that the premises No. 419/7, renumbered as 9-2-20 in Jandamanu Street, Chittoor, in respect of which a declaration by the State Government has already been made u/s 85(1) of the

Act, shall be deemed to be a factory for the purposes of the Act even in the year 1963-64, the period in respect of which the accused is sought to be prosecuted in the present case. Hence, the order of the Court below cannot be sustained.

11. In the result, I set aside the order of acquittal passed by the Sessions Judge in Crl. Appeal No. 127/65 and confirm the order of the trial Court convicting the accused u/s 92 of the Factories Act and sentencing him to pay a fine of Rs. 100. The accused is permitted to pay the fine within one month from today, in default to suffer rigorous imprisonment for one month.