

ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs.

Vattem Venkatramayya

Criminal Appeal No. 285 of 1960, Gudivada, in C. C. No. 84 of 1959

(Krishna Rao and Narasimham, JJ.)

09.03.1962

JUDGMENT

Krishna Rao, J.

1. This appeal, which has been referred to a Division Bench by Sharfuddin Ahmed, J., as he dissented from the decisions in *Public Prosecutor v. Mangaldas Thakker¹*, and *Lakshmaiah Naidu v. State²*, raises questions as to the construction and effect of Section 117 of the Factories Act (LXIII of 1948), hereinafter called the Act.

2. The material facts are briefly these. At 12.30 p.m. on 14-7-1959, the Additional Inspector of Factories at Gudivada (P. W. 1) visited the factory known as "Sri Rama Seshasayi Rice Mill" and found one woman worker by name Karra Lakshamma, working at the paddy sieve. This was beyond the period of work from 8.30 A.M. to 12 noon fixed for her beforehand under Section 61 and was, therefore, a contravention of Section 63 of the Act. Consequently, the respondent, who was the manager of the factory, was prosecuted for having committed an offence punishable under Section 92 of the Act. The respondent's defence was that Karra Lakshamma was a piecetime worker, that she was paid extra wages for working overtime from 12 Noon to 1 p.m. as required by Section 59 of the Act and that the respondent *bona fide* believed that he could employ casual labour overtime, subject to the payment of overtime wages. The trial Magistrate observed that the facts were on all fours with the case in 1958 Andh LT 804 : AIR 1959 Andhra Pradesh 536. He accordingly held that on a reading of Sections 59 and 63 of the Act together, it is not illegal to employ a casual worker overtime, if the worker was compensated by overtime wages. He also held that even if any of the provisions of the Act have been contravened, there was no mens rea on the part of the respondent, which ingredient has to be established by the prosecution by reason of Section 117 of the Act. On these grounds, he acquitted the accused and the Public Prosecutor, on behalf of the State Government, has come upon appeal against of the acquittal.

3. It may be useful at this stage to read the relevant portions of Sections 59, 63, 92 and 117 of the Act. They are in the following terms :

¹195/-2 Andh WR 455 : AIR 1958 And Pra 79

²1958 Andh LT 804 : AIR 1959 And Pra 536

"59 (1) Where a worker works in a factory for more than nine hours in any day or for more than fortyeight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

63. 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.

Section 92. 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 rule 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 three months or with fine which may extend to 500 Rupees or with both.....

Section 117. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act."

4. In 1957-2 Andh WR 455 : AIR 1958 Andhra Pradesh 79 the manager of a tobacco factory was prosecuted for the contravention of Section 63 of the Act, inasmuch as he had allowed the workers to work on a particular day beyond 5-30 p. m. which was the limit specified for their period or work. His defence was that on account of heavy rainfall, the workers came late and started work at 9 a. m. instead of at 7-30 A. M. and that they worked beyond 5-30 p.m. in order to make up their full hours of work for the day. The trial Magistrate acquitted the accused on the ground that there was no mens rea and that no offence had therefore been committed. The Public Prosecutor appealed against the order of acquittal. Kumarayya, J. dismissed the appeal, holding that as the accused had acted in good faith Section 117 protected him and that the language of the section was wide enough to cover not only officers or servants of the Govt. but also managers who had certain duties cast upon them by the Act. In support of his view of Section 117, Kumarayya, J. referred to two cases reported under the title *Ranjit Singh v. Emperor*⁴, *Ranjit Singh v. Emperor*⁵, and decided by Thomas C. J. of the budh Chief Court. In these two cases, one of the grounds for setting aside the convictions under Section 60 of the Factories Act (25 of 1934) was that there was no deliberate breach of the rules on the part of the occupier or manager.

