
(1990) 03 BOM CK 0024

In the Bombay High Court

Case No : Criminal Appeal No"s. 451 to 453 of 1978

State of Maharashtra

APPELLANT

Vs

Sampatlal Mensukh Bothara

RESPONDENT

Date of Decision : 05-03-1990

Acts Referred:

Factories Act, 1948 — Section 62, 68, 7, 83, 92

Citation : (1992) 1 LLJ 107

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Judgement

1. The State has come in appeal against the order of sentence passed the present Respondent, the Original Accused, in Summary Cases Nos. 4073/77, 4071/77 and 4072/77 for enhancement of the Sentence of fine of Rs. 5/- levied by the learned Chief Judicial Magistrate, Ahmednagar.

As in all these three appeals, the Appellant-Accused is the same and the contravention alleged is also the same, they are being disposed of by common judgment.

Briefly stated facts giving rise to these three appeals are that on February 9, 1977, Factory Inspector visited Bothara Engineering Works, a factory belonging to the present Respondent and found that Jaywant Pund, Sudhakar Shinde and Murlidhar Karale were working in the factory but their names were not entered as workers in the register as required by Section 62 of the Factories Act. The Factory Inspector, therefore, filed three separate complaints in respect of each of the workers in the Court. The learned Chief Judicial Magistrate on Strength of the evidence before him found that the Complainant proved that the present Respondent had contravened the provisions of Section 62 of the Factories Act and, therefore, have committed an offence punishable u/s 92 of the Factories Act and accordingly convicted the present respondent. The learned Chief Judicial Magistrate, however sentenced him only to pay a fine of Rs. 5/- in each case holding that it was a technical offence. Being aggrieved by the said order, the

State has come in appeal seeking to enhance the sentence awarded to the present Respondent.

4. On behalf of the State, it is very strenuously contended that having found that having found the accused guilty of contravention of Section 62 it was an error to allow the Accused to go with a light punishment of Rs. 5/- as a fine in case. It was contended that the learned Chief Judicial Magistrate was in error when he thought or considered that it was a technical offence. Now it is true that the contravention though apparently appears to be only a technical one, really has far reaching consequences. One must keep in mind that in the legislations in respect of labour the view that is required to be taken must take into consideration the far reaching effects of the same. The provisions of maintenance of a register of workers is made with a view that one should be able to ascertain as to how many workers were being employed by the factory as on the number of labourers employed by the factory, number of legislations become applicable. Therefore, there is bound to be some temptation of not maintaining proper records of engagement of labourers or workers so that the other legislations, which impose onerous duties on the occupier of the Factory, do not become applicable. In view of this, the learned Additional Public Prosecutor appearing for the State is right in saying that the Lower Court was in error when considering that the offence was a mere technical one. Now it may be that in matter which originated in 1978, today in 1990 it may not be even desirable to enhance the sentence because of lapse of such a considerable period. But at the same it must be said that the sentence that was passed by the Trial Court was only a fleabite sentence and the Lower Court was in error in taking a lenient view in the matter.

5. However, as the State has come in appeal, the Respondent-Accused gets a chance of contending that his conviction itself is bad in law, and rightly so the Respondent-Accused has availed of this opportunity and has contended before me that on the material that was before the Lower Court the conviction itself cannot be sustained. It was contended that as per Section 62 the liability to maintain the register is imposed on the management and admittedly the present Respondent is not a Manager and is an occupier and, therefore, the contravention, if any, has been committed it is not liability of the present respondent. In support of his contention, reliance is placed on ruling reported in State Government Vs. Maganbhai, , where in it was held that an occupier will be liable for contravention of any the provisions of the Act or rules if the responsibility for observing the provisions has not been imposed on some other person. If specific duty is laid on a particular person. If specific duty is laid on a particular person, the responsibility for the breach will be his. The obligation to maintain the registers is imposed on a and not on an occupier. An occupier cannot, therefor, be held liable for the failure of the manager to comply with the requirements of Sections 62 and 83 and Rule 91. The occupier cannot be said to have a guilty mind when he is not charged with the duty of maintaining the registers. It is also clear that as per Section 7 occupier has to give a notice to the Chief Inspector of Factories before he begins to occupy or use any premises as a

factory and the said notice is required to contain number of particulars including the name of the manager of the factory. Therefore, there is an obligation on the occupier to intimate the name of the manager of the factory. In the present case, the Complainant, it appears, had tried to rely on Exhibit 8 to show that the present Respondent is the Occupier of the factory. In his evidence also he was stated that he relied on Exhibit 8 only to show that the Accused was the Manager and the occupier. However he had to admit that Exhibit 8 did not disclose the name of the Manager as of the Accused. Unfortunately, Exhibit 8 is not in the records of the Lower Court, However it is definitely clear from evidence of the Complainant himself that the the name of the Accused is not shown as Manager in Exhibit 8. Under these circumstances, unless it could be shown that the present Respondent had also notified his name in the said notice to the Factory Inspector that he was the manager of the factory, he cannot be held responsible for the liability imposed upon the Manager as per Section 62 of the Factories Act. Hence the conviction of the Respondent u/s 68 read with Sec. 92 of the Factories Act itself is not sustainable. In the result, the appeals of the State in all the three matters will fail and on the other hand the Respondent will have to be acquitted. Hence the order.

The State appeals fail and the Accused, i.e. the present Respondent in all three cases, is acquitted of the offence for which he was convicted. Fine if recovered be refunded to the Accused.