

(1979) 10 AHC CK 0008
In the Allahabad High Court
Case No : Criminal Appeal No. 98 of 1974

State of U.P.

APPELLANT

Vs

Hari Shankar Agarwal

RESPONDENT

Date of Decision : 25-10-1979

Acts Referred:

Factories Act, 1948 — Section 2, 92
Companies Act, 1956 — Section 2

Citation : (1980) AWC 68

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Advocate : S.B. Jauhari, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Kapoor, J.—This appeal has been filed by the State against the order and judgment dated 26-9-73 of Sri V.K. Malhotra, Magistrate, 1st Class, Agra in Criminal Case No. 396 of 1973 acquitting the Respondent of the charge u/s 92 of the Factories Act. The Respondent Hari Shankar Agarwal was admittedly the occupier of the Factory M/S. Mittal Iron Foundry and Engineers, Agra. When the Factory Inspector inspected the factory on 27-3-73 he found certain irregularities as certain informations about the accidental death of a worker had not been sent to the Inspector, of the Factories. He also found that Form 9 was also incomplete.

2. A complaint was filed by the Factory Inspector against Hari Shankar Agrawal who was the occupier of that factory and against Sohan Lal who was the Manager. Sohan Lal admitted certain irregularities having been committed. His case was separated. Respondent Hari Shankar Agarwal, however, took the plea that he had entrusted all the affairs to the Manager Sohan Lal Agarwal and he alone was liable to send such information to the authorities concerned and; as such, Hari Shankar Agarwal himself disowned the liability for the offence.

3. The learned Magistrate accepted the defence plea and arrived at the

conclusion that u/s 2(n) of the Factories Act the Manager shall be deemed to be the occupier of the factory as well. In his judgment he has observed that the occupier had filed Form No. 4 which was prescribed under the Factories Act. That form is not on the record of this case. The learned Magistrate also referred to some ruling cited and he observed that it was distinguishable. He has not even given the citation of that ruling.

4. The learned Counsel for the State has argued that the learned Magistrate got confused and did not draw a distinction between the managing agent and the manager of the factory. u/s 2(o) of the Factories Act it is provided that the "managing agent has the meaning assigned to it in the Indian Companies Act." Under the Indian Companies Act Section 2(xxv) managing agent has been defined while u/s 2(xxiv) manager has been defined. It is clearly provided that the manager is different from the managing agent. The managing agent is the incharge of the management of the company under the direct control with the company while the manager works as the manager under the superintendence, control and direction of the Board of Directors. u/s 2(n) the affairs of the factory can be entrusted to the managing agent and not to the manager. It was so held in the case of State of Uttar Pradesh Vs. K.K. Modi and Another, . Learned Counsel for the Respondent has placed reliance on the case of John Donald Mackenzie and Another Vs. The Chief Inspector of Factories, Bihar, Ranchi and Others, . In that case the Petitioner No. 1 described himself as the manager and occupier of the Bata Shoe Co. Factory at Digha in Bihar. Their Lordships referred to Section 2(n) of the Factories Act in that case and observed that it was possible to treat the managing agent as the occupier as the entire control had been entrusted to the managing agent. In the end their Lordships dismissed the petition with the observation that "in that case no attempt was made to show that the whole control of the factory was transferred to the manager either by execution of document or by passing a resolution." According to the learned Counsel for the Respondent in case it could have been shown that the control had been transferred to Mackenzie who described himself as the Manager, Hon"ble Supreme Court would have held that he was governed by the definition of the occupier u/s 2(n), although he had described himself only as the Manager. It is clear from the observation of Hon. Supreme Court that the whole control of the factory was to be transferred to Mackenzie. In other words, he had to satisfy the definition of the managing agent as given under the Factories Act.

5. In the present case Sohan Lal has been described as the Manager. He had also pleaded guilty as manager. There is nothing to show that he was appointed as the managing agent for the factory. The authority of this Court reported in 1968 Allahabad 197 (supra) applies on all fours to the facts of the present case. I, respectfully, agree with the view taken by the learned Judge in that case. The learned Magistrate has obviously misdirected himself in equating the word "manager" with "managing agent."

6. In the result the appeal is allowed. The order of acquittal dated 26-9-1973 is

let aside. The case is sent back to the trial court for retrial according to law. It is, however, made dear that it will still be open to the Respondent to show that Sohan Lal had not only been appointed as manager but had also been appointed as the managing agent as contemplated u/s 2(xxiv) of the Companies Act.