

(1980) 04 AHC CK 0002

In the Allahabad High Court

Case No : Government Appeal No. 2051 of 1974

State

APPELLANT

Vs

B.M. Thaper and Another

RESPONDENT

Date of Decision : 23-04-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200, 378, 4(1)
Uttar Pradesh Factories Act, 1948 — Section 106, 8(4), 92

Citation : (1980) AWC 417

Hon'ble Judges : Satish Chandra, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : A.D. Giri, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—A learned Single Judge has referred these two appeals, filed by State of U.P. u/s 378 of the Code of Criminal Procedure, for decision by a larger Bench.

2. On 6-3-72, Sri V.N. Agarwal, Inspector of Factories U.P. Incharge Gorakhpur Region, forwarded two complaints u/s 92 of the U.P. Factories Act, against Sri B.M. Thaper, occupier, and Sri M.L. Chopra, Manager of M/s. Deoria Sugar Mills Ltd. to the District Magistrate, Deoria. These two complaints were headed "In the Court of District Magistrate Deoria and contained a prayer that the court may take action against the two accused The complaints were also accompanied by two covering letters containing the following request by the Factory Inspector:

It is requested that the cognizance on the complaint may kindly be taken by 6-3-72, the date on which the period of limitation as provided u/s 106 of the Factories Act, 1948 will expire, to avoid dismissal of the complaint by trying court at a later stage. This may kindly be given top priority.

The same day i.e. on 6-3-72, the District Magistrate forwarded the two complaints to S.D.M., Deoria for disposal. The complaints were received by

S.D.M, Deoria on 7-3-72 and he, after registering the cases against the accused persons, summoned them for 25-3-72.

3. On 15-5-73, one of the accused, namely, B.M. Thaper, moved an application inviting the attention of the court to Section 106 of the Factories Act, which runs thus:

No court shall take cognizance of any offence punishable under this Act unless a complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector;

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

and claimed that as cognizance of the offence had been taken more than three months after the alleged offence came to the knowledge of the Factory Inspector on 6-12-71, the proceedings for the trial of the two accused were incompetent.

4. The contention of the accused prevailed before the trying Magistrate, who by his order dated 4-5-74 dismissed the complaint after making the following observations:

In the present case the breach of Section 92 of the Factories Act, 1948 read with 42 and 46 of the U.P. F. Rule 1950 was detected by the Inspector of Factories on 6-12-71 and the complaint to the District Magistrate, Deoria was submitted on 6-3-72. The District Magistrate took no cognizance on it, he has simply sent it to S.D.M., Deoria for disposal. The complaint, however, was received in the court of S.D.M. Deoria on 7-3-72 who took the cognizance and ordered for registration of the case and issued notice to the accused on that very day. These go to show that the order of the District Magistrate dated 6-3-72 was an executive order and not a judicial one as the cognizance in the case was taken by S.D.M., Deoria and not by District Magistrate, Deoria. This further leads to the conclusion that cognizance in the case was taken by the competent court on the expiry of period of limitation of three months when the offence alleged to have been committed was detected. The case against the accused is, therefore, not maintainable...

5. Being aggrieved, the State Government has filed these two appeals before this Court. When the appeals came up for hearing before a learned Single Judge, learned Counsel appearing for the State relied upon a decision of this Court in the case of State Vs. S.D. Gupta, and contended that what Section 106 of the U.P. Factories Act requires is that the complaint is made within this period cognizance thereof can be taken at any time thereafter. If the complaint is made within time, the fact that the court, in which the complaint is filed dealt with it administratively and transferred it to another court for disposal, cannot undo the making of it. He urged that as in the instant case, the two complaints made by the Factories Inspector, were received in the office of the District Magistrate on 6-3-72, they had been, irrespective of the date when the S.D.M. took action

thereon, made within the time prescribed by Section 106 of the U.P. Factories Act and the order dismissing the complaint on the ground that it was barred by time cannot be sustained.

6. Sri A.D. Giri, learned Counsel appearing on behalf of the Respondents contended that as defined by Section 8(4) of the Factories Act, 1948 the District Magistrate was also a Inspector of Factories in his district. A perusal of the covering letter indicates that notwithstanding the fact that the two complaints were headed and addressed to "the court of the District Magistrate, Deoria" the Factory Inspector forwarded them to the District Magistrate not with a view that he should himself try the accused but with a view that he should place them before a competent court. The two complaints reached the competent court only on 7-3-72 by which time the court had lost jurisdiction to entertain the same. In support of his submission, learned Counsel for the Respondent placed reliance on the case of Gopal Das Sakseria and Another Vs. The State, .

