

John Douglas Keith Brown

Vs

State of West Bengal

Criminal Appeal No. 66 of 1962

(Raghuvar Dayal, J. R. Mudholkar JJ)

17.12.1964

JUDGMENT

MUDHOLKAR, J. -

The only point urged in this appeal from a decision of the High Court at Calcutta is whether the occupier of a factory is liable to penalty under section 92 of the Factories Act, 1948 (hereafter referred to as the Act) for the contravention of the provisions of section 52 of the Act.

The appellant is the Managing Director of Jardine Henderson, Ltd., Calcutta, who are the managing agents of the Howrah Mills Company, Ltd., of Ramkristopur, District Howrah and as such "occupiers" of the Mills within the definition of the term contained in section 2(n) of the Act. One J. P. Bell was the Manager of the Mills in June, 1957. Both the appellant and Bell were charged with an offence under section 92 of the Act read with section 52. It would appear, however, that during the pendency of the trial the Manager was permitted to proceed to England and the prosecution continued against the appellant alone. He was convicted of the offence and sentenced to pay a fine of Rs. 400/- by the Sub-Divisional Magistrate, Howrah. His appeal therefrom was dismissed by the Sessions Judge, Howrah. Similarly, the revision application preferred by him before the High Court was also dismissed. However, the High Court granted him a certificate to the effect that the case was fit for appeal to this Court and that is how the matter has come up before us.

Reliance was placed before us on behalf of the appellant upon the decision in State Government of Madhya Pradesh v. Maganbhai Dasaibhai (A.I.R. 1954 Nag. 41.) to which I was a party in support of the contention that where a duty is cast upon a Manager of a factory to perform a particular act his omission to do so will not render the occupier. According to the learned counsel the omission of the appellant is that under cl. (b) of sub-section (1) of section 52 of the Act a duty is cast upon the manager of the factory to give a notice to the appropriate authority of a change in the weekly holiday from the first day of the week to any other day and not upon the occupier. According to learned counsel the omission of the manager to give such notice would not render the occupier liable in any way unless it is shown that there was any connivance on his part of a breach of duty by the manager. This, it is contended, must necessarily imply that unless the occupier had the mens rea to contravene the provisions of section 52(1) of the Act he would not be liable for the contravention. In the absence of any evidence to the effect that the appellant knew of the omission and yet connived at it his conviction and sentence ought, therefore, to be quashed.

Sub-section (1) of section 52 reads thus :

"No adult worker shall be required or allowed to work in a factory on the first day of

the week (hereinafter referred to as the said day), unless -

(a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

(b) the manager of the factory has, before the said day or the substituted day under clause (a) whichever is earlier, -

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which in to be substituted, and

(ii) displayed a notice to that effect in the factory :

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day."

The opening words of this sub-section indicate a prohibition from requiring or permitting an adult worker to work in a factory on the first day of the week. The prohibition is, however, lifted if steps are taken under cls. (a) and (b) of that section. A perusal of cl. (b) makes it abundantly clear that what is required to be done thereunder, that is to say, to give and display a notice is only for the purpose of securing an exemption from the prohibition contained in the opening part of section 52 of the Act. Clause (b) cannot, therefore, be likened to some other provisions of the Act which impose a positive duty upon the Manager to do something. The prohibition contained in the opening words of this sub-section is general and is not confined to the Manager. It would, therefore, follow that where something is done in breach of the prohibition enacted by sub-section (1) of section 52 both the Manager as well as the occupier will be liable to the penalties prescribed in that section.

We may also point out that exemption from compliance with the provisions of section 52 was refused by the Chief Inspector of Factories as would be clear from the second para of his reply dated April 8, 1957 to the Manager. It runs thus :

"It is, however, pointed out that instead of employing workers of C Shift from Sunday evenings, it would be advisable to employ them on Saturday evenings. The work done by these workers after midnight on Saturdays which would be continued up to the following morning will be considered towards the work done on Saturdays. In that case, submission of notice under section 52 of the Act would not be necessary."

