

(1993) 10 GUJ CK 0032
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Harishbhai Veljibhai Thakker and Another

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29(2)
Factories Act, 1948 — Section 61, 94, 94

Citation : (1994) 1 GLR 404

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—What indeed would be the appropriate forum to initiate criminal proceedings against the accused under the Factories Act, 1948, - "whether the Court of learned Chief Judicial Magistrate or Court of the learned Magistrate First Class, wherein in cases the complainant while specifically alleging contravention of certain provisions of the Act as well as Rules made thereunder, also alleges that the accused was previously found to have been convicted and sentenced for the contravention of very same provision and that repetition of such offence invites punishment u/s 94 of the said Act, which provides over and above other things, imposition of fine of not less than ten thousand rupees, etc. etc."? This in short is the question which has arisen for consideration in this appeal in the back-drop of following facts and circumstances.

2. According to Mr. D.M. Daberiya, Factory Inspector, Vadodara, on 21-7-1989, when he visited the factory, viz., "Duck Lami Plast" situated at A-1-924, G.I.D.C., Makarpura, Vadodara, Mr. Harish Veljibhai Thakker, occupier of the said factory was found present there. On making inquiry, it came to his notice that one adult worker, namely, Karsanbhai Shukalbhai Prajapati was found working in the Lamination Plant. On further inquiry, it was also learnt that his name as well as names of some other adult workers were not shown in the Register, which was in clear violation of Section 62(1)(a) of the Factories Act. On the basis of these facts Factory Inspector Mr. Daberiya filed a complaint before the learned Magistrate, Vadodara. In the said complaint, it was further alleged that the respondent was

previously convicted and sentenced to pay fine of Rs. 40/- for the very same offence in C.C. No. 2660 of 1989. Not only that but it was further pointed out in the said complaint that since the respondent had repeated the very same offence, he was liable to be punished u/s 94 of the Factories Act wherein over and above other things, minimum sentence prescribed is fine of Rs. 10,000/-. Thereafter, in response to the summons issued, the respondent appeared before the Court and submitted a purshis Exh. 2 dated 9-3-1990 stating therein to the effect that (i) the worker Karsanbhai Prajapati had come to work for a limited period, and therefore, inadvertently his name could not be mentioned in the register, (ii) he had no bad intention, (iii) his factory was a small unit not having more workers, (iv) he was also facing financial crisis, (v) he was unable to pay fine of Rs. 10,000/- as stated in the complaint, and (vi) he belong to business community, and therefore, in order to avoid frequent visits of the Court, he prayed for lenient view and mercy in the matter of sentence.

3. The learned Magistrate accepting the aforesaid purshis, convicted and sentenced the respondent for the alleged offence punishable u/s 61(1)(a) read with Section 94 of the Factories Act, 1948 and sentenced him to pay fine of Rs. 2500/- and in default to undergo S.I. for 15 days, giving rise to the present criminal appeal for enhancement of the sentence.

4. On going through the complaint and the purshis Exh. 2 filed by the respondent-accused, it cannot be said that the same amounts to plea of guilty. In fact, when any accused hopefully expecting that he would be let-off with the lighter sentence, and accordingly in the process while pleading guilty, he also cleverly put forward some more facts and circumstances either by way of explaining away or justifying the alleged wrong committed by him in order to further influence the mental process of the learned Magistrate while awarding the sentence, then such a composite plea of guilty and innocence cannot be said to be the "plea of guilty" at all. This view is already taken by this Court in a judgment rendered in case of State of Gujarat Vs. Dinesh Chandra Harjibhai Patel, . When such is the situation, there is no alternative left with this Court but to remand this matter for de-novo trial. Moreover, this matter does not simply rest here as in the complaint, it has been further specifically alleged that the respondent was previously convicted for the very same offence and in that view of the matter, he was liable to be punished u/s 94 of the Factories Act, 1948.

5. Now, on perusal of Section 94 of the Factories Act, it is very clear that for the repeated offence involving contravention of the same provision, the accused shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine, which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both, provided that the Court may for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees. Thus, taking into consideration the fact that the sentence prescribed is not less than ten thousand rupees, by virtue of Section 29(2) of the Criminal Procedure Code, 1973, the

learned J.M.F.C. would not have any jurisdiction to impose a fine exceeding five thousand rupees. The said Section 29 of the Code reads as under:

29. Sentences which Magistrates may pass:

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees or both.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate and the powers of the Court of a Magistrate of the first class.

In this view of the matter, since it is alleged that the respondent was liable to be punished u/s 94 of the Act wherein the minimum sentence of fine of Rs. 10,000/- is provided, the complaint ought to have been filed before the learned Chief Judicial Magistrate, Vadodara who had jurisdiction to conduct trial of such cases. In case for whatever reasons, if such complaints are filed before the learned Magistrate First Class, then it shall be the duty of the learned Magistrate to forward the same to the learned Chief Judicial Magistrate of the concerned area who has jurisdiction to conduct the trial.

5.1 Turning to the facts of the instant case, it is indeed interesting to note that in the previous case bearing No. 2660 of 1989 the respondent-accused came to be sentenced to pay fine of Rs. 40/- only by judgment and order dated 4-7-1989 and within a short span of five months, the respondent-accused is found to have repeated the very same offence. Under such circumstances inflicting fine of Rs. 40/- is too trivial to deter such offenders under the Factories Act from repeating offences under the said Act. Further, violation of Section 61 by no stretch of imagination can be said to be trivial or technical, and therefore, the same is required to be considered quite seriously. Still however, for the reasons difficult to comprehend, the interest of working class is as if thrown, to wind and undesirable mercy to the exploiters of the weaker section of the Society is evinced, under one pretext or the other. If such practice continues by no less an authority than the Court itself, then one would not be surprised if it is alleged that "the law has started losing its respect in the Society, it is only because of the unconcerned approach of some of the Courts in not holding the honour, dignity and the object underlying the law". Thus, every learned Magistrate trying the Factories Act matters will have to understand this aspect at the earliest, in order to maintain the faith of people in the administration of justice.

6. In the result, this appeal for enhancement of sentence fails and is dismissed. The matter is remanded to the learned Chief Judicial Magistrate, Vadodara for de-novo trial in accordance with law. Mr. K. C. Shah, the learned A.P.P. is hereby directed to inform the Factory Inspector to appear before the learned Chief Judicial Magistrate. Vadodara on 2nd November, 1993 and take further date for the trial and serve direct notice on the respondent. The learned Chief Judicial Magistrate is further directed to decide the case in the light of directions given in the case of State of Gujarat Vs. C.K. Patel, .

7. The learned A.P.P. is directed to forward a copy of this judgment f to (i) The Secretary, Legal Department, (ii) The Secretary, Labour & Industries Department, Gandhinagar with a view to see that every Factory Inspector is immediately made aware about the Forum to file complaints in cases of repetition of offence where the accused is liable to be punished u/s 94 of the Factories Act for the enhanced penalty.