

State of Maharashtra

Vs

Jamnabhai Purshottam Assar

Criminal Appeal No. 234 of 1964

(M. Hindayatullah, C. A. Vaidialingam JJ)

25.04.1967

JUDGMENT

HIDAYATULLAH, J.

The state of Maharashtra appeals against the judgment and order of the High Court of Bombay dated November 8, 1963 by which the High Court set aside the conviction of one Purshottam Ranchhoddas (since deceased and represented by his widow) and the fine imposed on him, under s. 92 of Factories Act, 1948 read with r. 3-A of the Bombay Factories Rules, 1950. Only one question arises in this appeal and it is the true construction of s. 85 of the Factories Act on which different views have been expressed by the High Court and the Court below.

Purshottamdas Ranchhoddas was a lessee from the Port Trust Bombay of an open plot of land. He established a factory called the Sunderdas Saw Mills. He closed down the factory on April 1, 1957. In July 1957, the ex-workers of the factory combined together to form five partnerships and by agreements of leave and licence, Purshottamdas Ranchhoddas gave in their use the premises of the factory and the machinery installed there. He himself did not join any of the five partnerships. The licensees were to pay a fixed sum for the use of the premises and the machines. It appears that some of the workers who were not taken in as partners complained that the closure of the factory was a shame. No action was taken on this complaint and there is no finding in this case that the closure of the factory was unreal.

In the year 1959, a prosecution was started under s. 92 of the Factories Act on the charge that the original licensee of the factory had not given notice under s. 7(1) of the start of the factory and had not renewed the licence under r. 4 of the Bombay Factories Rules, 1950. This ended in an acquittal since Government had not declared these premises as a factory under s. 85 of the Act, as it could, if the workers (although not employed by the owner) were working with the permission of or under an agreement with the owner. After such notification the premises are deemed to be a factory and the owner of the premises is deemed to be an occupier.

On September 29, 1960, a notification was issued under s. 85. That notification specified the places where the five partnerships were working as factory. On November 10, 1959, five separate complaints were filed for failure to take out five licences. The charge was that Purshottamdas Ranchhoddas was the owner of the factory and hence an occupier and the workmen were working under an agreement with him. The owner defended himself by stating that he had no control over the five firms and he could not enforce the provisions of the Factories Act. This defence was not accepted. Purshottamdas Ranchhoddas was held to have become an occupier by reason of the notification and, therefore, to be compelled to take out a licence under r. 3-A of the Bombay

Factories Rules. He was fined Rs. 201/- for the first offence and Rs. 25/- for the subsequent offences. Purshottamdas Ranchhoddas appealed but died during the pendency of the appeal. As the sentence was one of fine the appeal was continued by his legal representative under s. 431 of the Code of Criminal Procedure. The Bombay High Court set aside the conviction and fine and now the present appeal has been filed by the State of Maharashtra on special leave granted by this Court.

Under r. 3 of the Bombay Factories Rules, 1950 an application has to be made for the approval of a factory. Under r. 3A no occupier of a factory shall use any premises as a factory except under a licence obtained or renewed in accordance with the provisions of the rules. Section 85 grants power to the State Government to apply the Factories Act to certain premises which would otherwise not come within its purview. The section reads :

S. 85 : "Power to apply the Act to certain premises :- - (1) 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."

The present matter is said to be governed by s. 85(1) (ii). It is contended that in as much as a notification had issued, the owner of the premises (the present lessee of the premises namely Purshottamdas Ranchhoddas) became an occupier and thus liable for breach of the Factories Act and the Bombay Factories Rules since the premises were not licensed. The High Court, differing from the Presidency Magistrate, Mazgaon, held that s. 85(1) (ii) did not cover the present case. We think the High Court was right.

Under s. 2(n) of the Act an 'occupier' of a factory means the person who has the ultimate control over the affairs of the factory. If one goes by this definition, Purshottamdas Ranchhoddas was not an occupier if he had not the ultimate control over the affairs of the five partnership firms running the factory. But here the Factories Act gives special powers to the State Government under s. 85 quoted above. The notification of Government makes applicable all or any of the provisions of the Act to a place of manufacture notwithstanding that the persons working therein are not employed by the owner of the place wherein the manufacture is carried on provided the workers work with the permission of or under agreement with the owner. The condition precedent for the notification is that the persons working therein (a) work with permission of or (b) under agreement with the owner. The section does not contemplate a case where the owner hands over the factory on rent and the

workers work without his permission and not under agreement with him. In other words, if there is no connection between the owner and the workmen in the sense that they work without his permission and without an agreement with him, there would be no question of the liability of the owner as an occupier. In the present case the agreements show that the premises were given over to partnership firms in return for its periodic payment. The agreements show that the licensees of the premises bound themselves, to carry on the manufacturing process on their own and Purshottamdas Ranchhoddas had no control over them. The High Court has considered the clauses and come to the conclusion that the partnerships were independent of the control of the owner and the workers cannot be said to be working with his permission or under agreement with him. They had formed themselves into partnerships, taken on leave and licence the factory premises and started their own business. In these circumstances, the conditions for the notification hardly existed.

An attempt was made to prove from s. 93 that the definition of an occupier cannot apply to circumstances arising under s. 85 because s. 93 makes special provision for the responsibility of the owner. A glance at the provisions of s. 93 however discloses the opposite. It is not necessary to consider all the clauses, some of which may bind the owner but a clause like 93(3) (ii) clearly shows that the owner is liable only when he has control. The clause reads :

" (3) Where in any premises, independent of self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, of any contravention of the provisions of this Act in respect of -

(i).....

(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;....."

The difference between the owner of the premises and the occupier is at once visible. The liability of the occupier is patent but the liability of owner arises only when the machinery and plant is not specifically entrusted to the custody or use of an occupier. In the present case, for example, the machinery and plant has been so specifically entrusted to the custody or use of the various partnerships and the owner of the premises cannot be made liable.

As we said above the finding is not that the owner had indulged in a sham transaction. If the transaction are genuine and the five partnerships have taken over the factory to work independently, no question of the liability of the owner under s. 85(1) (ii) arises. It is possible that some obligations are still on the owner under s. 93 but that is another matter. Purshottamdas Ranchhoddas could not be made liable for not taking out the licence. The matter has been correctly approached by the High Court and we see no reason to interfere. The appeal fails and will be dismissed.

R. K. P. S. Appeal dismissed.

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