

CALCUTTA HIGH COURT

Superintendent

Vs

H.E. Watson

(Guha ,J.)

04.07.1934

JUDGMENT

Guha, J.

1. These are two appeals by the Government of Bengal ; and they are directed against an order of acquittal passed by the learned Chief Presidency Magistrate, Calcutta, on 16th December 1933, in regard to two separate charges, following upon complaints made against Mr. H.E. Watson, as Director, Statesman Printing Press, by the Chief Inspector of Factories, Bengal on 9th November 1933. The complaints made were: (i) Under Section 41 (a) read with Section 28, and (ii) Under Section 43 (c) read with Section 35, Indian Factories Act.

2. The case for the prosecution was that the Inspector of Factories inspected the factory, the Statesman Printing Press, on 15th and 19th October 1933, and found that one printer, five proof readers, and seven compositors in the advertisement section were employed on different dates beyond the time limit of eleven hours per day, as prescribed by Section 28, Indian Factories Act. It was further alleged that the register of persons employed as prescribed by Section 35 of the Act, was not correctly maintained, regard being had to the facts that no entries were made in the register after 17th October, that specified hours of work of the persons employed were not entered in the register, and that different shifts in which the workers were employed were not shown.

3. In the written statement filed in Court by Mr. Watson, it was stated that during the dates between which the offences were alleged to have been committed, he was not in India, and he had given over charge to Mr. Hemmin, the Director of the Statesman Ltd., that no charge could lie against him in respect of matters which took place in his absence, and without his knowledge. It was further mentioned in the written statement that the accused person was not the occupier of the premises. It was therefore pleaded in defence that no penalty could be inflicted under the Indian Factories Act, on the accused, placed on his trial. So far as the charge Under Section 28 read with Section 41(a) was concerned, it was stated on the side of the defence that the thirteen persons referred to in the petition of complaint were not manual labourers; that they were persons who used their educational qualifications, were experts, and were engaged in work of supervision or confidential work.

4. It was further mentioned that the persons working in the advertisement department: the printer, the readers and copyholders mentioned in the petition of complaint, were all outside the scope of Section 28, Indian Factories Act. With reference to complaint made Under Section 43(c) read with Section 35 of the Act, it was pleaded in defence that the employment register taken along with the time sheets which contained all the necessary details, completely satisfied the requirements of the law. It was specifically stated in the written statement that the present system of maintaining registers had been approved by Mr. Adams, the then Chief Inspector of Factories, in whose opinion the keeping of the employment register and using the same in conjunction with the time sheet, was sufficient compliance of the provisions of the Indian Factories Act, and that this system has been in vogue, without any objection by the authorities concerned for the past ten years. It may be noticed, in this connexion that evidence in support of the case aforesaid, stated in the written statement, was sought to be given before the Magistrate but such evidence was not recorded ; the Magistrate did not state his reason why the evidence was not allowed to be given. It is necessary to notice that after the inspection of the factory on 15th and 19th October 1933, the attention of the Director of the Statesman Printing Press was drawn by the Inspector to the irregularities noticed by the Inspector. It was done by a letter from the Inspector of Factories to the Director, dated 24th October; the Director it appears sent a reply to the Inspector on 26th October in these terms:

We are in receipt of your letter No. 6356, dated 24th October, and thank you for calling our attention to irregularities, which will be immediately put right. With regard to Section 22: the names in red were given a holiday for their Sunday work, but we find that it was not within three days of the Sunday, and we will take care that this is observed in future. With reference to the notice that you should receive in this matter escaped our attention, but a notice will be sent to you weekly every Monday in future. Your remarks Under Section 35 have been attended to. With reference to Section 28: many of the names mentioned are merely supervisors and therefore we understood that they did not come strictly under the Hour Rule. We should like to inquire whether Readers, who sit in office away from the works, should not come under the same category as Clerks as we have always regarded them as such? We are changing the employment register so as to separate the supervisors from the ordinary workmen, which will make the work of your Inspector easier. We shall be glad to know if this matter is now adjusted to your satisfaction.

5. There was admittedly no reply given to this letter of 26th October which discloses absolute bona fides and good faith on the part of the management of the factory concerned. The complaints on the other hand starting the present prosecution were filed before the Magistrate on 9th November 1933. On the facts and in the circumstances of the case before us, the main features of which have been outlined above, two questions stand out very prominently for consideration, and they call for a decision before the provisions of the Factories Act as contained in Sections 2, 28, 29 and 35 and the Rules framed under the Act, referred to in the course of the argument before us, come in for consideration, in connexion with the case for the prosecution.

6. First, could the penalties prescribed by the Factories Act be imposed on Mr. Watson against whom complaints were lodged, and who was charged with violation of law. The person accused of offences under the Factories Act, was absent from the duties as manager, as contemplated by law, at the time when there was the alleged infringement of the law. It is a fact that the absence of the manager of the factory was not notified to the authorities by the occupier, as required by law (Section 33(2) Factories Act), for which non-compliance with the provisions of the law, the

occupier could be held liable. According to Section 33(3) of the Act, the occupier was to be deemed as manager for the purposes of the Act, and he was jointly and severally responsible for any violation of the law. On the facts as they stand, Mr. Watson was not the person against whom complaints could be lodged or the person who could be charged with any of the offences or the infringement of the law complained of, and on whom penalty could be imposed under the law for infringement of the law, at a time when he was not the manager responsible for the working of the factory.

