

(1966) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Criminal Revision Application No. 4 of 1966

State of Gujarat

APPELLANT

Vs

Chandulal Vardhman Shah

RESPONDENT

Date of Decision : 03-05-1966

Acts Referred:

Factories Act, 1948 — Section 63, 92

Citation : (1966) 2 LLJ 767

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

1. This is a revision application by the State for the enhancement of sentence passed upon the owner of a factory after convicting him under S. 63

read with S. 92 of the Factories Act for employing workers beyond time. The learned magistrate convicted him under the above sanctions, but

released the convicted person after due admonition under S. 4 of the Bombay Probation of Offenders Act.

2. The learned Government Pleader contends that S. 4 of the Bombay Probation of Offenders Act should not be applied to the present case and

that a convicted person should be convicted and sentenced at least to a fine of Rs. 100. Having regard to the nature of the case, S. 4 of the

Bombay Probation of Offenders Act can be applied in appropriate cases. It cannot be said that though the Factories Act is a social legislation,

having regard to the nature of the offences in appropriate cases, S. 4 of the Bombay Probation of Offenders Act cannot be applied. I cannot see

any important difference between the release of a convicted person after the admonition and the imposition of fine of Rs. 100. The penalty, if any,

after conviction would no doubt apply in either case, because in the case of a

person's release after the admonition the conviction is in force. What is important is that a man should be convicted and not that he should be sentenced to a fine of Rs. 100 or released after due admonition. Once he has been convicted, too much emphasis should not be put on which of the above two sentences should be imposed. There is a trifling difference between the release on due admonition and a fine of Rs. 100 Section 4 of the Bombay Probation of Offenders Act can be applied even to much more serious offences, and I cannot understand why it should not be applied to a less serious offence like a breach of the rules under the Factories Act.

3. It is next contended by the learned Government Pleader that conditions (a) and (b) of S. 4 of the Bombay Probation of Offenders Act, 1938, have not been fulfilled in the present case. Section 4 of the said Act reads as follows :

4. Notwithstanding anything contained in any enactments for the time being in force in any case in which a person is convicted of any offence punishable with not more than two year's imprisonment or fine or both and no previous conviction is proved against him, the Court by which he is so convicted, may, if it thinks fit having regard -

(a) to the age, character, antecedents or physical or mental condition of the offender, and

(b) to the nature of the offence or any extenuating circumstances under which the offence committed,

for reasons to be recorded in writing, instead of sentencing him to any punishment, release him after due admonition.

4. Section 4 of the said Act contemplates that all the factors enumerated therein should have to be considered. If the nature of the offence is not

very serious, there is no need to consider the other factors like age. Physical or mental condition has to be considered only if something is wrong

with the physical or mental condition of the offender. Even if the physical or mental condition is sound, if the nature of offence allows, S. 4 of the

said Act may be applied. The same remarks apply to the age. Regarding the character and antecedents, it is not suggested that character or

antecedents are, in any way, bad. There is, therefore, no force in this contention. The alleged excess time for which the respondent was convicted

appears to be only twenty minutes.

5. In the result, I do not propose to pass any orders in this revision application.