
(1960) 12 RAJ CK 0007
In the Rajasthan High Court

Sohanlal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-12-1960

Acts Referred:

Factories Act, 1948 — Section 16, 2, 21, 22, 92

Citation : (1962) 1 LLJ 607 : (1961) RLW 257

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Judgement

Bhargava, J.—This is a revision by Sohanlal against his conviction u/s 21(1) read with Section 92 of the Factories Act, 1948 (Act 43 of 1948) (hereinafter called the Act) by the City Magistrate, Jodhpur. He has been sentenced to a fine of Rs. 500, in default to simple imprisonment for three months. His appeal to the Court of the Sessions Judge, Jodhpur, failed. He has now come in revision to this Court.

2. The prosecution case against the petitioner was that on 26 December 1958, the factory known as R.J. Engineering Company and Iron Re-Rolling Mills, Jodhpur, was inspected by B. Kumar, Inspector of Factories and amongst other defects he found that

- (a) the flywheel and belts of the engine, room were not securely fenced; and
- (b) the belts of the lathe In the workshop were not securely fenced.

As It amounted to a contravention of the provisions of Section 21(1) of the Act, the petitioner was informed of this and was directed to remove them. Petitioner sent a reply Stating that the above mentioned defects had been removed. The factory was inspected again by B. Kumar on 27 January 1959, but on that date too he found that the flywheel and belts of the engine In the engine room and the belts of the lathe in the workshop were not securely fenced. A complaint was, therefore, submitted against the petitioner for having committed a breach of Section 21(1) of the Act. The learned City Magistrate found that the petitioner had contravened the provisions of Section 21(1) of the Act and, therefore, held

him guilty. The same view was upheld by the learned Sessions Judge, Jodhpur.

3. In this revision learned Counsel for the petitioner has contended that as the petitioner was not given opportunity to produce his defence witnesses, he was not examined after the close of the prosecution evidence and the trial has been vitiated. It was further contended that the petitioner cannot be said to have contravened the provisions of Section 21(1) of the Act as it has not been proved that the parts of the machinery were in motion or use at the time they were inspected by B. Kumar. According to the learned Counsel, Section 21(1) requires that the parts of the machinery should be securely fenced only when they are in motion or in use. If they are not in motion or use no obligation is cast on the manager or occupier to fence them. It was also urged that the petitioner was neither an occupier nor a manager of the factory and could not be punished for contravention of Section 21(1) even if there be any.

4. Lastly it was urged that the amount of fine imposed was excessive.

5. So far as the objections regarding the alleged irregularities in the trial are concerned, I find no force in the contentions raised by the learned Counsel.

6. Now coming to the main contentions. Section 21 of the Factories Act runs as follows:

Section 21.--In every factory, the following, namely,--

(1) every moving part of a prime-mover and every flywheel connected to a prime-mover, whether the prime-mover or fly wheel is in the engine house or not;... shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use.

7. "Prime-mover" has been defined in Section 2(h) as "any engine, motor or other appliance which generates or otherwise provides power. What Section 21 aims at is the safety of the workmen who may not come into contact with the dangerous parts of the machinery and that is why it requires that these parts should be securely fenced. To me the obligation to securely fence the dangerous parts of the machinery appears to be absolute whether those parts may be in motion or use or not. The parts by themselves may be so dangerous as to imperil the lives of those who are likely to come in contact with them; that is why the law seems to have imposed the obligation to securely fence them even though machinery may be not in motion. The requirement contained in the latter part of the sub-section that the fencing should be of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use, is a further injunction describing the extent and the manner in which the fencing is to be constructed and maintained. The provisions of the Act are almost similar to the provisions of the English Factories Act, 1937. Under Sections 12, 13, 14 and 15 of the English Factories Act, there is a provision for securely fencing the prime-movers and other machinery and dangerous parts of the

machinery and Section 16 provides that "all fencing or other safeguards provided in pursuance of the foregoing provisions of this part of this Act shall be of substantial construction, and constantly maintained and kept in position while the parts required to be fenced or safeguarded or in motion or in use, except when any such parts are necessarily exposed for examination and for any lubrication or adjustment shown by such examination to be immediately necessary, and all such conditions may be specified in regulations made by the Secretary of State are complied with. Under the Indian Factories Act, provisions contained from Sections 12 to 16 in the English Factories Act have mostly been incorporated in Section 21. It is, therefore, dear that u/s 21(1), the prime-mover and flywheel connected with the prime-mover, in all circumstances, whether it may be in motion or not, is required to be securely fenced and the nature and time of that fencing should be of substantial construction and should be kept in position while the parts of the machinery are in motion or in use. Although the Inspector of Factories has not stated that on 28 December 1958, when he Inspected the factory, the prime-mover was in motion but he baa stated that on 27 January 1959, the machinery was working but it was not the petitioner's case that on 26 December 1948. the machinery was not in motion. His case was that it remained closed from 14 January 1959 to 3 February 1959.

8. As regards the other contention that the petitioner was neither a manager nor an occupier of the factory, it may be stated that a specific question was put to him whether he was a manager of the factory and in his reply he did not deny it but only stated that he was a partner. The Courts below have found that he was an occupier of the factory. "Occupier" has been defined under the Act as "the parson who has ultimate control over the affairs of the factory, and where the Said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory." It appears that after the factory was inspected on So December 1959, a letter was sent to the manager of R.J. Engineering Company and Iron Re-Rolling Mills, Jodhpur, and It was the petitioner who sent a reply under his signatures which is Ex. P1. Even assuming that ha was a partner in the firm, still he will be an occupier of the factory within the meaning of that term because he had ultimate control over the affairs of the factory. His reply Ex. PI indicates that he was controlling the affairs of the factory and as such it cannot be contended that he was not the occupier of the factory. Under such circumstances, the petitioner was rightly held to be an occupier of the factory. From the prosecution evidence as well as from the admission of the petitioner, it appears that on 26 December 1958, the flywheel and belts of the engine in the engine-room and the belts of the lathe in the workshop were not securely fenced. This amounts to a contravention of Section 21(1) of the Act. The petitioner has rightly been convicted for contravening the provisions of Section 21(1) of the Factories Act.

9. As regards the sentence it may be noted that the maximum amount of fine has been imposed on the petitioner and in the circumstances of the case, the fine appears to be excessive. Learned Government Advocate also agrees that the fine

imposed is excessive A fine of Rs. 200, in the circumstances of the case, will meet the ends of justice.

10. The result, therefore, is that this revision is partly allowed, conviction of the petitioner u/s 21(1) read with Section 22 of the Factories Act is maintained but his sentence is reduced to a fine of Rs. 200, in default to undergo simple imprisonment for a period of three months.