7. Secondly, the law, in general, affords protection in the matter of prosecution for commission of offences, to persons acting in good faith. Good faith so far as commission of acts for which penalties may be imposed under the law, must, no doubt, involve due care and attention (Section 52, Penal Code). The question for consideration, therefore in the case before us is: did the infringement of the law by the manager of the factory assuming that there was infringement of the law involve want of good faith on the part of the manager. There was the definite case before the Magistrate, as stated by the accused person, and which he wanted to establish by evidence ; there was further the representation of the manager to the Inspector of Factories by the letter of 26th October 1933, to which reference has been made already, showing the bona fides on the part of the manager of the factory, in the matter of the alleged infringement of the law as contained in Section 28 read with Section 41(a), Factories Act. On the materials before us, the conclusion is irresistible that the accused person, (Mr. Watson) was not the person on whom penalty could be imposed under the Factories Act, for the reasons stated above in regard to any of the infringements of the law, mentioned in the petition of complaint before the Magistrate.

8. Our decision on the two questions mentioned above concludes the appeals before us ; but in view of the arguments advanced in support of the appeals, and on behalf of the respondent, it is desirable to indicate briefly, the result of our interpretation of the different provisions of the Factories Act under two different heads is concerned. At the outset, it may be presumed that the enactment regulating the employment of workers, and their work in a 'factory,' as defined in the Factories Act, has to be construed in favour of the employee, and strictly against the employer. The question whether the thirteen persons mentioned in the petition of complaint, were within the category of persons employed in the factory within the meaning of Section 2(2), Factories Act, was discussed before us at length. The significance of the word 'employed,' the meaning of term 'factory' and of the expression 'manufacturing process' as mentioned in Section 2(4) of the Act, have to be considered in conjunction with Rule 59, relating to the exceptions contemplated by Section 29 of the Act. It would appear that all persons not strictly coming within the exceptions, and persons in regard to whom there is no "opinion" of the Inspector of Factories, entitling the Manager to claim that he was not a person employed in the factory, as contemplated by Section 28, Factories Act, are to be deemed as persons employed in the factory. In the case before us, there was however a claim by the Manager in good faith, in view of the difficulty felt in interpreting the different provisions of the Factories Act, that the persons mentioned in the petition of complaint were not persons to whom Section 28 could be held to be applicable. The Manager's view in this behalf was placed before the authorities for consideration, and no opinion was expressed by the authorities themselves. The only reply that was vouchsafed by them was the launching of the prosecution by a complaint before the Criminal Court, which has resulted in an acquittal of the person against whom the complaint was lodged, on the interpretation of the provisions of the law applicable to the case. It could not therefore be said that there was absence of good faith on the part of the Manager of the factory. It may be mentioned in this connexion

that the view forcibly presented before us, and which was accepted by the Magistrate in the Court below, that the Factories Act affected only the manual workers does not appear to be sound. As the provisions of the Act now stand, the question whether a particular worker who comes strictly within the definition clauses of Section 2, which are of a very wide application, and in whose case an exception could be claimed Under Section 29, has to be settled by the Inspector of Factories, who is the constituted authority under the law, as it now stands, to express the opinion whether that person held a position of supervision or management, or is employed in a confidential capacity as mentioned in Section 29 of the Act, and Rule 59 framed under the Act, the opinion of the Inspector being dependent on the facts and circumstances of the case before him.

9. As to interpretation of Section 35, Factories Act: on a strict interpretation of that provision of the law, it cannot be said that the employment register need not be complete in itself, and that it could be supplemented by the time sheet, as was contended for on the side of the defence, a contention which was accepted by the trial Court, The provision of the law as it stands is mandatory in its nature ; and although the use of the word "shall" in some cases does not definitely indicate the intention of the legislature, the expression "shall be kept," taken along with the proviso to Section 35 relating to an order in writing by the Inspector, makes the position clear that in the absence of such an order one register in Form G must be kept of all persons employed in a factory, of the hours of their work, and of the nature of their respective employment, as mentioned in Section 35. In the case before us, there were of course reasons given, why there was no strict compliance with the particular provision of the law ; and the letter of 26th October 1933. addressed to the Inspector of Factories made it clear that the irregularities of Section 35, had been attended to by the Director of the Factory. There was therefore no absence of good faith on the part of the management of the factory, so far as strict compliance of the provision of the law as contained in Section 35, Factories Act, was concerned.

10. The result of the conclusions as mentioned above is that the order of acquittal passed by the Chief Presidency Magistrate in the two cases before us, should not be interfered with. The order is affirmed for reasons other than those assigned by the Magistrate in his judgment. The appeals are accordingly dismissed. I desire to add that I have had the privilege and opportunity of considering the judgment going to be delivered by my learned brother, and I entirely agree with the view taken by him of the cases before us.

