

SUPREME COURT OF INDIA

Hemant Madhusudan Nerurkar

Vs.

State of Jharkhand & Anr.

Crl.A.No.442 of 2016

(Jagdish Singh Khehar and C.Nagappan,JJ.,)

04.05.2016

JUDGMENT

Jagdish Singh Khehar, J.,

SLP(Crl) No. 6410/2015

1. Leave granted in both the special leave petitions.
2. The controversy arising for adjudication emerges from the provisions of the Factories Act, 1948 (hereinafter referred to as 'the Act'), and the Bihar Factories Rules, 1950 (as applicable to the State of Jharkhand). Insofar as the alleged violations committed by the appellants are concerned, a summary of the same stands recorded in paragraph 3 of the impugned judgment, which is extracted hereunder:

"3. It appears that an inspection carried out in the Growth Shop of M/s Tata Steel Limited on 14.09.2013 and in course of inspection, it was found that in Fabrication Yard No.1 about 100 numbers of contract labourers engaged. However, on inquiry, it came to the notice of the Inspecting Team that though the Management took overtime service from them, but in terms of Factories Rules,

1950 (Form-10A) overtime slip not provided to them, which is violative of Rule 103A of the Factories Rules, 1950. The Inspecting Team further found that the contract labourers were not provided with leave book in Form-15 of the Factories Rules, which is violative of Rule 88 of Jharkhand Factories Rules, 1950. It is further alleged that on inspection of canteen, the following shortcomings defected:

- (a) There is no partition for the female workers in the dining hall and service counter.
- (b) Doors and windows of the canteen are not fly proof.

(c) Menu Chart, rate and the names of members Canteen Managing Committee has not disclosed on the board.

(d) for washing of utensils no arrangement of hot water has been made."

3. Based on the above allegations, cognizance was taken against the occupier - Hemant Madhusudan Nerurkar (the appellant in Criminal Appeal No. 442 of 2016 - arising out of SLP(Criminal) No. 6410 of 2015), and the manager - Rupam Bhaduri (the appellant in Criminal Appeal No. 443 of 2016 - arising out of SLP(Criminal) No. 6406 of 2015).

4. Keeping in mind the apparently trivial issues, on which proceedings were taken out against the appellants, this Court on the first date of hearing, i.e., on 14.08.2015, recorded the following order:

"Heard Mr. K.V. Vishwanathan, learned senior counsel for the petitioner and Mr. Tapesh Kumar Singh, learned Standing Counsel for the State of Jharkhand. Having heard learned counsel for the parties, it is directed that the concerned Inspector shall verify the factory premises and find out whether the defects pointed out by him have been rectified or not. List the matter in the first week of September, 2015. The Registry is directed to reflect the name of Mr. Tapesh Kumar Singh in the Cause List on the next date of hearing."

5. A perusal of the above order reveals, that the entire purpose of passing the same, was to ensure that violations if any are rectified. It seems, that the aforesaid course of action was taken on the basis of the decision rendered by this Court in the *Delhi Cloth and General Mills Co. Ltd. vs. The Chief Commissioner, Delhi and others, reported in*¹ for the reason, that the appellants asserted that they needed to have been afforded an opportunity to cure the defects and irregularities found during the course of inspection, and only if they had failed to abide by the provisions of the Factories Act, 1948 and the Rules, it would be open to the authorities to proceed against the appellants. After 14.08.2015, the matter came up for consideration on 30.11.2015, on which date the motion Bench passed the following order:

"It is submitted by learned counsel for the petitioner that the petitioner has removed all the defects pertaining to infrastructure but two defects pertaining to contract labour are not yet been removed because the burden lies on the contractor under the law. Mr. Sinha, learned senior counsel along with Mr. Tapesh Kumar Singh, learned counsel for the State shall obtain instructions in this regard. Let the matter be listed in the third week of January, 2016."

6. A perusal of the above order reveals, that two defects pertaining to contract labour had not been removed. Insofar as the instant aspect of the matter is concerned, it has been the submission of the learned counsel for the appellants, that these two allegations leveled against the appellants, were the responsibility of the contractor who had provided the contract labour. And, not of the appellant.

7. Lastly, the matter came up for consideration on 27.4.2016, when this Court ordered as under:

"Learned counsel for the petitioner(s) states, that the violation with reference to the contract labourers, depicted in paragraph 3 of the impugned judgment, will be rectified within four days from today, and that the matter may be taken up for hearing again on 4.5.2016.

List again on 4.5.2016."

8. In compliance with the directions issued by the motion Bench order dated 27.4.2016, an affidavit has been filed on behalf of both the appellants, affirming that the two defects pertaining to the contract labour have also been rectified.

9. Given the aforesaid factual position, the question which arose for consideration is, whether the appellants could still be punished under Section 92 of the Act, which provides as under:

"92. General penalty for offences - Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued:

Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

Explanation - In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot."

10. Insofar as the seriousness of the issues is concerned, learned counsel for the State of Jharkhand, Mr. Tapesh Kumar Singh, vehemently contends, that the violations committed at the hands of the appellants should not be termed as trivial.

