
(1960) 12 AHC CK 0016
In the Allahabad High Court

R.S. Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-12-1960

Acts Referred:

Factories Act, 1948 — Section 106, 80
Penal Code, 1860 (IPC) — Section 300

Citation : (1961) 31 AWR 476 : (1962) CriLJ 251

Hon'ble Judges : Mitthan Lal, J; Jagdish Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagdish Sahai J.

1. The petitioner R.S. Sharma has been convicted u/s 80 of the Factories Act (herein-after referred to as the Act) and Rule 110 of the Rules framed thereunder (hereinafter referred to as the rules) and sentenced to pay a fine of Rs. 100/-. He filed a revision application before the learned Sessions Judge who refused to make a reference to this Court and rejected the application. Thereafter the petitioner filed a revision application in this Court u/s 439 Cri.P.C. which came up for hearing before a learned Single Judge. On a reference being made by him to a larger Bench the matter has come before us. The only submission that has been made on behalf of the petitioner before us is that the complaint on the basis of which he has been convicted was barred by limitation.

2. The accident giving rise to this reference and in which one Zile Singh was the victim occurred on the 19th of September 1957. The matter was reported to the Inspector of Factories (hereinafter referred to as the Inspector) by means of an application dated the 4th November 1957, made by Zile Singh. The Inspector received this application on the 12th of February 1958 and the complaint giving rise to this case was filed by the Inspector on the 7th of July 1958.

3. Section 106 of the Act requires that a complaint should be made within three

months of the date on which the alleged commission of the offence came to the knowledge of the Inspector. The question for consideration is whether on the basis of the information with regard to the offence which the Inspector received on the 12th of February 1958 by means of the application of Zile Singh, knowledge can be imputed to him so as to attract the provisions of Section 106 of the Act. The said section reads as follows:

106. No Court shall take cognizance of any offence punishable under this Act Unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may, be, made within six months of the date on which the offence is alleged to have-been committed.

It is common ground that the proviso is not applicable to the facts of the present case and we are concerned only with the main clause of Section 106 of the Act. Section 106 of the Act lays down a rule which affects the jurisdiction of the court. If the complaint, is not filed within the period prescribed, the court shall not have jurisdiction to try the same. The key word in the section is "knowledge". It has been contended on behalf of the state that there is a difference between "knowledge" and "information" and knowledge can be imputed to a person only at the stage when he believes the information to be true and that stage can only be reached after an enquiry has been made and satisfaction reached by the Inspector that the information is correct. It has been submitted that whether or not an Inspector had knowledge can be proved by him alone.

In Shorter Oxford English Dictionary, among other the following meanings have been given to the word "knowledge"-

Acquaintance with a fact; state of being aware or informed: consciousness (of anything) Acquaintance with facts, range of information. Intellectual acquaintance with, or perception of, fact or truth; the fact, state or condition of understanding. Formerly, also, intelligence, intellect. A mental apprehension; a cognition. Theoretical or practical Understanding of an art, science, language, etc: The fact or condition of being instructed; information acquired by study; learning, Information, intelligence; intimation.

It would be seen from the above that the word "knowledge" is sometimes used also in the sense of information. When a person says that he has knowledge he is describing a state of his mind. That state may be reached either by what one Sees or by what he hears and what he believes to be true. If an information is received which the inspector does not believe to be false or has no reason to believe it to be false he would be attributed a state of mind which may amount to his having knowledge of that matter. It may be noticed that the words used in Section 106 of the Act are "came to the knowledge of an Inspector" and not "when the Inspector was satisfied about the correctness of the information". If the legislature intended that an enquiry should be made by an Inspector and.

only if he is satisfied about the correctness of the information he should make a complaint, the words used by the legislature would have been, "within three months of the date on which the Inspector is satisfied about the commission of the offence".

Both satisfaction and knowledge denote a state of mind. In order to be satisfied or in order to have knowledge there must be some basis. The basis may be, as we have said above, either what is seen or what is heard or the information received. Knowledge is that state of mind when the person believes a thing to be true or has no reason to believe that it do not true. The state: of satisfaction is reached only when the man is certain after deliberate consideration over the matter that that thing exists beyond all doubt. When a person gets fully determined either by the subjective process of deliberating over the matter or by the objective process of making an enquiry or by seeing the thing himself the stage of knowledge ceases arid the stage of satisfaction sets in.