7. In the case of State Vs. S.D. Gupta, , a learned Single Judge had, after considering the decision of this Court in Gopal Das Sakseria's case 1955 All. 511 , observed that the District Magistrate had a dual character, namely, as a Factory Inspector u/s 8(4) of the Factories Act, 1948 and he also exercised jurisdiction as a Magistrate throughout his district. Answer to the question as to whether the complaint was sent by the Factory Inspector to the District Magistrate treating him to be a superior officer in the hierarchy in the department or it was sent to him as a Court, should rest on the language of the complaint and the letter accompanying it. The learned Judge before whom the present appeals came up for hearing observed that the two complaints addressed to the court of the District Magistrate, Deoria were accompanied by two covering letters from the Inspector of Factory requesting him to take cognizance of the complaint by 6-3-72, the date on which the period of limitation was to expire so as to avoid dismissal of the complaint by trying court at a later stage. He opined that use of the words "to avoid dismissal of the complaint by trying court at a later stage, indicated that the Factory Inspector merely intended that the District Magistrate should take steps to present the complaint to the competent court within time. The learned Judge further observed that had it been the intention of the Inspector or for that matter of the District Magistrate that the cognizance of the complaint should be taken by the District Magistrate, the endorsement by the District Magistrate to S.D.M., Deoria for disposal would, instead of on the margin of the two covering letters should have found place on the two complaints. This according to the learned Judge clearly showed that the complaint was not meant to be made to the District Magistrate as a court. The learned Judge then went on to observe that as Section 106 of the Factories Act, provided a statutory protection after three months to an offender from the prosecution, it was expedient to consider the question whether the complaint with the heading in the court of District Magistrate, Deoria" sent for action to the District Magistrate who u/s 8(4) of the Factories Act is the Factory Inspector for his District, can be deemed to be a complaint validly made before the competent court. He also

expressed his dissent with the observations made by the learned Judge in State Vs. S.D. Gupta, to the effect that he had a dual character, namely, as a Factory Inspector u/s 8(4) of the Factories Act, 1948 and that he also exercised jurisdiction as a District Magistrate throughout his district and that the question as to whether the complaint was sent to the District Magistrate treating him to be a superior officer in the hierarchy of his department or it was sent to him as a court, should rest on the language of the complaint and the letter accompanying the same. Accordingly, in view of the earlier Division Bench decision of this Court in the case of Gopal Das Sakseria and Another Vs. The State, , he thought it proper to refer the case for a decision by a larger Bench.

8. We are in respectful agreement with the view expressed by the Division Bench of this Court in the case of Gopal Das Sakseria and Another Vs. The State, , that what Section 106 of the Factories Act, 1948 requires is that a complaint must be made within three months of the date on which the alleged commission of the offence comes to the knowledge of the Inspector and not that the court must take cognizance of the offence within such period. The crucial question, therefore, that remains to be considered is whether in this case a complaint on which action had to be taken by the criminal court was made within three months of the date on which the Factory Inspector came to know about the offence committed by the accused.

9. The word "complaint" has been defined in Section 4(1)(h) of the Code of Criminal Procedure thus:

A complaint means the allegation made orally or in writing to a Magistrate, with a view to taking of action under this Code, that some persons whether known or unknown has committed an offence, but it does not include a report of the Police Officer.

Accordingly, the complaint is made to a Magistrate on the date on which the Magistrate is with a view to his taking action under the code, informed either orally or in writing that some persons known or unknown has committed an offence. It may be, that an information about an offence given to a Magistrate not competent to take action under Code of Criminal Procedure may not amount to a complaint, but then, if an information is given to a Magistrate about the commission of an offence with a view to his taking some action under the Code of Criminal Procedure, which he is competent to take, such information would undoubtedly be a complaint and would be deemed to be made on the date on which the information is conveyed to the Magistrate. We have, therefore, to see, (1) whether on the basis of information given by the Factory Inspector on 6-3-72 the District Magistrate was competent to take action under the Code of Criminal Procedure and (2) whether the information was given to the District Magistrate with a view to his taking action under the Code of Criminal Procedure. If answer to both the questions is, in the affirmative, it would be obvious that these complaints had been made to the competent Magistrate within the period of three months, mentioned in Section 106 of the Factories Act.

10. Section 8(4) of the Factories Act enables the State Government to by notification in the official gazette appoint such person who possess requisite qualifications to be Inspectors for the purposes of this Act. Sub-section (4) of Section 8 then lays down that every District Magistrate shall be a Inspector for his District. All that this provision means is that a person appointed as a District Magistrate under the provisions of Criminal Procedure shall be able to, for the purposes of the Act, exercise within his district all such jurisdiction and powers which an Inspector appointed under the Act, has within the area assigned to him. The provision contained in Section 8(4) cannot be interpreted as effecting his powers under the Code of Criminal Procedure. We, therefore, agree with the observations made in Section D. Gupta's case, 1973, Criminal Law Journal 999, that though the District Magistrate is a Factory Inspector, he is also a Magistrate exercising powers in throughout the district. In the case of Gopal Das Sakseria v. State (supra), one of the questions that arose for consideration before a Division Bench was as to whether the complaint addressed to the City Magistrate which had been forwarded by Factory Inspector to the District Magistrate could be considered to be a complaint made to the District Magistrate. On the facts and circumstances of that case, this Court came to the conclusion that the complaint had been forwarded to the District Magistrate not with a view to his taking action under the Code of Criminal Procedure, but with a view to his transmitting the same to the competent court. In the circumstances, receipt of such complaint by the District Magistrate could not be said to be receipt of the complaint made to him. There is nothing in this decision which can imply that designation of District Magistrate as an Inspector under the U.P. Factories Act deprives him of his power under the Code of Criminal Procedure to take action on a complaint made to him for an offence under Factories Act. We are, accordingly, of opinion, that Section 8(4) of the U.P. Factories Act does not prevent the District Magistrate from exercising any of the power vested in him under the Code of Criminal Procedure for dealing with an offence under the Factories Act.

