

ALLAHABAD HIGH COURT

State

Vs.

Sri Krishna

Criminal Govt. Appeals Nos. 540 and 541 of 1951

(Raghubar Dayal and B.D. Mukerji, JJ.)

30.11.1950. 04.03.1953

JUDGMENT

B.D. Mukerji, J.

1. These two appeals by the State arise out of more or less the same facts and consequently we propose to dispose of both these appeals by this common judgment.

2. In Appeal No. 540 there is only one respondent, namely, Sri Krishna Prasad Dar, Manager Allahabad Law Journal Co. who has figured in both the cases. In appeal No. 541 of 1951 there are two respondents, namely, Rameshwar Prasad Bajoria, resident of 9 Dalhousie Square Calcutta, who is said to be the occupier of Allahabad Law Journal Co. Ltd. and Sri Krishna Prasad Dar, Manager of the Allahabad Law Journal Co. Ltd.

3. The facts which have given rise to these two Government Appeals lie within a very narrow compass and they may be stated as follows : On 25.6.1950, which was a Sunday, Mr. M.L. Bhagat, Inspector of Factories, paid a visit to the Allahabad Law Journal Co. Ltd. and discovered eleven persons working in the outer portion of the factory building in a verandah. He found that the Chaukidar or the Darwan, as he was called, was also present at the time. The Inspector found the main factory premises locked and he also found that the persons who were working at that time were busy binding certain books. It is pointed out, however, that these men were not using any "power" or machinery of the factory, which was at that time locked away from all accessibility of these persons. He called for the "Register of Factory Workers" as also the "Inspection Book". These, however, could not be produced because neither the Manager, nor anybody responsible for running the Press, was present at the time.

4. The Inspector of Factories made a report in regard to this matter and as a consequence of his report, two complaints were filed against Sri Krishna Prasad Dar and one complaint against

Rameshwar Prasad Bajoria. In one of the complaints the complaint which has given rise to Appeal No. 541 of 1951 the charge was for the breach of Section 52, Factories Act, 1948, namely, Act 53 of 1948. In the other complaint, which has given rise to Appeal No. 540 of 1951 there was a complaint for a breach of Section 62, Factories Act, read with Rule 97 of the Act.

5. Section 52, Factories Act, is in these words : "52 (1) 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 is 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....."

It is not necessary to quote the other portions of this section.

6. It appears from this section that a worker cannot be permitted or asked to work on a Sunday unless arrangement has been made to give him a holiday in substitution of the Sunday on which he is made to work; the section further requires that previous notice of this desire of the factory to employ a particular worker on a Sunday and substituting the Sunday by another off-day has to be communicated to the Inspector of Factories before he is made to work. The prohibition contained in the section, however, applies to a worker in a factory. "Worker" has been defined in Section 2 (1) of the Act as follows :

"(1) 'worker' means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process." From the definition it is clear that only such persons can be classified as workers of a factory who are either directly or indirectly or through some agency employed for doing the work of any manufacturing process or cleaning, etc. with which the factory is concerned. It does not contemplate the case of a person who comes and that too without the knowledge of the factory owner or without his intervention, either directly or indirectly, and does some work on the premises of the factory. Section 62 of the Act enjoins :

"No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the

entries made beforehand against his name in the register of adult workers of the factory."

According to the case for the prosecution the persons who were found in a certain portion of the Law Journal Press premises, had no such notice of periods of work displayed in the factory in regard to them. Under Rule 97 of the Rules framed under the Factories Act (we may mention that the Rules that apply to the present case were the rules that were framed under the Factories Act of 1934, because the Rules framed under the Present Act came into force in 1951) the Manager of a factory was required to maintain a register which indicated certain details and contained certain information in relation to the workers of the factory. The case against Sri Krishna Prasad Dar was that, as Manager, he employed workers on a Sunday without complying with the provisions of the Act with respect to making workers work on a holiday; the charge further was that the register of the factory did not disclose the names and the particulars in regard to the eleven persons who were found working on a certain portion of the premises of the Allahabad Law Journal on 25.6.1950. There were certain other minor infringements to which attention was drawn by the Inspector of Factories, namely, the fact that certain registers were not available to him on demand. We do not consider it necessary to go into the question of these registers, because no particular charge against the respondents hangs thereby.

