

ALLAHABAD HIGH COURT

State

Vs.

Laxmi Narain

Govt. Criminal Appeal No. 1255 of 1956, against order of Magistrate 1st class Etah
(Roy and Sahai, JJ.)

18.05.1953. 20.11.1956

JUDGMENT

Roy, J.

1. The Inspector of Factories inspected the factory in question belonging to the respondent on the 12th December 1951 and found that manufacturing process was being carried on with the aid of power without a certificate of stability of the building having been obtained by the respondent as required by Rule 3 (3) of the U. P. Factories Rules 1950 framed by the State Government under section 6 of the Factories Act of 1948. The failure to do this was an offence punishable under section 92 of the Act. Under section 106 of the Act, no court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector.

A complaint for that offence should have been lodged within three months from the above date i.e. within 12th March 1952. No complaint was, however, made in regard to that offence. The Inspector again visited the factory on the 19th December 1952 and admittedly no certificate as required under the Rules was yet obtained by the respondent. In regard to the offence detected on the 19th December 1951 a complaint was filed within time i.e. on the 18th March 1953. The learned Magistrate was of the view that since the offence came originally to the knowledge of the Inspector of Factories as early as 12th December 1951 the complaint in regard to the offence detected on the 19th December 1952 was time barred. The learned Magistrate accordingly dismissed the complaint and acquitted the accused. It is against that order that the present appeal has been preferred by the State.

2. We have heard learned counsel for the parties and we are of the opinion that the view taken by the Magistrate was erroneous. The offence was a continuing offence; and this is apparent from the phraseology of Rule 3 (3) of the Rules. Rule 3 (3) inter alia, says that no manufacturing process carried on with the aid of power shall be begun or carried on in any building or part of a building until a certificate of stability of the building or part of a building in Form No. 2 signed by person possessing the qualifications prescribed in sub-rule (4) has been delivered to and accepted by the Chief Inspector. The words "shall be begun" or "carried on in any building or

part of a building" in Rule 3 (3) connotes that an offence of this nature may be a continuing offence. And if upon a previous inspection the Inspector of Factories allows the matter to go unnoticed and without filing a complaint but with a verbal warning to the factory owner that the errors should be rectified, it would not be open to the factory owner or occupier to say upon a subsequent inspection of the factory where the same breach is still found to exist that the subsequent breach should be condoned and a complaint based upon it should be held to be time barred because the earlier breach was not brought into question in a Court of law.

3. In a Madras case, *Public Prosecutor v. Veerabhadrappa*¹, the Inspector of Factories inspected a factory on the 5th October 1950 and found that the accused had failed to construct a Pucca dust-proof husk chamber as required by section 14. The Inspector visited the factory again on the 24th January 1951 when also he found the above defect and laid a complaint on the 15th March 1951 for an offence under Section 92. The question was whether the complaint was barred by limitation as being beyond three months of the first visit of the Inspector on the 5th October 1950. It was held that the offence committed was a continuing one and when the Inspector visited the factory on the second occasion on the 24th January 1951 the offence committed on that date came to his knowledge on that day and the prosecution having been launched within three months of that date was in time. In the present case we find that the offence committed was a continuing one and when the Inspector visited the factory on the 19th December 1952 on the second occasion the offence committed on that date came to his knowledge on that day and the prosecution having been launched within three months of that date was in time. The respondent was clearly guilty under section 92 of the Factories Act for breach of Rule 3(3) of the Rules framed by the State Government in 1950 under section 6 of the Factories Act.

4. We, therefore, allow the appeal and convict the respondent under section 92 of the Factories Act and sentence him to a fine of rupees twenty-five (Rs. 25/-) only in default of payment of which he shall undergo fifteen days' simple imprisonment.

Appeal allowed.

¹ AIR 1953 Mad 204