11. We now proceed to consider whether the District Magistrate was in this case competent to receive the complaint filed by the Factory inspector. Section 190 of the Code of Criminal Procedure, 1898 enables a Presidency Magistrate, District Magistrate or S.D.M. and any other Magistrate specifically empowered in this behalf to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. It will thus, be seen that a District Magistrate is competent to take cognizance of any offence on receiving a complaint of facts which constitute such an offence. The District Magistrate, Deoria, therefore, was a competent authority to which a complaint in respect of an offence under the provisions of the Factories Act could be made.

12. In the case before us the two complaints forwarded by a Factory Inspector were addressed to the court of the District Magistrate. They contained a request that he should take cognizance of the offence and take necessary action against the accused. The covering letter merely emphasized and requested the District Magistrate to take cognizance of the offence by 6-3-72, the date on which the

period of limitation provided u/s 106 of the Factories Act, was going to expire so as to avoid dismissal of the complaint by the trying court at a later stage. There is no manner of doubt that the facts mentioned in the complaint, according to the Inspector, constituted an offence under the Factories Act. The Factory Inspector while bringing these facts to the notice of the District Magistrate specifically requested him to take cognizance of the offence under the provisions of the Code of Criminal Procedure. Clearly the facts were brought to the notice of the District Magistrate with a view to his taking action under the Code of Criminal Procedure. Information conveyed to the District Magistrate, therefore, amounted to a complaint made to a competent court on 6-3-72, which would be well within time.

13. The arguments that the fact that in the covering letters the Factory Inspector mentioned that cognizance may be taken to avoid dismissal of the complaint by trying court, indicated that the complainant wanted the action on the complaint to be taken not by the District Magistrate but by another court of competent jurisdiction and, therefore, was not a complaint made to the District Magistrate does not appeal to us.

14. Section 190 of the Code of Criminal Procedure empowers the District Magistrate to transfer any case of which he has taken cognizance for enquiry or trial to another Magistrate subordinate to him. Apart from the fact that the Factories Inspector had laid information before the District Magistrate, who was competent to take cognizance of the offence, specifically praying that he should take cognizance of the same, the fact remains that the District Magistrate did take cognizance of the complaints on 6-3-72, for he could not have transferred them to another Magistrate without taking cognizance thereof. It was suggested that according to Section 200 a Magistrate taking cognizance of a complaint had to, at once examine the complainant and the witnesses present, if any, on oath. As in this case the complainant was not examined on oath, it would not be said that the District Magistrate took cognizance on 6-3-72 and any transfer of the case to the S.D.M. could not be attributed to exercise of powers u/s 192 of the Code of Criminal Procedure. This submission overlooks the first proviso to Section 200 which lays down that when the complaint is made in writing, nothing contained in the section shall be deemed to require a Magistrate to examine a complainant before transferring the case u/s 192. Accordingly, merely because the District Magistrate did not examine the complainant before transferring the two cases to the Sub-Divisional Magistrate, also not mean that he did not take cognizance of the complaint made to him. In this connection we would like to point out that taking of cognizance of a complaint under provisions of Code of Criminal Procedure is something quite different from trial of the case. The Code of Criminal Procedure clearly contemplates cases where cognizance of complaint is taken by one Magistrate, but the trial thereof takes place before another Magistrate. In these circumstances, the fact that the complainant had, in the covering letters, mentioned that cognizance of the complaint may be taken on 6-3-72 so as to avoid dismissal of the complaint by the trying court at a later

stage, may lead to an inference that while making the complaint to the District Magistrate the complainant knew that eventually the case will be transferred for trial by another court, but then it certainly did not mean that the complainant wanted the case to be transferred by the District Magistrate to another court, even without taking cognizance of the cases, or that he thought that in law the complaint could not be made to the District Magistrate. On the wordings of the complaint as also of the covering letters, it is absolutely clear that the Factory Inspector made allegations in writing to the District Magistrate with a view to his taking actions under the provisions of the Code of Criminal Procedure against the two Respondents. The District Magistrate was the competent court before which the complaint would be made. Since the District Magistrate received that complaint on 6-3-72, the complaint was filed before him on that day and was within limitation. Moreover, as we find that the District Magistrate had while transferring the case to the S.D.M., Deoria had also taken cognizance of the two complaints within limitation on 6-3-72, the date on which the complaints were received by the court which eventually is proceeding to try them is. in our opinion, not at all material.

15. In the result, both these appeals are allowed. The order passed by the Magistrate 1st Class dated 4-5-74 dismissing the two complaints as barred by time is set aside. The Magistrate shall proceed to dispose of the two complaints filed by the Factory Inspector in accordance with law.