7. The main charge, therefore, against the respondents was that they made eleven persons work on a Sunday in contravention of the Factories Act; further that there were no appropriate entries in the registers of the factory relating to these alleged workers. The defence of the Manager as also the Occupier was that these persons who were found by the Inspector on a certain part of the premises of the Allahabad Law Journal Co. Ltd. were not workers of the Company nor had they been employed directly or through any agency by the Company. With regard to the entries in the registers it was stated that obviously the names and particulars in relation to these persons could not have been in the registers maintained by the Company, inasmuch as these persons were not the employees or workers of the Company. As regards the non-production of the various registers called for by the Inspector at the time of his visit, it was said that his visit having been on a holiday, the premises were locked and closed and no officer of the Company being present on the premises, obviously these registers could not have been produced. The defense of the Manager further was that he had given a contract to one Abdul Rahim for binding some volumes and that Abdul Rahim was required to remove the unbound volumes from the premises of the Company to his own premises, bind them there and then hand over the finished bound volumes to the Company, and that Abdul Rahim instead of removing the unbound volumes to his place, without the knowledge of the Manager or anybody else of the Company, brought his labourers on to the premises and started getting work done by these men on that particular day. The persons who were found on the premises were the persons who had been engaged by Abdul Rahim in order to complete a contract which he had taken from the Company. The contract which Abdul Rahim had was a contract to do a particular piece of work, work not connected directly or indirectly with the process of manufacture going on during the relevant period in the factory but work which the factory had already completed, namely, the printed volumes, which had to be put through a

further process of manufacture in order to make them marketable. It was, according to the defense, an independent act of manufacture which had been undertaken by Abdul Rahim by entering into that contract with the Company. It is important to note that Abdul Rahim was, on the application of Sri Krishna Prasad Dar, Manager of the Allahabad Law Journal Co. Ltd., made a party to the proceedings in the court below. As a matter of fact, Abdul Rahim became a co-accused with Sri Krishna Prasad Dar in one of the cases. Abdul Rahim admitted the fact that the labourers who were doing the work of binding in the verandah of the factory were his labourers and that they were working in the verandah of the factory 'against' the instructions of Mr. Dar. On behalf of the prosecution no evidence was produced to indicate that any of the persons found by the Inspector on the premises on that particular Sunday were the employees or workers of the Allahabad Law Journal Company. The Inspector apparently made inquiries from the persons he found working on the premises but his inquiries did not reveal the fact that those persons were the employees, either directly or indirectly, of the Allahabad Law Journal company.

8. On behalf of the State it is contended that once persons are found working on some portion of the premises of a factory, then a presumption must be raised that those persons are the workers of the factory and that unless it is proved positively that they are not workers, the liability of the Manager of the Company cannot cease. Reliance was placed on the wording of Section 2 (1), especially the words "employed..... through any agency". It was contended by Mr. Bhatt that the fact that Abdul Rahim had employed them for getting the work of Allahabad Law Journal Co. completed would make those persons the workers of the Allahabad Law Journal Co. through the agency of Abdul Rahim. We are unable to agree to this interpretation of Section 2 (1). In our judgment, Section 2 (1) contemplates cases where the persons are either employed directly by the Management of the Company for doing the manufacturing processes of the company or cases where the Company employs some agency in order to get employment of labour for itself, labor which is directly used in the processes of manufacture which that particular Company undertakes. Reliance was placed on the decision of '*Provincial Government, C. P. and Berar v. R. Robinson*', In this case the Manager, Robinson, was prosecuted for certain breaches of certain sections of the Indian Factories Act. The trial Court acquitted Robinson and an appeal was thereafter filed by the then Provincial Government against the acquittal to the Nagpur High Court. In that case the Electric Supply Co. was having certain additions made to certain plants and for the purposes of getting this done, they had given a contract to Messrs. Babcock and Wilcox of Calcutta. Babcock and Wilcox had really made the infringements complained of. The point that was raised on behalf of the Electric Supply Co. was that the work which Babcock and Wiicox were doing on the premises was not work in relation to the manufacturing process of the Company and, therefore, no offence under the Indian Factories Act had been committed by the Company. This contention of the Electric Supply Co. was overruled by the High Court on the ground that "manufacturing process" had been defined in the Act and that it was inclusive of all alteration, repair, cleaning, breaking up, adapting, etc. within the definition given in the Act and since Babcock and Wilcox were admittedly doing work which fell within the purview of the words used in the definition of "manufacturing process", the liability of

