

# NAGPUR HIGH COURT

State Government, Madhya Pradesh

Vs

Jiwa Bhai Nathabhai

Criminal Appeal No. 256 of 1951

(Hemeon and V.R. Sen, JJ.)

23.11.1951

## JUDGMENT

### **Hemeon, J.**

1. The respondent Jiwabhai, owner of a rice mill at Uttai, Durg district, and Ratilal, Manager, thereof, were each convicted and sentenced to pay a fine of Rs. 25 by the Judge-Magistrate, Durg, under Section 92, Factories Act, 1948, for contravention of Section 56. They were, however, acquitted in respect of contraventions of Sections 62 and 66(1) (b) 'ibid'; and the State Government has now filed an appeal against the acquittals.

2. When the mill in question was inspected on 10.1.1951 by Shri D. T. Vaidya (D. W. I), Inspector of Factories, it was found that –

- (i) the register of workers was not properly maintained;
- (ii) three women were found working after 7 p.m.; and
- (iii) the spreadover was 13½ hours instead of 10½ hours.

We are not here concerned with (iii) in respect of which the respondents have been convicted.

3. In the manager's explanation it was admitted vide Ex. P-2 that the register of workers was not properly maintained and we do not understand what the learned Judge-Magistrate meant when he observed that this was too technical an irregularity to be visited with a penalty. There had been a contravention of Section 62, Factories Act, and the applicants were both liable, therefore, under Section 92 'ibid'. They are accordingly convicted thereunder and each sentenced to pay a fine of Rs. 25. In default of payment, they shall each undergo a fortnight's simple imprisonment.

4. Under Section 66(1)(b) no woman shall be employed in any factory except between the hours

of 6 a.m. and 7 p.m. Two of the three women in question are the wives of two of the factory workers and the third woman is the daughter of another factory worker. They had, it appears, brought food to these workers; and while they were consuming it, the three women deputed for them by placing 'dhan' in the mill. It was accordingly claimed in the respondents' behalf that they were not as such acting as employees of the mill and were merely doing what may be called a good turn for their male relatives. We consider, however, that the respondents were liable for contravention of the aforesaid clause, inasmuch as the word "employed" does not only connote employed on wages but also being occupied or engaged in some form of activity. This view is in consonance with the spirit of the Factories Act which strictly inhibits the employment of women in a factory after 7 p.m. and before 6 a.m. A heavy sentence is not, however, warranted because of the circumstances of the case. Here too we set aside the acquittals and sentence each of the respondents to pay a fine of Rs. 25. In default of payment, they shall each undergo a fortnight's simple imprisonment.

Acquittal set aside.