In our judgment the word "satisfaction" has not been purposely used in Section 106 of the Act. Inasmuch as the Inspector has only to make allegations by lodging a complaint the satisfaction about the correctness or otherwise of the allegations has got to be that of the court. In our opinion the word "knowledge" has been used in the sense that if the Inspector himself sees an offence being committed or if he receives information which he has no reason to disbelieve it would amount to his having knowledge of the offence. It is true that the legislature did not use the word "information" but for that there are two obvious reasons. The first one being that if the word "information" was used that would not have included a complaint being made on the basis of what the Inspector saw for himself as the word "information" would not have comprehended cases where the Inspector saw an offence being committed with his own eyes and in respect of which he did not receive any information and secondly because it was not expected that he would act on every information including the one which he knows to be untrue.

It hag been contended by the learned Government Advocate that an Inspector alone can depose on what date he had knowledge of the offence and his statement on that point should therefore be final. We are not prepared to accept this argument. We have already pointed out that Section 106 of the Act is a provision, by means of which the jurisdiction of a court is barred under certain circumstances. In other words it confers an immunity to an offender in cases where a complaint is not made within the period of limitation provided. Consequently It is a matter which goes to the root of the Jurisdiction of the court and in every case in which the jurisdiction is challenged by an accused person ft is the duty of the court first to determine whether or not the complaint was filed within three months from the date of knowledge, to the Inspector.

It is obvious that such a question has got to be determined in an objective manner and on the basis of the evidence produced by the parties and cannot be left to be concluded by the statement of the Inspector. It is open to the court not

to believe the statement of the Inspector that he had received knowledge on a particular date. The statement of the Inspector is only a piece of evidence which may or may not be believed. The Inspector cannot usurp the functions which the legislature has vested in courts. It is not difficult to visualise as to what would be the consequences if the question as to whether or not the Inspector had knowledge of the commission of the offence on a particular date were to be concluded by the statement of the Inspector. In the first place he would become a judge of his own cause and from a witness or a complainant would ascend to the position of a judge. Besides even in cases in which he has been inactive or lethargic and has filed a complaint beyond the period prescribed he would be able to, confer the jurisdiction on the court to try the case by falsely stating that his enquiries concluded and he acquired knowledge of the offences on some date within three months of the filing of the complaint.

In other words the jurisdiction of the court to try or not to try a case would not depend upon the factual position in the case but upon the sweet will of the Inspector. We have no doubt in our mind that that is not what the legislature intended by enacting Section 106 of the Act and it is not possible to stretch the meaning of the word "knowledge" so as to include an earlier enquiry and satisfaction of the inspector that the offence was actually committed. It is true that an Inspector like any other complainant should not file a complaint merely on suspicion or hearsay or one which is false or vexatious to his knowledge but neither Section 106 of the Act requires nor is it the import of the word "knowledge" that the filing of a complaint should be preceded by an enquiry and only after the Inspector is satisfied that the offence has been actually committed he should file a complaint.

In fact a complainant is not expected to do so under the general law and nothing has been pointed out to us in the Act to show that the same differs from the general law in this matter. To investigate and enquire into the truth of an allegation is not the function of a complainant but that of the Court though a complainant is not expected to rush to a Court unless he believes that the allegations he is making in Court are not false. There is a difference of degrees between "believe" and "satisfy". For belief there need not be a certainty which is required in the case of satisfaction. The Inspector need not have full satisfaction that the offence has really been committed in order to file a complaint. If he believes an information and thus understands that an offence has been committed or has no reason to disbelieve the information he should file a complaint and leave it to the Court to decide whether or not the information received by him is true and whether or not in fact the offence has been committed.

Can it be said that in a case where there is good evidence to show that an offence has been committed but the Inspector does not personally believe that evidence or does not feel satisfied about its correctness he can refuse, to file a complaint and thus deprive the Court of adjudicating upon that matter? It will be

his duty to put before the Court the evidence that is in his possession and leave it to the Court to decide whether that evidence should be believed or not. He cannot himself assume the role of the Court and decide for himself whether or not that evidence is correct and in cases where he comes to the conclusion that it is not correct, not to file a complaint. Such a course would be much in excess of his functions and if he does not file a complaint only on the ground that he does not personally believe that evidence he would be committing a serious dereliction of duty.