McNair, J.

11. I agree with the judgment that has been delivered by my learned brother and with the reasons which he has given for dismissing the appeals. I wish to add that in my opinion these proceedings should never have been brought. The learned Chief Presidency Magistrate in his judgment states: The object of the Act is to protect human beings from being subjected to unduly long hours of bodily strain or manual labour.

12. That undoubtedly is one of the objects of the Act. It also provides that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents. In order to obtain the information necessary to ensure that its objects are carried out, the Local Government are empowered to appoint inspectors, to call for returns, and to see that the prescribed registers are

duly kept. This is part of the machinery which enables the authorities to maintain effective supervision, and it is undoubtedly important that there should be substantial compliance with these provisions of the Act.

13. At the same time it should not be forgotten that the Act is sanctioning interference with the ordinary rights of the citizen and that the inquisitorial powers which are given should be used with tact and circumspection. A law which is enacted for the benefit of the employee should not be used merely for the purpose of harassing the employer. It is difficult to believe that these principles were present in the minds of the authorities who were responsible for this prosecution. What are the facts? An Inspector came to the Statesman offices at 9-30 a. m. on a Sunday morning in the middle of the puja holidays and was unable to see the employment register. He inspected the premises again four days later on 19th October, a gazetted holiday, and was shown the register. On both occasions he was shown the timesheets. One of the irregularities of which the Inspector complained was that the data required had not been included in the register prescribed by the Act. As I have said on each of his visits he was shown the time sheets and it was explained to him that these time sheets were intended to supplement the employment register as the forms of register provided in the Act were unsuitable to the conditions of employment in a newspaper office where 14 shifts were sometimes worked.

14. The method adopted, he was told, had been submitted to and sanctioned by a former Chief Inspector of Factories and had been used by the 'Statesman' without protest from any Inspector for the last 10 years. A second complaint was that the register on the 19th was not up-to-date. This no doubt was a technical infringement but the explanation given was that the register had been written upto the 17th and that the 18th and 19th were gazetted holidays. The third complaint was that certain employees in the advertisement section came within the provisions of the Act. and had worked longer than the prescribed hours. With regard to some of these employees, the authorities themselves are doubtful whether they should or should not be included, Agreeing as I do with my learned brother that no prosecution will lie against Mr. Watson, who was on leave at the date of the alleged infringements, I do not consider it necessary to deal at length with the points that have been raised, but from the above outline it will appear that the complaints related to two technical breaches of the machinery provided for enforcing the Act; and to an alleged offence in employing beyond the maximum working hours certain persons to some of whom it is admittedly doubtful whether the provisions of the Act apply. On 24th October 1933 the Inspector wrote to the 'Statesman Printing Press' setting out the alleged infractions of the Act. The 'Statesman' immediately replied saying that the irregularities complained of had been put right and giving reasons for their contention that some of the employees mentioned were not subject to the provision of the Act. The letter is eminently reasonable and shows a genuine desire to meet any complaint and to rectify any irregularities. This letter was not even acknowledged and these proceedings were initiated against Mr. Watson on 9th November. The complaints were rejected by the learned Chief Presidency Magistrate and the Government has appealed to this Court and has instructed the learned Deputy Legal Remembrancer to press every charge and to admit nothing. With regard to the first charge the authorities do not deny that the form of register (coupled with the time sheets) which has been supplied by the 'Statesman' has been sanctioned and accepted for the past 10 years. In this court it is argued that although that fact is not denied, it is not admitted, and that, even if it was sanctioned, the authorities are not bound thereby as the sanction was not in writing. It is difficult to understand this attitude on the part of those responsible for the prosecution and it is in marked contrast to the scrupulous fairness and

disregard of mere technicality which in my experience as invariably been shown by the Deputy Legal Remembrancer when appearing for the prosecution in a criminal charge. At a late stage in the hearing we were informed that the authorities looked upon this as a test case and that if a conviction resulted no fine would be exacted. I find it hard to accept this explanation in view of the trivial character of two of the charges and seeing that so far as I am aware no such explanation had ever previously been made either to the Court or to the accuse.

15. There is another small incident which has some bearing on this point I was supplied by the prosecution with a copy of the rules framed under the Act which contained many marginal, notes, presumably by some member of the department. I suggested that a clean copy might be supplied and I was informed that both the Act and the Rules framed under it were out of print and could not be obtained even by a factory which is governed by its provisions. The Government, we were told, are unwilling to incur the expense of reprinting the Act since they intend to introduce a new Act at an early date. In the circumstances it is difficult to understand why the Government should incur the expense of fighting a test case upto the appellate Court. Surely any ambiguity which is contained in the present Act and which the Government considers of primary importance could be rectified through the legislature. I agree that the appeals should be dismissed and I consider for the reasons which I have stated that this is a prosecution which should never have been launched.