
(2000) 12 BOM CK 0017
In the Bombay High Court
Case No : Criminal W.P. No. 148 of 1995

Vinod B. Chabriya

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29, 29(2), 4
Factories Act, 1948 — Section 92
Maharashtra Factories Rules, 1963 — Rule 4(4)

Citation : (2001) ALLMR(Cri) 270 : (2001) 3 BomCR 541 : (2001) 91 FLR 795 :
(2002) 1 LLJ 731 : (2001) 2 MhLj 237

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : Shriram Shirsat, for Raja Thakare and A.M. Chimalkar, for the Appellant; B.R. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Parkar, J.—By this petition the order of the Additional Sessions Judge, Greater Bombay passed on January 17, 1995 confirming the order of Metropolitan Magistrate's 29th Court, Dadar, Bombay and dismissing the Criminal Appeal No. 223 of 1994 filed by the petitioner is challenged. The petitioner was found by the Inspector of Factories carrying on manufacturing process with the aid of power in the form of electricity and 18 labourers manufacturing playing cards on September 5, 1992 when the petitioner's factory was inspected by the Inspector of Factories. The petitioner was, therefore, prosecuted for offence u/s 92 of the Factories Act, 1948 read with Rule 4(4) of the Maharashtra Factories Rules, 1963. The accused pleaded guilty and prayed for leniency before the Magistrate. It seems that the learned Magistrate accepted the plea of guilt of the petitioner and sentenced him to pay a fine of Rs. 25,000/- in default to suffer RI for eight months by order dated August 24, 1994, Copy of the said order is not annexed to this petition. The petitioner challenged the said order in Criminal Appeal No. 223 of 1994 before the Sessions Court, Greater Bombay on the ground that the Magistrate having power to impose sentence of

fine upto Rs. 5000/- exceeded his jurisdiction.

2. It is not in dispute that u/s 29(2) of Cri.P.C. read with Sub-section (4) thereof there is a limitation on the power of the Metropolitan Magistrate to pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding five thousand rupees, or both. In case the Magistrate is of the opinion that the accused found guilty by him ought to receive punishment more severe than that Magistrate is empowered to inflict, he can record his opinion and submit the proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate u/s 325 of Cri.P.C. The Chief Judicial Magistrate on being submitted the proceedings by any Metropolitan Magistrate may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence and pass appropriate judgment, sentence or order as he thinks fit in accordance with law.

3. u/s 92 of the Factories Act, under which the petitioner was prosecuted, if the accused is found guilty he can be punished with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both for the first offence. Thus a sentence of fine upto one lakh rupees could have been imposed on the petitioner in this case. Since the Magistrate otherwise had no power by virtue of Section 29 of Cri.P.C. to impose fine exceeding five thousand rupees he could adopt the course open to him u/s 325 of Cri.P.C. expressing his opinion that the petitioner-accused ought to receive punishment of fine exceeding a sum of Rs. 5,000/- which he was empowered to impose. Instead of adopting this course the learned Magistrate himself imposed fine of Rs. 25,000/- which was beyond his powers vested in him u/s 29 of Cri. P.C.

4. The Sessions Court in appeal, however, had upheld the order of Magistrate on the ground that this being an offence other than under I.P.C. the restriction imposed on the powers of the Magistrate u/s 29 of Cri P.C. was not applicable. Reliance was placed on Section 4 of Cri.P.C. Under Sub-section (2) of Section 4 all offences under any other law i.e. other than under I.P.C. are to be investigated, inquired into, tried and otherwise dealt with according to the provisions of Cri.P.C. but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 4 of Cri.P.C. provides as follows:

"4. Trial of offences under the Indian Penal Code and Other laws. -(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."

5. The power of the Magistrate to impose sentence cannot be said to be covered

by the wording like investigating, inquiring into and trying used in the above Sub-section (2). In my view the wording used, "otherwise dealing with such offences", cannot be read to widen the powers of the Magistrate to impose higher sentence or higher amount of fine than the Magistrate is otherwise empowered under the provisions of Cri.P.C. If that had been the intention underlying Sub-section (2) of Section 4 of Cri.P.C. it would have been expressly provided for.

6. In this respect reliance is placed on behalf of the petitioner-accused on. the recent decision of the Supreme Court in the case of K. Bhaskaran v. Sankaran Vaidhvan Balan and Anr. 2000 (5) Bom.C.R. (SC) 178. That was a case u/s 138 of Negotiable Instruments Act where the High Court imposed fine of Rs. 1 lakh which exceeded the limit of five thousand rupees which the Magistrate could impose by way of fine. The Supreme Court held that even the High Court could not have imposed sentence of fine higher than the maximum sentence that could be awarded by the Magistrate. The order of higher sentence awarded by the High Court was consequently set aside and the matter was remanded back to the Trial Court to pass appropriate orders on the question of sentence and the compensation, if any payable to the complainant. Thus the Supreme Court also was considering the powers to be exercised by the Magistrate under special enactment like Negotiable Instruments Act,

7. In my view the fine amount of Rs. 25,000/- awarded by the Magistrate in the instant case and confirmed by the Sessions Court is liable to be quashed as the order of fine imposed by the Magistrate is in excess of his jurisdiction.

8. In the result, while I uphold the order of conviction of the petitioner u/s 92 of the Factories Act. 1948 read with Rule 4(4) of the Maharashtra Factories Rules, 1963, I set aside the sentence awarded by the learned Metropolitan Magistrate which was confirmed by the Sessions Court and remand the matter back to the Trial Court for passing appropriate orders in accordance with law as regards sentence. Rule is made absolute accordingly.