
(1988) 09 MAD CK 0054

In the Madras High Court

Case No : Criminal Appeal No. 16 of 1985

State by Public Prosecutor

APPELLANT

Vs

P. Kaleeswaran

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Factories Act, 1948 — Section 105, 112, 67, 83, 92

Citation : (1988) LW(Cri) 500

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : T. Munirathina Naidu, for Public Prosecutor, for the Appellant; V. Sairam, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Arunachalam, J.—This appeal by the State, represented by the learned Public Prosecutor, is against the judgment of the learned Sub Divisional Judicial Magistrate, Sattur, acquitting the respondent in C.C. No. 371 of 1983 on his file.

2. The respondent was prosecuted for violation of the provisions of the Factories Act 1948 and the rules framed thereunder. The prosecution case is that P.W.1, the Assistant Inspector of Factories, Sivakasi, inspected Sabai Match Industries, belonging to the respondent at 11:30 a.m. on 14-6 1982. During the course of his inspection, the respondent was present. P.W.1 found that totally 26 men and 118 women apart from 5 minors were working in the factory.

Since no child who had not completed 14 years of age, shall be required or allowed to work in any factory in terms of section 67 of the Factories Act, P.W.1 would depose that it is an illegality. P.W.1 also found that Form 25-B relating to Time-card had not been maintained. No acknowledgements had also been obtained from the labourers and this was in violation of S. 112 read with Rule 103-B of the Factories Act and Rules. P.W.1 further noticed violation of S. 83 read with Rule 87 of the Factories Act and Rules in that Form No. 15 relating to

holidays with wages had not been maintained and not produced when demanded,

3. P.W.1 sent a show cause notice to the respondent, (Ex.P3,) along with his inspection report, Ex P2. Ex.P6 is the reply of the accused. Since P.W.1 was not satisfied with the reply of the respondent, he instituted this prosecution on 10-9-1982 before the trial Court. The violations noticed by him were punishable under S. 92 of the Act.

4. To substantiate the Prosecution case, P.W.1 examined himself and marked Exs.P1 to P6. The respondent denied the charge, but did not examine any witness on his side. He did not also mark any document.

5. The trial Court, on a consideration of the evidence adduced before it, found that there was a violation of the mandatory provision of S. 105 of the Factories Act, which would entail the respondent to an acquittal. The trial Court also found that there was a limitation bar for the institution of the prosecution, but there was practically no discussion on this aspect. The learned Magistrate, was also not prepared to place reliance on the evidence of P.W.1, since in page 3 of Ex.P2 the names of the minor children had not been noted, in the proper column, but had been filled up only in page 7 of the report.

6. Mr. T. Munirathina Naidu, appearing for the State, contended that the reasoning of the trial Court is unsustainable. He would produce before me a typed copy of a Government Order dated 27-3-1976 and contend that the Assistant Inspectors of Factories Sivakasi Nos. 1 and 2 have been appointed as Inspectors for the purpose of the Factories Act, within the local limits within which such person shall exercise powers. The local limit is seen to include Sattur, Aruppukottai, Srivilliputhur and Rajapalayam taluks of Ramanathapuram district. He would also contend that there is no reasoning whatsoever regarding the question of limitation and even on that ground the judgment of the trial Court will be unsustainable. Regarding the third ground of the acquittal by the trial Court he would submit that there was nothing wrong in P.W.1 having entered the names of the minors at page 7 after specifically noting in page 2 of Ex.P2 that the names of the minors had been later entered.

7. Thiru V. Sairam, learned counsel appearing for the respondent, would contend that the acquittal by the trial court has to be sustained since P.W.1 has not even deposed in his evidence that he was empowered to prosecute the respondent under the Factories Act, let alone the non-production of the Govt. order. On the contrary, he has stated in the cross-examination that he had obtained the previous sanction from the Inspector of Factories, which was available on his file. Regarding the second and third grounds of acquittal, Thiru Sairam would submit that they may not have to be gone into if his first submission were to be accepted.

8. S. 105 of the Factories Act reads thus:-

Cognizance of offences -

(1) No court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of an Inspector.

(2) No court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

9. It is, therefore, apparent on a reading of S. 105 that the Court can take cognizance of an offence under the Act only on a complaint of an Inspector or with his previous sanction in writing. P.W.1 is only an Asst. Inspector of Factories and though previous sanction in writing is admittedly available, it had not been produced in this case. It also appears to be a sorry state of affairs that even P.W.1 was not aware that he had been empowered under a notification to take action under S. 105 of the Act. As long as the fact remains that P.W.1 had not deposed before the Court below about his having been empowered to file this Prosecution and notification as such had not been produced before the trial Court it cannot be said that the view taken by the learned Magistrate is erroneous. Learned counsel appearing for the prosecution brought to my notice a decision of this Court reported in *Andiappan v. The State* by the Forest Range Officer, Burgur 1985 L.W. CrL. Part 11, 325. wherein in a revision against conviction, K.M. Natarajan, J. had accepted the production of the original Gazette notification by the Government Advocate during the hearing of the revision petition and dealt with the offender under the provisions of the Probation of Offenders Act. It is seen in that case, that a typed copy of the Government gazette had been filed in the lower court and the Court had some material in the evidence of P.W.1 on which the jurisdiction to take cognizance was upheld. The production of the original gazette notification in this Court, which could not be disputed, was admitted.

10. It cannot be said that the same analogy will apply to the facts of this case. The trial Magistrate had neither oral nor documentary evidence on record to hold that the complaint laid by P.W.1 was maintainable. I am not able to persuade myself to hold that the judgment of the learned trial Magistrate was wrong in the circumstances of the case. In any event, this being an appeal against acquittal I do not think a further chance has to be given to the prosecution to fill in the lacuna when it had not discharged its duty earlier in the trial Court. In view of my finding on this point there is no need to go into the other grounds of attack.

11. In the result, the appeal fails and is dismissed.