That being the position, we would have had an occasion to consider Maganbhai case (A.I.R. 1954 Nag. 41.) if it were the appellant's case that the weekly holiday had been altered without his knowledge or consent. But that is not so. Moreover, there is ample material to show that what the manager did was within the full knowledge of the appellant and, presumably, was also with his consent. In this connection we may point out that on January 18, 1957 the Manager of the Mills sent a letter to the Chief Inspector of Factories which runs thus :

"HOWRAH MILLS COMPANY LTD.

# Howrah, West Bengal, 18th January, 1957. Ref. No. G.12/4968 The Chief Inspector of Factories, New Secretariat Building, Calcutta.##

Dear Sir,

We request your permission to operate the batching to winding departments in No. 1 Mill, as shown on the attached sheet with effect from Sunday the 27th January, 1957.

An early reply would be appreciated.

It will be noted that all shifts will then work 48 hours per week.

# Yours faithfully, Sd/- J. P. Bell Mill Manager.###

A copy of this letter was sent to M/s. Jardine Henderson Ltd., Calcutta of which the appellant is admittedly the Managing Director. From the letter of the same date addressed to the Manager by the General Secretary of Howrah Jute Mills Karmachari Sangha it would appear that the workers categorically refused to work according to the schedule proposed by the Mill Manager. The Sangh, however, proposed alternative working hours for the "C" shift and there it is suggested that the workers would work on Sunday from 8.30 P.M. to 6.00 A.M. This schedule was also accepted by the National Union of Jute Workers to which some of the workmen in the Mills belong. This would appear from the letter of its Joint Secretary, dated January 21, 1957. On February 5, 1957 the Mill Manager wrote another letter to the Chief Inspector of Factories requesting for approval of the new Schedule of working hours. It may be mentioned that even in the original schedule of working hours which is appended to the letter of January 18, 1957 by the Mill Manager the starting time of the first shift was also 8.30 P.M. on Sunday. On February 9, 1957 the Chief Inspector of Factories asked the Mill Manager to forward the resolution of the Works Committee of the Factory or other documents to show that the workers had agreed to work in the factory at 8.30 P.M. on Sundays. The Manager's reply to it was as follows :-

"Dear sir,

Re : Treble shift working in No. 1 Mill.

With reference to your letter No. 818 dated 9th February 1957 we forward herewith as desired by you two original letters with one true copy of each from the General Secretary of Howrah (Jute) Mills Karmachari Sangha and Joint Secretary of National Union of Jute Workers requesting the management to adopt the existing working hours of the "C" shift in No. 1 Mill.

We trust this will be found to be in order and would request you to kindly return the original letters after your perusal.

# Yours faithfully, J. P. Bell Mill Manager.###

A copy of this letter was also sent to M/s. Jardine Henderson Ltd. The fact that copies of letters of January 18, 1957 and February 18, 1957 were sent to Jardine Henderson Ltd., would fix the occupier i.e., the appellant before us, with the knowledge of what the Manager had proposed to do. Therefore, quite apart from the fact that as the Managing Director of Jardine Henderson Ltd. who were themselves the Managing Agents of the Howrah Mills, the appellant must be deemed to have known what was being done by the Manager of the Mills. We have positive evidence of the fact that the Manager had apprised him of what he was proposing to do. The appellant took no steps to restrain the Manager from putting the new schedule in operation which was in itself in violation of

the opening words of section 52. We may further point out that what the provisions of section 52(1)(a) and (b) permit is to grant exemptions to specified workmen from the operation of the prohibition enacted in section 52 from working in factories on weekly holidays. No general permission can be granted under cls. (a) and (b) of sub-section (1) of section 52 for altering the day of the weekly holiday so as to cover all the workmen. Therefore, upon the proper construction of the provisions it is clear that whenever workers are required (or are permitted) to work on a weekly holiday the specific permission of the Chief Inspector of Factories in respect of each and every worker who is required to work on such a day should be obtained. That being the provision of law the occupier must be deemed to have known it. Being duly apprised of the fact that the Mill Manager was seeking to start the "C" shift from 8.30 P.M. On Sunday without specifically mentioning the names of those workmen who had to work in that shift he was doing something which was not within the purview of cls. (a) and (b) of sub-section (1) of section 52. Of this fact the occupier had actual knowledge and, therefore, he must be held guilty of the contravention of the provisions of section 52 of the Act.

The appeal is, therefore, dismissed.

Appeal dismissed.

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