
(1996) 01 RAJ CK 0038

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 164 of 1995

State of Rajasthan

APPELLANT

Vs

Vimla Devi (Smt.) and Another

RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

Factories Act, 1948 — Section 106, 92

Citation : (1998) 3 LLJ 1123 : (1996) 1 RLW 340 : (1996) 2 WLC 266 : (1996) 1 WLN 78

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : B.S. Bhati, G.A, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Heard learned Government Advocate Shri B.S. Bhati. The State of Rajasthan has filed this Leave to Appeal Application to file a Criminal Appeal against the judgment and order of acquittal passed by learned Chief Judicial Magistrate, Pali in Complaint Case No. 942/1989, whereby the learned Magistrate acquitted the respondents-accused for the offence punishable u/s 92 of the Factories Act.

2. Learned Government Advocate Shri B.S. Bhati vehemently submitted that the learned Magistrate was absolutely wrong in dismissing the complaint on the ground of delay. The period of limitation for filing complaint is 3 months as provided u/s 106 of the Factories Act. The learned Magistrate found that the report of the accident was received by the complainant on July 20, 1989 and he filed a complaint before the Court on October 24, 1989, means after the expiring period of limitation of 3 months. Shri B.S. Bhati submitted that mere receipt of the report is not sufficient. The Inspector has to proceed to the place of incident and investigate into the matter and after fully satisfying himself about the accident occurred, he had to file a complaint.

3. In this case, he investigated the place of accident on July 25, 1989 after receiving the report on July 20, 1989 and further recorded the statements of the workers on July 27, 1989, August 11, 1989 and August 14, 1989 and thereafter he lodged the complaint on October 24, 1989. Thus, the complaint was within 3 months. In support of his submission, Mr. Bhati has relied upon the judgment of the Supreme Court in case of P.D. Jambekar Vs. State of Gujarat, wherein the Supreme Court has clearly held that the Inspector cannot be said to have acquired knowledge of the commission of the offence when he received the report. This judgment of the Supreme Court clearly supports the submission made by the learned Government Advocate Shri Bhati. Therefore, the order of acquittal recorded by the Magistrate on the ground of filing] complaint after the expiry of period of limitation was required to be set aside. Thus, the learned Magistrate was wrong in acquitting the accused on the ground of filing complaint after expiry of the period of limitation. If this was only ground, then this Court would have straight away granted leave to appeal to file Criminal Appeal against the order of acquittal. But, the learned Magistrate has also acquitted the accused on merits. The learned Magistrate found that the complainant has admitted in his cross examination that the nip guard on the nip of pressure roller and cylinder roller of Zero Felt Machine was affixed at the time of accident, as per the statements made by co-workers before him. Not only this he also stated that when he visited the factory and inspected the machine, he found the nip guard was affixed in Zero Zero Felt Machine. Unfortunately, in this case the injured Kesa Ram himself has not examined for the best reasons known to the prosecution.

4. Under the circumstances, when the learned Magistrate has found the evidence of the complainant non-reliable and acquitted the accused, then in acquittal appeal this Court cannot interfere with such finding. Because the view taken by the learned Magistrate is reasonable and plausible, and it is well settled that when two views are possible and a view taken by the Court in favour of the accused is reasonable, then in acquittal appeal High Court will not interfere with such finding.

5. In view of the above discussion this leave to Appeal to file Criminal Appeal is dismissed.

6. Before parting with the judgment I must say that the learned Magistrate was not justified in making observation against the complainant and to order inquiry against the complainant for filing complaint late. Because as stated earlier the complainant had filed the complaint in time. Unfortunately, the judgment of the Supreme Court which has been cited before this Court, was not cited by the learned Advocate appearing for the complainant or by the complainant before the learned Magistrate. If that was pointed out before him, I am sure that the learned Magistrate would not have acquitted the accused on that ground and ordered inquiry against the complainant. Therefore, observations made by the learned Magistrate against the complainant for filing complaint late and his

direction to order inquiry against the complainant for filing complaint late are quashed.

7. With this observation, this Leave to Appeal is dismissed.

8. As the leave to Appeal is dismissed, the main Criminal Appeal is also dismissed.