
(2015) 02 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : CRM No. M-41413 of 2013 (O and M)

Rajesh Saigal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Factories Act, 1948 — Section 2(k), 2(m), 2m(i)

Citation : (2015) 146 FLR 588 : (2015) 2 LLN 249 : (2015) LLR 659

Hon'ble Judges : Inderjit Singh, J.

Bench : Single Bench

Advocate : Ashish Aggarwal, Senior Advocate and Abhineet Taneja, for the Appellant; S.S. Pannu, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Inderjit Singh, J.—Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.1928 of 2012 dated 03.12.2012 titled as "State of Haryana through Assistant Director, Industrial and Health Gurgaon-I vs. Rajesh Sehgal and another" along with consequential proceedings initiated thereupon and summoning order dated 20.02.2013 passed by learned Chief Judicial Magistrate, Gurgaon.

2. It is mainly stated in the petition that the criminal complaint and the consequent proceedings are misuse and abuse of process of the law. The petitioner is occupier and Sh.Imran Khan, who is named in the criminal complaint as accused No.2, was the then Manager of the Food Laboratory of M/s Intertek India Pvt. Ltd. Imran Khan has resigned from the company on 28.02.2013. The company has taken the premises on lease after taking the consent of Haryana State Industrial and Infrastructure Development Corporation Ltd. It is further stated in the petition that Food Laboratory of M/s Intertek India Pvt. Ltd. is covered under the provisions of Punjab Shops and Commercial Establishment Act. Accordingly, the Food Laboratory of the company has also duly obtained the

Registration Certificate under the provisions of aforesaid Act. The said certificate was issued by the Labour Department after inspecting the premises of the company.

3. Notice of motion was issued in this case and learned State counsel appeared, filed reply and contested the petition.

4. I have heard learned counsel for the petitioner as well learned State counsel and have gone through the record.

5. From the record, I find that the complaint was filed by the State through Assistant Director, Industrial and Health Gurgaon-I against Rajesh Sehgal (Saigal) and Imran Khan by mainly stating that accused are the Occupier/ Manager of M/s Intertek India Pvt. Ltd. An inspection was conducted by Er.Deepak Malik, Assistant Director (1SandH) Gurgaon-1 and Dr.D.S.Deswal, Asstt. Direction (III) Gurgaon on 04.09.2012 and they noticed violations under the Factories Act, 1948 and Rules framed thereunder. It is stated that Occupier/ Manager were engaged in the testing, inspection, certification of materials of the food item with the aid of 30 workers and electric power of 250 K.V.A, hence the establishment is coverable under Section 2m(i) of the Factories Act, 1948 but Occupier/Manager failed to show the proof of submission of Factory licence fee under Factories Act upto year 2012 along with Form No.2. In the complaint, so many violations have been pointed out under the Factories Act, 1948.

6. At the time of arguments, learned counsel for the petitioner mainly argued on one point only that Food Laboratory of the Company does not fall under the definition of 'Factory' as given in Section 2(m) of the Factories Act, 1948, which is reproduced as under:-

(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.

7. I have gone through the definition of the Factory. As per the above-stated definition, 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 without the aid of power, or is ordinarily so carried on, where the number of workers are twenty or more. The perusal of the definition of the factory shows that the manufacturing process is being carried on. Learned counsel for the petitioner, at the time of arguments, argued that no such manufacturing process was being carried in the premises. Section 2(k) of the Factories Act, 1948 defines manufacturing process as under:-

(k) "manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;

8. I have gone through the definition. The definition as provided under Section 2(k) of the Act, shows that no manufacturing process was carried out in the premises of the petitioner. The premises of the petitioner is a Laboratory and as per the complaint, work of testing, inspection, certification of materials of the food item was carried out. The perusal of the definition nowhere shows that any making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, is being carried out. Therefore, in view of the definition, in no way, it can be held that manufacturing process was being carried out there. Only food items, are inspected, tested and certified. So, no new article or changed article is made for the purpose of its use, sale, transport, delivery or disposal, which are necessary ingredients. Admittedly, the case does not fall under other clauses also.

9. Learned counsel for the petitioner cited judgment passed by the Hon'ble Calcutta High Court in Employees' State Insurance vs. Duncan Gleneagles Hospital, Ltd., 2005 LLR (SN) 1071 (Cal HC), in which it is held as under:-

"7.5. The definition of "manufacturing process" includes otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal. The outcome of the test is recorded through various machineries electronically operated or otherwise. In some cases, these are recorded in special kind of papers or any photo plates or X-ray plates or certain kind of devices recording Ultra-sonographic tests. The process of these tests were not carried on either for making, altering, repairing, ornamenting, finishing or otherwise treating or adopting any article or substance, namely, the X-ray plates or the papers or the sonographic records with a view to its use, sale, transport, delivery or disposal. These articles or substances were used in aid of the process for the examination or the tests carried on. It is the report of the test, which is produced. It is the service of preparing the report or diagnosis is the services rendered. The process is not undertaken for the purpose of production of any

article or substance in the form of developed X-ray films or sonographic records or anything else. If we interpret in such a manner, in that event, even printing floppies or writing disks or typing of papers in course of any business or commerce or any office or administration would also amount to undertaking of manufacturing process since floppies, disks, xerox and typing are undertaken for the use or disposal. But if the pathological laboratory undertakes tapping of blood and process the same and use the same for the purpose of sale or transfusion or otherwise use thereof, the same may be a manufacturing process. But the pathological tests would not amount to manufacturing process even though the production of the developed X-ray films or sonography reports may amount to manufacturing process otherwise in some other context. It has to be reconciled with the purpose and object for which it is being used or utilized. It is the ultimate product that will determine the issue the process adopted for study and research in order to diagnose would not be a manufacturing process."

10. I have gone through the above-cited judgment and the same fully applies to the facts of the present case.

11. In view of the above discussion, I find that the petitioner's premises/laboratory where testing, inspection and certification work was being done, does not fall in the definition of manufacturing process and cannot be treated as a Factory. Therefore, filing of the present complaint is nothing but abuse of process of law.

12. Therefore, finding merit in the present petition, the same is allowed. The criminal complaint No.1928 of 2012 dated 03.12.2012 and all subsequent proceedings along with summoning order dated 20.02.2013 passed by learned Chief Judicial Magistrate, Gurgaon are hereby quashed qua the petitioner.