

(1988) 11 BOM CK 0059
In the Bombay High Court
Case No : Criminal Appeal No. 26/88

State of Maharashtra

APPELLANT

Vs

V.S. Raghavan, Manager, Lorcom Factory, Chikalthana,
Aurangabad

RESPONDENT

Date of Decision : 17-11-1988

Acts Referred:

Factories Act, 1948 — Section 101, 2, 58, 58(1), 92

Citation : (1989) 3 BomCR 55 : (1989) 58 FLR 293 : (1989) 2 LLJ 427 : (1989) MhLj 828

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Judgement

1. This appeal is filed by the State against the respondent-accused who is Manager of Lorcom Factory, Chikalthana, Aurangabad.

2. The complaint was filed against the respondent accused for contravention of provision of Section 58(1) of the Factories Act made punishable u/s 92 of the said Act. The learned Trial Judge acquitted the respondent on the ground that the occupier of the factory is not made accused in the present case. The prosecution is launched only against the respondent who is Manager of the factory. As the occupier is not made accused, the learned Trial Judge held that such a prosecution in view of the provisions of Section 92 of the Factories Act is not proper and hence acquitted the respondent-accused.

3. Shri Patil, learned A.P.P. for the State, contended that the provisions of Section 92 are not properly appreciated and the prosecution of Manager alone for contravention of provisions of Section 58 of the Act is possible.

4. The provisions of section 92 of the Act relate to the penalties and the procedure therefor. It provides as follows -

"Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any

of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two months or with fine which may extend to (one lakh rupees) or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued...."

5. Shri Marlapalle, appearing for the respondent, contended that the learned Trial Judge was right in acquitting the respondent-accused as Section 92 provides for a joint prosecution of occupier and Manager and there can be no prosecution of the Manager alone. Admittedly the occupier is not made accused in the proceedings and, therefore, the learned Trial Judge was right in passing an order of acquittal in favour of the accused. He invited my attention to the other provisions of the Act to contend that Section 92 of the Act provides for joint trial and Manager alone cannot be prosecuted. He invited my attention to the definition of occupier in Section 2(n) and also to the provisions of Section 101 of the said Act which according to him govern the interpretation of Section 92 of the Act. He also contended that the provisions of Section 92 are beneficial provisions made by the legislation with social approach and the whole purpose of the object of introduction of Section 92 will be lost if the occupiers are let free and merely the Managers are allowed to be prosecuted.

6. While considering the provisions of Section 92, the other connected provisions will have to be taken into consideration. Section 92 deals with offences by workers. Sub-section 2 of Section 97 provides that where a worker is convicted of an offence punishable under sub-section (1), the occupier or Manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention. Similarly Section 101 provides for exemption of occupier or Manager from liability in certain cases. The opening words of Section 101 reads thus -

"Where the occupier or Manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than 3 clear days" notice of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, etc."

It is not disputed that Section 92 is the only section which provides for punishment for offences under this Act.

7. The provisions of Section 101 have, therefore, a definite bearing on the provisions of Section 92 of the Act because Section 101 provides for exemption of occupier or Manager from liability in certain cases which are punishable u/s 92 of the Act. It is true that Section 92 provides that if there is any contravention of any of the provisions of the Act or any rule made thereunder or of any order in

writing given thereunder, the occupier and Manager of the factory shall each be guilty of an offence and punishable with imprisonment. The use of the words - the occupier and Manager of the factory shall each be guilty of an offence and punishable with imprisonment - relate to the guilty and the punishment but does not indicate that the prosecution u/s 92 must necessarily be both the occupier and Manager simultaneously. The provisions of Section 101 provide that "where the occupier or Manager of a factory is charged with an offence punishable under this Act". Thus, it is clear from these provisions that occupier or Manager of factory can be charged with an offence punishable under this Act. The words appearing in Section 92 to the effect that "the occupier and Manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or fine", relate to the guilt of the occupier and the Manager and punishment. It cannot be said that they also indicate that the prosecution u/s 92 should be a joint prosecution of the occupier and Manager or that they should be simultaneous prosecuted. In a given case, it may be that the Manager may be responsible for the offence so also the occupier. For the same offence both of them can be held guilty not necessarily arising out of the same of joint prosecution. Even if they are separately prosecuted, at the most it means even if one of them is prosecuted, it should not be open to other in another prosecution to contend that the real culprit is already convicted or held responsible. In spite of fixing of the criminal responsibility of one, it will be open for the prosecution to prosecute the other and to hold him responsible for the same act. To my mind, the provisions of Section 92 do not at all indicate that there shall be joint prosecution of occupier and Manager simultaneously and the prosecution cannot be launched against one of them only. The provisions of Section 92 enable to hold both of them guilty for an offence and provide for punishments whether in a joint prosecution or in a prosecution separately launched individually against occupier and/or Manager. This interpretation of provision of Section 92 of the Act harmonises the wordings of the provisions of Section 101 of the Act because Section 101 provides that "where the occupier or Manager", it does not provide the occupier and Manager of factory is charged, but it refers charging of the occupier or Manager for an offence punishable under this Act and the only section which enables charging either occupier or Manager for an offence punishable under the Act is Section 92. In view of the provisions of Section 101 also it is clear that Section 92 can be invoked for charging occupier or Manager singly or even jointly. The prosecution cannot be said to be bad merely because it is launched against Manager or occupier alone.