All that is required on his part is that he should not rush to Court with frivolous and vexatious cases. The law only requires that he must act bona fide and put in Court cases in which there is some evidence to support the charge. For exercising such functions it appears to us that it is not necessary for him to hold an enquiry and we have already said above that Section 106 of the Act or any other section in the Act does not require him to do so. This does not mean that he cannot hold an enquiry at all on order to find out what evidence he will produce in Court or whether the case is not a frivolous or vexatious one. All that we intend to say is that the holding of an enquiry is not a condition precedent to his acquiring knowledge of the commission of the offence.

4. To know is not necessarily to have precise knowledge of. Knowledge of circumstances ordinarily leading to the conclusion that the thing or the state of thing exists will suffice. We find support for our view from the case of *National Bank of Australasia v. Morris* 1892 AC 287. In that case the question was whether the Bank knew that its debtor was insolvent and the test adopted by the Privy Council was that if the information received by the Bank was such that ordinary man of business would on its basis conclude that the debtor is unable to meet his liabilities, knowledge of insolvency would be imputed to the Bank.

The following words from that judgment are very helpful:

Their Lordships conceive that if the creditor who receives payment has knowledge of circumstances from which ordinary men of business would conclude that the debtor is unable to meet his liabilities, he knows, within the meaning of the Act, that the debtor is insolvent.... We need not inquire nicely whether Belfour used the term "insolvent", as is suggested by a subsequent passage in his evidence, in a sense compatible with Braun's inability to meet his engagements. It is sufficient that he knew the facts which ought to have shown him clearly enough that Braun could not do so.

5. In *Ram Nath Aiyar's Law Lexicon* under the heading "Knowledge and Belief" the following is given:

"Knowledge" is nothing more than man's firm belief, and is distinct from "belief" in that the latter includes things which do not make a very deep impression on the memory. The difference is ordinarily merely in degree.

The meaning of the words "belief" and "know" as defined by lexicographers will

show that there is distinct and well defined difference between them. "Belief" is defined by Webster to mean to exercise trust or confidence; and by the Century Dictionary, to exercise belief in; to be persuaded upon evidence, arguments, and deductions, or by other circumstances other than personal knowledge. "Knowledge" according to Webster, is the act or state of knowing; clear perception of facts; that which is or may be known. According to the Century Dictionary it means acquaintance with the things ascertained or ascertainable; specific information.

If an Inspector has specific information or information which he has no reason to disbelieve he will be imputed the knowledge. In *Emperor v. Zamin* AIR 1932 Oudh 28 the word "knowledge" came up for interpretation in connection with a criminal case and the learned Judge observed as follows:

Without going into a metaphysical discussion of the nature of knowledge, we may say that for practical and legal purposes "knowledge" means the state of mind entertained by a person with regard to existing facts which he has himself observed, or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt.

We find ourselves in agreement with this view.

The learned Government Advocate placed reliance upon the case of *Gahbar Pande Vs. Emperor*, and has drawn our attention to the following passage in the judgment:

No doubt a man is presumed to intend the natural and inevitable conclusions of his own act, but the presumption of intention must depend upon the facts of each particular case, and "knowledge", as used in Clause (2) of Section 300 I.P.C. is a word which imports a certainty and not merely a probability.

In that case the learned Judges were interpreting the word "knowledge" as used in Section 300 I.P.C. and all that they held was that before an accused person can be convicted by attributing knowledge of a particular thing that knowledge must be proved beyond all reasonable doubt. That case, in our opinion, is clearly distinguishable because whereas an accused person can only be convicted if the facts found against him have been proved beyond all reasonable doubt, it is not the function of the Inspector for filing a complaint under the Act to reach a certainty in his mind that the allegations are correct. We have already said above that if he has no reason to disbelieve the information and there is evidence it is his duty to submit a complaint.

6. The learned Government Advocate next placed reliance upon the case of *Prabhu Lal Dayalji v. The State* AIR 1956 Sau 4. The facts of that case were different from the facts of the case before us as would be apparent from the following observations of the learned Judge:

The contention is untenable because, as I said, the consideration of the whole question was deferred to view of the pending dispute before the Industrial

Tribunal, and in view of the same it could not be said that the Factory Inspector had come to know that it was an offence. The latter part of the contention therefore does not survive. So far as the prosecution itself is concerned the complaint was made by the Factory Inspector within three months of the written order dated 9.1.1951, and it is therefore, not barred, u/s 106, Factories Act.