the Electric Company was made out. The question whether the workmen on the staff of Babcock and Wilcox of Calcutta could be deemed to be the workers of the Electric Supply Co. Jubbulpore, was not pointedly raised in the case, although reference was made to the definition of "worker" contained in the Factories Act. It was noticed that the word "worker" included a person employed in any manufacturing process or any kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process. It was further pointed out that "worker" included a person who was employed in any kind of work connected with the subject of the manufacturing process. The point, however, was not brought out as to whether or not the workers then employed by Babcock and Wilcox could be deemed to be workers of the Electric Supply Co. But, it does appear that the learned Judges assumed, on the facts of that particular case, that the workers so employed were to be deemed workers of the Jubbulpore Electric Supply Co.

9. In the case before us it could not be said, at any rate not in the state in which the

¹ AIR 1947 Nag 83

evidence in this case is that the workers who were found on the premises of the Allahabad Law Journal Co. or within its precincts were the workers of the Allahabad Law Journal Co. The scope of Section 52, Factories Act, makes it clear to us that only such workers alone are contemplated by that section over whom the particular employer has control, not only in the matter of taking work from them, but also in the matter of their employment, leave, holidays, etc., for if that had not been so the Legislature could not have made an employer responsible in the event of there being a breach in regard to lack of substitution of a holiday for a Sunday in the event of the worker being made to work on a Sunday. It is inconceivable that a person should be held responsible for something which he has no control over. In this particular case the Allahabad Law Journal Co. could not possibly control the leave of the persons who were employed by Abdul Rahim to do a particular job, for the Allahabad Law Journal Co. How could the Allahabad Law Journal Co. know whether or not the workers who were employed by Abdul Rahim on that particular date had or had not "substitution leave" in lieu of the work that they were putting in on a Sunday? In this particular case we have this fact clearly found by the trial Court, a finding with which we are in agreement, that the workers employed by Abdul Rahim were in the precincts of the Allahabad Law Journal Co. without the knowledge and without the permission of the Manager or the occupier of the manufacturing concern.

10. Reliance was also placed by Mr. Bhatt on the decision of '*Ramditi Mall v. Emperor*²', which is a decision by Costello, J. This decision is not very helpful for our present purposes for the reason that in that case Costello, J., was dealing with the provisions of the Factories Act of 1911. Some of the provisions of the Factories Act of 1948, particularly the provisions in point, are in different words from the provisions of the Factories Act as it was in 1911.

11. In the result, we are of the opinion that the decision of the trial Court in Government Appeal No. 540 of 1951 was right in so far as Sri Krishna Prasad Dar could not have been convicted for the contravention of Section 62, Factories Act, 1948. We are also of the opinion that the decision

of the trial Court was equally right in Government Appeal No. 541 of 1951, inasmuch as the respondents Rameshwar Prasad Bajoria and Sri Krishna Prasad Dar could not have been convicted under Section 52, Factories Act. We see no merits in either of the two appeals preferred by the State Government and we accordingly dismiss both the appeals.

Appeals dismissed.

² AIR 1934 Cal 548