5. In 1958 Andh LT 804 : AIR 1959 Andhra Pradesh 536, the question arose whether the manager of a rice mill, who allowed nine adult male workers to carry on work at a factory on a particular day beyond the usual time fixes, committed an offence under Section 92 of the Act. Sanjeeva Row Nayudu, J. accepted the defence contention that Section 59 recognizes the payment of extra wages for overtime work and as the provisions of Sections 59 and 63 have to be interpreted so as to obviate any apparent inconsistency, employment of labour which has been paid for in compliance with Section 59, is not illegal under the Act, so far as casual overtime employment is concerned. It was argued by the prosecution that the legal and proper payment of extra wages for overtime, which is contemplated by Section 59, relates to cases where

⁴ AIR 1943 Oudh 308

⁵ AIR 1943 Oudh 311

exemptions from the limits of hours of work have been granted under Section 64 by the State Government. This argument was repelled by the learned Judge on the ground that Section 64 was

intended to cover cases of only regular employment of labour over and above the maximum prescribed and not to cases of casual overtime employment. The learned Judge was also of the view that Section 117 was a complete answer to the charge, as the manager of the mill had no mens rea and set aside the conviction and sentence under Section 92 of the Act.

6. The correctness of the view of the law taken in these decisions is assailed before us by the Public Prosecutor. It is argued in the first place that Section 117 is intended to protect only persons like the inspecting staff, on whom powers are conferred by the Act and does not apply at all to occupiers or managers of factories, on whom obligations are imposed. Reliance is placed on the decision in *Provincial Government v. Chapsi Dhanji*⁶, where a Division Bench of the Nagpur High. Court dealing with Section 81 of Act 25 of 1934 corresponding to Section 117 observed :-

"It appears to us that this section was inserted in the Act primarily, if not entirely, for the benefit of the inspecting staff."

7. With, due respect to the learned Judges of that Bench, we have to observe that the language of Section 117 does not limit the protection there under to the inspecting staff alone. As pointed out by the learned Counsel for the respondent, similar protection has been enacted in other statutes and the language there has expressly limited the protection to Government Officers. For example, Section 64 of the Indian Income-tax Act (XI of 1922) runs thus :

"No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under this Act."

Similarly, to mention a few other instances, in Section 56 of the Madras Prohibition Act 1937, Section 17 of the Madras General Sales Tax Act, 1939, Section 40 of the Central Excises and Salt Act, 1944, and section 43 of the Wealth Tax Act 1947, Government officials are expressly mentioned. It appears that where the legislature intended to limit the protection to particular classes of persons it has specified them in the enactment. The expression used in Section 117 is "any person" and it is manifestly wide enough to include also occupiers and managers of factories. No doubt, if the only persons who can perform things done or intended to be done under the Act are Government officials or the inspecting staff, the operation of the section would be necessarily confined to them alone. But a reading of the Act shows that it imposes duties on also occupiers and managers of factories, owners of premises and on workers. Contraventions of its provisions by occupiers and managers are punishable under Section 92, by owners of premises under Section 93 and by workers under Section 97. It follows that occupiers and managers of factories are not excluded from the protection conferred under section 117.

⁶ AIR 1938 Nag 406

8-9. The main question for consideration is the meaning of the expression, "anything which is done or intended to be done under this Act" occurring in Section 117. The learned Public Prosecutor, contends that this would certainly not include anything done in contravention of the Act, while the learned counsel for the respondent takes the position that it covers all matters that can be connected with the Act. The learned Public Prosecutor relies on the construction of

section 11 of the East Punjab Refugees. (Registration of Land Claims) Act by the supreme Court, in *State of Punjab v. Mohar Singh*⁷, B. K. Mukerjea, J. observed at p. 88

"Section 11 of the Act is in the following terms

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The East Punjab Refugees (Registration of Land Claims) Ordinance No. VII of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had not come into force on 3rd day of March 1948." We agree with the High Court that the expression "anything done" occurring in the section does not mean or include an act done by a person in contravention of the provisions of the Ordinance. What the section contemplates and keeps alive are rules, notifications or other official acts done in exercise of the powers conferred by or under the ordinance and these powers are mentioned in several sections of the Act." The relevant expression there was "anything done..... in exercise of the powers conferred by or under the said Ordinance." The construction turned on the existence of the words "in exercise of the powers" in the expression. We do not consider that the expression in Section 117 is in pan materia.

