

(1961) 01 KAR CK 0008
In the Karnataka High Court

The State of Mysore

APPELLANT

Vs

K. Srinivasa Upadya

RESPONDENT

Date of Decision : 11-01-1961

Acts Referred:

Factories Act, 1948 — Section 2 (m), 85, 92

Citation : (1961) CriLJ 128

Hon'ble Judges : K.S. Hegde, J;Ahmed Ali Khan, J

Bench : Division Bench

Judgement

1. Both these appeals are connected appeals. Sri K. Srinivasa Upadya, the Manager of the Siddartha Printers, is the respondent in both these appeals. A common question of law arises in these appeals, and it is convenient to deal with it in one judgment.

2. The Inspector of Factories at Mangalore laid two complaints against the respondent under Sec. 92 of the Factories Act, 1948. It is that the premises known as "Siddartha Printers" is an establishment that had been notified u/s 85(1) of the Factories Act, 1948, and the provisions of Sections 1 to 11, 18, 42, 51 to 56, 61 to 63, 67 to 73, 92 to 115, 117 and 118 of the above Act had been made applicable to the same. The accused is the Occupier and Manager of that establishment. The complaints relate to contraventions of certain provisions of the Factories Act and the Rules framed thereunder.

3. Both the cases were tried by the learned District Magistrate, South Kanara and the accused acquitted.

4. The learned District Magistrate did not go into the merits of the Cases, but dismissed the complaints in question on the ground that the Notification of the Government notifying the premises in question as a Factory is ultra vires of its powers. The learned District Magistrate observed:

Thus it is evident that if there are less than ten workers and if it is worked with the aid of power, it is not a Factory. But the State Government has got power u/s

85 of the Factories Act to declare a place where a manufacturing process is carried on, the number of persons employed is less than ten when working with the aid of power and less than twenty when working without the aid of power. So, the State Govt. cannot declare a place as Factory under the powers vested in them in which the number of persons is less than ten if working without the aid of power. The Government can declare certain place as Factory under this section only when the manufacturing process is carried on with the aid of power and the number of persons employed is less than 10.

In the present case the manufacturing process is not carried on with the aid of power and the number of workers therein is only four; so if the Government of Madras has in its Notification dated 24-10-1956 declared the Siddhartha Printers as Factory it is illegal and ultra vires, the contravention of which Cannot be questioned by the Factories Department; Section 85 of the Factories Act does not Confer any power on the State Government to declare premises in which the power is not used and less than ten workers are working. Hence the accused is not bound to comply with the Madras Factories Rules, and he is not liable to any punishment.

Hence the question for consideration is as to what is the true scope of Section 85.

5. A "Factory" is defined in the Factories Act in Section 2(m) as follows:

"Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on. without the aid of power, or is ordinarily so carried on,

It is clear that the premises with which we are dealing in this case is not a "factory" as defined in Section 2(m). But u/s 85 of the Factories Act, the State Government is empowered to notify certain premises as Factories, even though they do not come within the definition found in Section 2(m). Section 85 reads:

The State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that:

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner

only with the aid of his family.

2. After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

EXPLANATION:- For the purposes of this section "owner" shall include a lessee or mortgagee with possession of the premises.

It is contended by Sri K. R. D. Karant that the State Government cannot declare a place as "Factory" under the powers vested in it, in which the number of persons is less than 10, if working without the aid of power. In short, he reiterates the reasoning of the trial court. We do not think that this contention is correct. On a plain reading of Section 85 it is clear that the State Government is empowered to declare any premises working without the aid of power as a "factory" if the number of workers employed therein is less than 20. It is undoubtedly true as contended by Sri Karant that Section 85 is not happily worded. It would have been better if the Legislature had said that the State Government has power to notify any premises as a "Factory", notwithstanding the definition contained in Section 2(m). But, we do not see any ambiguity in Section 85. In our view, that section is plain enough and the same does not lend itself to the interpretation contended for by Sri K. R. D. Karant.

6. In the result, both these appeals are allowed; the order of acquittal passed by the learned District Magistrate is set aside and the cases remanded to the trial Court for disposal according to law.