

(1991) 11 MAD CK 0047

In the Madras High Court

Case No : Criminal Appeal No. 339 of 1987

State by Asst. Inspector of Labour, Kovilpatti

APPELLANT

Vs

Sait P. Shenbagam

RESPONDENT

Date of Decision : 21-11-1991

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 18

Citation : (1992) LW(Cri) 396

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : P. Govindarajan for the Public Prosecutor on behalf of the State, for the Appellant; R. Thirugnanam, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—This appeal has been filed by the State, represented by the Assistant Inspector of Labour, 1st Circle, Kovilpatti, challenging the acquittal of the respondent by the Judicial II Class Magistrate, Kovilpatti, in S.T.C. No. 463 of 1986 tried for offence under Rules 15 and 16(4)(a) of the Shops and Establishment Rules, 1948, read with Section 18 of the Shops and Establishment Act, 1947.

2. The allegation against the respondent was that on 30.11.1985, when the Inspector of Labour, inspected Viji Trading Company, of which the respondent was the Managing Partner, there were violations of Rules 15 and 16(4)(a), in that, the name board of the concern was not in Tamil and no "J" form showing the working hours of Typist Raja was found.

3. During trial, the Inspector was examined as P.W.1 and Exhibits PI to P.6 were marked. The respondent denied having committed the offences and in particulars stated, that he had nothing to do with Viji Trading Company, which was a partnership with only Smt. M. Bagirathy and Smt. D.Site Rani, as partners. A partnership deed dated 1.5.1981 was produced by the respondent. The learned

Magistrate acquitted the respondent on the ground that the prosecution had produced no materials to show what connection there was between Viji Trading Company and the respondent and there were corrections and alterations in Exhibit P.1 report, as well as in Exhibit P2-show cause notice, served on the respondent and the prosecution independently had to prove the connection between the respondent and Viji Trading Company. Aggrieved with the acquittal, the State has filed this appeal.

3-A. The learned Public Prosecutor would submit that in exhibit-P4, the reply to the show cause notice, the respondent, who had been addressed as Managing Partner, had admitted that he was incharge of the entire business of the concern and he was responsible for everything and there were no employees and Raja was only a neighbour, who was temporarily looking after the work in his absence. This according to the learned Public prosecutor, was an admission by the respondent, on which the trial Court ought to have acted.

4. Per contra, Thiru R. Thirugnanam, the learned counsel for the respondent would submit that the prosecution could not rely upon the admission of the respondent in Exhibit P4 and had to prove its case by independent evidence and the partnership deed produced showed that the respondent had nothing to do with Viji Trading Company and he was only a broker. His acquittal, therefore, was correct and has to be upheld.

5. The question that arises for consideration is, whether the acquittal of the respondent can be legally sustained?

6. As far as the facts are concerned, it is not disputed that at the time of inspection by P.W.1, the name Board did not contain the Tamil translation. In Exhibit P.4, the respondent has stated that he had since then altered the name board. It is clear, therefore, that at the time of the inspection there was violation of Rule 15. Regarding Rule 16(4)(a), according to the prosecution, Typist Raja was employed in Viji Trading Company and at the time of P.W.1's inspection, Raja was physically present doing typing work and no "J" form was maintained for him. The respondent would state that Raja was only a boy from the neighbouring house, who had been requested to stay in the place during his temporary absence, and that there are no employees in Viji Trading Company. This explanation of the respondent cannot be accepted. Even in Exhibit P1, in inspection report, P.W.1 has stated that Typist was present and when questioned, had given his salary as Rs.200/-. Raja has signed Exhibit P.1. Further, Exhibit P4, which is the reply of the respondent and which is written in the letter-head of the Viji Trading Company, shows that the same has been registered for Sales Tax purposes and it has phone number and it is an established business. The partnership deed produced shows that the partnership is dealing with purchase and sale of safety matches and purchase and sale of raw materials for the manufacture of matches in whole sale, retail and commission basis, acting as agents for any supplier or manufacturer and undertaking, private or government contract. Even paragraph-7 of the partnership deed contemplates appointment of

a person to conduct the affairs of the firm, and who will be paid 20% of the net profit of the firm. When such is the situation, it is unacceptable that the partnership firm should not have a single employee. I, therefore, hold that Raja was a regular employee in the firm as a Typist and "J" form was required for him and had not been maintained.

7. The final question is whether the respondent has anything to do with Viji Trading Company. The term "employer" has been defined in Section 2, Sub-Section (5) as a person owning or having charge of the business of an establishment, including the Manager, agent or other person acting in the general Management or control of an establishment. The definition therefore includes any one having charge of the business of the establishment. The respondent, therefore, need not be proved to be a Managing partner in order to be made liable. His own statement, Exhibit P4 is to the effect that he is incharge of all the affairs of the business. In Exhibit P2, he has been described as Managing Partner. In Exhibit P3, the respondent has not chosen to deny that description. Whatever that be the definition of "employer" referred to above, includes the respondent also, when on his own showing he is in charge of the entire business and looks after the business by himself. The learned Magistrate was in error in holding that the court cannot act upon the admission of the respondent in Exhibit P.4.

8. Exhibit. P.4 would be evidence against the respondent recording what is admitted by him in it. The acquittal of the respondent, therefore, cannot be legally sustained. The acquittal has to be set aside.

9. In the result, this appeal is allowed. The respondent is convicted under Rule 15 and 16(4) (a) of the Tamil Nadu Shops and Establishment Rules, 1948, read with Section 18 of the Tamil Nadu Shops and Establishment Act, 1947. Since this conviction is rendered in an appeal, the respondent will have to be heard on the question of sentence. Post this case on 21.11.1991 for the appearance of the respondent.

This Appeal having been set down this day for questioning the respondent regarding the sentence for which he has been convicted herein in the presence of Mr. P. Govindarajan Advocate (Crl.Side) for the Public Prosecutor on behalf of the State and of Mr. R. Thirugnanam, Advocate for the respondent the Court made the following order:

The matter was posted today for questioning the accused regarding the sentence.

2. The learned counsel for the respondent has filed a petition u/s 482 of Criminal Procedure Code that due to sickness, the respondent is not able to attend court. The learned counsel represented that this court can impose any sentence without questioning the respondent. Accordingly, the respondent is sentenced to pay a fine of Rs. 10 for each of the offences in default, to undergo simple imprisonment for a period of five days. The fine shall be paid in the trial Court, within one month of the receipt of the copy of this judgment.