10. In *Raleigh Investment Co., Ltd. v. Governor-General in Council*⁸, the expression "assessment made under the Act" occurring in Section 67 of the Indian Income-tax Act (XI of 1922) fell to be construed by the Judicial Committee and Lord Uthwati said at page 19 (of Mad LJ) : (at p. 81 of AIR) :

"In their Lordships' view the construction of the section is clear. Under the Act the Income-tax officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, and in their Lordships' opinion the correct meaning, of the phrase "assessment made under the Act" is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an ultra vires provision of the Act is in this view immaterial in determining whether the assessment is "made under the Act." The phrase describes the provenance of the assessment : It does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test"

11. In our opinion, the expression "anything done or intended to be done under this Act" similarly describes the provenance (or source) of the thing done or intended to be done. The test would be whether the person can reasonably claim that act complained of was done or intended to be done by virtue of some obligation imposed

⁷ AIR 1955 SC 84

⁸1947-2 Mad LJ 16 : (AIR 1947 PC 78)

by the Act.

12. The Act was passed for regulating comprehensively the conditions of work in factories and creates various duties, positive or negative in character, for that end. It enacts provisions in the interest of the health, safety and welfare of the workers and for controlling their periods of work and for restricting the employment of women and young persons and for giving workers annual leave with wages. The things to be done comprise both specified acts to be performed and

prohibitions to be enforced. The protection conferred by Section 117 is concerned with all such duties and obligations specially imposed by the Act. Questions may arise as to whether the duties were performed reasonably, adequately, and effectively and whether an action will lie in respect of any harm which may result from the performance of the duty. Section 117 enacts that if the duty was performed in good faith, no suit, prosecution or other legal proceeding shall lie. Under Section 3(22) of the General Clauses Act a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith is naturally one of fact to be determined with reference to the circumstances of each case. If the person to whom any duty is addressed by the Act performs it honestly, he is protected by Section 117, even if it is ultimately found that there was some mistake or negligence on his part resulting in injury to another or that there was a contravention of some one of the comprehensive provisions of the Act or of the rules or orders made thereunder.

13. We may also observe that Section 117 would have little content if the argument of the learned Public Prosecutor is accepted. If the condition precedent is that done or intended to be done is not in contravention of the Act, no prosecution under the Act would lie, whether or not there was good faith on the part of the doer. If, on the other hand, the only condition is good faith meaning absence of dishonesty on the part of the doer, as contended by the respondent, little would be left of the duties and liabilities imposed by the Act.

14. This leads us to the contention of the learned Public Prosecutor that the doctrine of "mens rea" has no application at all to offence punishable under Section 92 of the Act, at any rate, when the contravention complained of is in respect of an absolute prohibition such as the prohibition under Section 63 which contains the words "shall be required or allowed." He calls in aid the provisions of Section 101 which exempt the occupier or manager from liability, subject to certain procedural conditions mentioned in the section, and subject to his proving that he has used due diligence to enforce the execution of the Act and that some person to be brought before the court committed the offence in question without his Knowledge, consent or connivance. The argument is that the defence under Section 101 is the only defence bearing on the question of mens rea which is available to an occupier of manager of a factory. Reliance is placed on the case of *Reynolds v. G. H. Austin and Sons, Ltd.*⁹, where Humphreys, J., observed as follows :

"I agree that it is important that the rule should not be relaxed which declares that when there is an absolute prohibition against the doing of an act scienter forms no part of the offence and absence of it affords no defense to the accused person, but, in my opinion, that rule does not extend to the case of a

⁹(1951) 1 All England Reporter 606 at p. 608

defendant charged with having done an act lawful in itself but which had become unlawful as the result of some action entirely unknown to him by some other person not his servant or agent. I am not entirely satisfied that the offence alleged in this case is one to which the doctrine applies at all, but, as the point was not argued before us, I prefer not to base my judgment on that ground."