8. Shri Marlapalle relied upon the decision of Allahabad High Court reported in 1976 Vol. 32 Indian Factories & Labour Reports, 350, to contend that joint and simultaneous prosecution is provided for u/s 92. The ratio laid down in this decision does not support this contention. There the question was whether the Directors of the company of factory can be proceeded with along with the Manager u/s 92 and it was held that in the case of company, the Director becomes the occupier and in that capacity he is liable to be prosecuted along

with the Manager of the factory. This meant to show that the Director shall be prosecuted alongwith the Manager. The ratio relates only to the fact that the Director of company can be prosecuted or is liable to be prosecuted along with the Manager of the factory. He has also relied upon decision of Division Bench of this Court in State Vs. Manager, Sutaria Automobiles, where the concept for "urgent repairs" came for consideration and interpretation and this Court has held that the object of the legislature must be borne in mind and the means adopted by the legislature in carrying out the object must be studied by reference to the provisions enacted in the behalf and in construing any provision regard must be had to the general consideration the failure to comply with these rules is made an offence and so if the expression is capable of two constructions in the context, the construction which is in favour of the accused should be adopted. On the other hand, if it appears that by adopting the construction for which the accused contends the relevant provisions of the Act themselves would be rendered nugatory, that is a factor which must expression. The legislation containing the material clause is undoubtedly a labour welfare legislation. Legislature has put this Act on the statue book for the purpose of protecting workmen engaged in factories and it cannot be disputed that provisions made in such a statute should ordinarily receive beneficent construction from the Courts. Relying on these observations of the Court, he contended that if the occupiers are allowed to let free without prosecution u/s 92, the Managers who are employees of the factories will suffer and the beneficial use of protecting the interest of the workmen will be lost of which the provisions of Section 92 are enacted. He had also relied upon two other authorities reported in 7. Bombay Law Reporter, 454 and 33 Bombay Law Reporter, 309. I fail to to understand as to how these two decisions help him for construing the provision of Section 92 regarding the prosecution the Manager with or without the occupier. In both these cases, the point at issue was not for consideration at all.

9. Shri Patil has rightly invited my attention to the decision of Supreme Court in John Douglas Keith Brown Vs. State of West Bengal, where though a joint prosecution was launched against the Manager and the factory but during the tendency of the trial the Manager was permitted to be deleted and the prosecution continued against the company alone. The continuation of the prosecution in the absence of the Manager was practically approved by the Supreme Court in that case. A reference must be made to the Division Bench decision reported in State Government Vs. Maganbhai, . Here also though the prosecution was initiated jointly, the court had observed that an occupier will liable for contravention of any of 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, the responsibility for the breach will be his and not of the occupier. So the person who is responsible for the breach alone is liable and the prosecution of such a person alone u/s 92 is possible.

10. If the prosecution feels that the responsibility lies for the breach only one the

Manager, the prosecution u/s 92 can proceed only against the Manager and it cannot be said that even in such event the occupier should also be made accused which will result in harassment of the occupier or in many cases of the Manager because even if the prosecuting feels occupier alone is responsible for the breach of the provisions of the Act, than the Manager will be unnecessarily dragged in the prosecution merely because if the provisions of Section 92 are construed to mean that a joint prosecution is contemplated in each and every case and neither the occupier nor the Manager can singly be prosecuted. The principle of vicarious liability is negatived by the Nagpur High Court in the above mentioned case even under the provisions of Section 92 of the Act.

11. The learned Trial Judge has acquitted the accused only on the ground that the occupier is not made accused in the present case. The evidence is neither considered nor any finding is recorded by the Trial Court regarding the responsibility of the accused or otherwise. In view of this, it will not be proper in this appeal to consider the evidence and fix the responsibility. I, therefore, remand the matter back to the learned Trial Judge to proceed with the trial of the accused-respondent. The respondent-accused will be at liberty to lead evidence if he so desires to show that he is not responsible or somebody else is responsible.

12. In the result, appeal allowed. The matter is remanded back to the Trial Court to decide the same afresh on merits.