The prosecution having been launched for failing to comply with the said order the question of the Factory Inspector having come, to know of the offence earlier namely, on his visit to the factory on 21.12.1950 and the complaint being required to be filed within three months of the date does not really arise, and Mr. Shah has also not pressed it on this ground. The complaint is filed for the disobedience of the order dated 9.1.1951 for which the limitation is six months and since it was filed within that period, it is perfectly within time.

In the end the learned Counsel for the State placed reliance upon an unreported decision of our brother Desai in Criminal Misc. No. 290 of 1956 (All) and the following two passages were brought to our notice:

Whether he had knowledge or not can be proved by him alone if he did not believe the information or wanted to verify its truth before acting upon it he did not treat it as knowledge...it is for him to decide whether to make a complaint or not and to ascertain what legal evidence there is in support of it, and before he decides to make a complaint he must know as a matter of fact that the offence has been committed. The law contemplates that he should make a report on knowledge of facts only, not on suspicion or hearsay. This practically means that he must have personal knowledge. So if he received information from some one, he may either believe it to be true or verify its truth by an enquiry. He is not bound by any law to make a complaint even if he does not believe it to be true, he has a right to insist on making an enquiry so as to acquire personal knowledge and the period of limitation must commence from the date of such knowledge.

With great respect to the learned Judge we are not prepared to go so far and for the reasons which we have already given above we are unable to accept the proposition that whether or not an Inspector has knowledge can be proved by him alone and that he must acquire personal knowledge before he can file a complaint. We are also unable to subscribe to the view that even though there be evidence in support of the information or the charge an Inspector is not bound to make a complaint if he has no personal knowledge that the offence has been committed. In our judgment the language of Section 106 of the Act does not warrant any such conclusion. Besides it is well known that while interpreting a statute the interpretation which does not result in defeating the object of the Act, or the provision being interpreted, should be accepted, and effort should be made by Courts to implement the purpose or the object of the Act, or the provision. See *Tirath Singh Vs. Bachittar Singh and Others*, , and *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, .

We have already said above that it was the clear intention of the legislature that if a complaint is not filed within the period of limitation provided for the jurisdiction of the Court to try that case would be lost and the person who is supposed to have committed the offence would get an immunity from prosecution on that charge. If we take a contrary view the result would be that the object of the provision would be defeated and even though a complaint may be barred by time and thus the accused Person may have obtained immunity from prosecution he would be liable to be tried if the Inspector falsely deposed that he received knowledge on a date within three months of the filing of the complaint. It may also be stated that in a criminal statute if two interpretations are possible the one in favour of the accused person should be accepted.

For the reasons mentioned above we are of the opinion that under the provisions of Section 106 of the Act an Inspector must file a complaint if he saw the commission of the offence himself within three months of the date of seeing, and if he received information which he could have no reason to disbelieve, within three months of the receipt of the information. Even in cases of information which he does not believe he must act promptly and if he has to make an enquiry he must complete it within such time so as to file a complaint within the time provided by law. In our opinion in cases in which he files a complaint on the basis of a particular information, though after an enquiry the starting point of limitation would be the date of the information and not the date of the conclusion of the enquiry.

It would be noticed that the legislature did not require a complaint to be filed immediately or within a few days of the knowledge of the offence and provided three months for doing so. This to our mind was clearly provided for so that investigation if any should be finished before the expiry of that period. Cases under the Act are of a simple and petty nature and if an enquiry is at all made by the Inspector it cannot take much time and can very reasonably be concluded much before the expiry of three months from the date of information.

7. In any case in the present case Ex. Kha. 2. the letter of the Chief Inspector of Factories to the Manager of Sam Smelting and Refining Corporation (Private) Ltd., Meerut dated 18th January, 1958, clearly shows that the Inspector had received the information that the accident relating to Zile Singh had taken place within the factory premises on the 19th of September 1957, and that the management was required to furnish an accident report. The present complaint was filed on the 7th of July, 1958, i.e., more than three months even after the 18th of January, 1958. In the present case therefore there cannot be the least doubt that the complaint was filed beyond the period of limitation provided by law and the Magistrate had no jurisdiction to try the applicant.

8. The result is that the application is allowed. The order of the learned Magistrate dated the 10th of July, 1959, convicting and sentencing the applicant is set aside. The fine, if paid, shall be refunded.