No doubt Section 101 gives effect to the principles of law enunciated by Humphreys, J., and protects an occupier or a manager of a factory from liability for offences under the Act,

committed unknown to by him by some other person not his agent. But the general rule is stated in Halsbury's Laws of England (Simond's Edition, Vol. 10, Section 508 at pages 273 and 274) as follows :

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, willfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute."

15. It appears to us that the object of Section 117 of the Act is to give a general protection from civil and criminal liability, so far as the performance of duties and obligations addressed by the Act are concerned. In respect of them, if there was good faith on the part of the person charged, a prosecution would not lie, and to this extent, absence of mens rea is a good defense. The relevant meaning of "good faith" is as defined in Section 3(22) of the General Clauses Act. "Due care and attention" stipulated by Section 52 of the Indian Penal Code is not prerequisite. The special provision for exemption from criminal liability enacted by Section 101 cannot be imported to modify or eviscerate the terms of Section 117.

16. To sum up, the tests for determining whether Section 117 applies to a suit, prosecution or other legal proceeding are : (1) Whether the person proceeded against can reasonably claim that the act complained of and done or intended to be done by him was necessitated by one or more of the provisions of the act; and (2) whether he acted in good faith to give effect to the provisions of the Act. The first test would be satisfied if a duty whether of a positive or of a negative character, was addressed to him by the provisions of the Act; the second test would be satisfied if he acted under an honest belief that he was carrying out the provisions of the Act. Applying these tests to the instant case, there was certainly no duty imposed on the respondent by the Act to employ any worker overtime. It was not because of the Act, but of his own choice and for his own purposes that the respondent employed the worker overtime. Thus it was not a thing done or intended to be done under the Act and the fact that he seems to have acted in good faith is immaterial.

17. We have also to observe that there is no necessary inconsistency between Sections 59 and 63 of the Act as was thought by Sanjeeva Row Nayudu, J. Hours of work not in accordance with Sections 61 and 62 are prohibited by Section 63 and contravention thereof would entail liability under Section 92. Section 59 merely creates an additional liability qua the worker, namely, to pay him extra wages for the overtime work. The two liabilities can exist side by side and there is no conflict between them. A worker is defined in Section 2(10) thus :-

"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 manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

A casual worker also comes within this definition, payment of extra wages under Section 59 is

no defense at all for a contravention of Section 63 in the absence of necessary exemption or permission under Sections 64 and 65. We are supported in this view by the decision of a Bench of the East Punjab High Court in *Emperor v. Abdul Latif*¹⁰, under the corresponding provisions of Act 25 of 1934.

18. However, Section 59 has been construed by the trial Magistrate here as specifically authorising the employment of a worker overtime, the only obligation being that overtime wages are paid to him. Although we have held that this construction is incorrect, the same view was shared by a learned Judge of this Court in 1958 Andh LT 804 : AIR 1959 Andhra Pradesh 536. The trial Magistrate has found that the respondent did pay overtime wages. It cannot be properly said that the trial Magistrate was bound to convict the respondent under Section 92, inasmuch as his duty was to follow the decision in 1958 Andh LT 804 : AIR 1959 Andhra Pradesh 536. Further we do not know whether the respondent had other defences, which he considered it redundant to put forward. If we reverse the acquittal therefore, we would have to order a retrial of the offence committed more than 2½ years ago. In these special circumstances, we do not see sufficient reason to interfere with the acquittal and dismiss the appeal.

Appeal dismissed.

¹⁰ AIR 1948 E. P. 15