11. It was submitted, that the enactment under reference has a laudable role, inasmuch as, the same extends to ensure due facilities to the labour engaged in factories, and provides measures to regulate emoluments of factory employees. In this behalf, learned counsel for

the respondents has placed reliance on a decision of this Court rendered in *J.K. Industries Limited and others vs. Chief Inspector of Factories and Boilers and others*², reported in And placed reliance on the following observations recorded thereunder:

"40. In keeping with the aim and object of the Act which is essentially to safeguard the interests of workers, stop their exploitation, and take care of their safety, hygiene and welfare at their place of work, numerous restrictions have been enacted in public interest in the Act. Providing restrictions in a Statute would be a meaningless formality unless the statute also contains a provision for penalty for the breach of the same. No restriction can be effective unless there is some sanction compelling its observance and a provision for imposition of penalty for breach of the obligations under the Act or the rules made thereunder is a concomitant and necessary incidence of the restrictions. Such a provision is contained in Section 92 of the Act, which contains a general provision for penalties for offences under the Act for which no express provision has been made elsewhere and seeks to lay down uniform penalty for all or any of the offences committed under the Act. The offences under the Act consist of contravention of (1) any provision of the Act; (2) any rules framed thereunder; and (3) any order in writing made thereunder. It comprises both acts of omission and commission. The persons punishable under the Section are occupiers and managers, irrespective of the question as to who the actual offender is. The provision, is in consonance with the scheme of the Act to reach out to those who have the ultimate control over the affairs of the factory to see that the requirements for safety and welfare of the employees are fully and properly carried out besides carrying out various duties and obligations under the Act. Section 92 contemplates a joint liability of the occupier and the manager for any offence committed irrespective, of the fact as to who is directly responsible for the offence. The fact that the notified / identified director is ignorant about the 'management' of the factory which been entrusted to a Manager or some other employee and is himself not responsible for the contravention cannot absolve him of his liability. The identified /notified director is held vicariously liable for the contravention of the provisions of the Act, the rules made thereunder or of any order made in writing under it for the offender company, which is the occupier of the factory.

41. Mr. Jain, Mr. Nariman and Mr. Tripathi, appearing for the appellants, however, argued that since Section 92 imposes a liability for imprisonment and/or fine, both on the occupier (the notified director) and the manager of the factory, jointly and severally, for the contravention of any of the provisions of the Act or any rule made thereunder or of any order in writing given thereunder, irrespective of the fact whether the occupier (the notified director) or manager, had any mens-rea in respect of that contravention or that the contravention was not committed by him or was committed by any other person in the factory without his knowledge, consent or connivance, it is an unreasonable restriction. Learned counsel argued that in criminal law, the doctrine of vicarious liability is unknown and if a director is to be punished for some thing of which he is not actually guilty, it would violate his fundamental right as enshrined in Article 21 of the Constitution. It was urged that on account of advance-

ement in science and technology, most of the companies, appoint professionally qualified men to run the factories and nominate such a person to be the 'occupier' of the factory and make him responsible for proper implementation of the provisions of the Act and it would, therefore, be harsh and unreasonable to hold any director of the company, who may be wholly innocent, liable for the contraventions committed under the Act etc. when he may be totally ignorant of what was going on in the factory, having vested the control of the affairs of the factory to such an officer or employee, by ignoring the liability of that officer or employee. The argument is emotional and attractive but not sound.

42. The offences under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means liability without fault or mens rea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution etc. In India and abroad. 'Absolute offences' are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty. Such offences are generally known as public welfare offences. A seven Judge Bench of this Court in *R.S. Joshi Vs. Ajit Mills (AIR 1977 (SC), 2279, at page 2287: SCC p. 110, para 19)*:

"Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be proceeded by mens rea. The classical view that 'no mens rea no crime' has long ago been eroded and several laws in India and abroad, especially regarding Economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force "

43. What is made punishable under the Act is the 'blameworthy' conduct of the occupier which resulted in the commission of the statutory offence and not his criminal intent to commit that offence. The rule of strict liability is attracted to the offences committed under the Act and the occupier is held vicariously liable along with the Manager and the actual offender, as the case may be. Penalty follows actus reus, mens-rea being irrelevant."

12. In view of the above declaration by this Court, we are of the view, that it is not possible for us to interfere with the impugned order passed by the High Court, wherein the prayer made by the appellants for quashing the proceedings initiated against them, was declined. We therefore hereby confirm the same.

13. Despite our above conclusion, learned counsel for the appellants points out, that the factual position is clear, and that, rather than requiring the appellants to face a protracted trial, this Court may consider the appropriateness of imposing a reasonable punishment on the appellants, by accepting the aforesaid violations , summarised in paragraph 3 of the impugned order.

14. Learned counsel for the respondents - State of Jharkhand, states that he has no objections to the suggestion made by the learned counsel for the appellants.

15. Having given our thoughtful consideration to the allegations levelled against the appellants, we are satisfied, that in terms of the mandate of section 92 of the Act, ends of justice would be met, if a penalty of Rs.50,000/- each is imposed on the appellants. Ordered accordingly. The aforesaid amount of penalty shall be deposited by the appellants before the trial Court, within four weeks from today.

16. The instant order shall also dispose of the criminal proceedings against the appellants in G.O. Case No. 252 of 2013, pending before the Judicial Magistrate, First Class, Seraikella, after the penalty amount is deposited by the appellants before the trial Court.

17. Disposed of in the aforesaid terms.

Judgment Referred.

¹(1970) 2 SCC 0172

²(1996) 6 SCC 0665