

NAGPUR HIGH COURT

Madhya Pradesh

Vs

Maganbhai Dasaibhai

Criminal Appeal No. 23 of 1952

(Mudholkar and Sen, JJ.)

06.10.1951. 25.04.1952

JUDGMENT

Mudholkar, J.

1. This is an appeal by the State Government, Madhya Pradesh, against the acquittal of respondent Maganbhai.
2. The Patel Oil Mills, Akola, is a factory within the meaning of Section 2 (m), Factories Act, 1948, (hereinafter called the Act). The respondent Maganbhai was the occupier of this factory as defined in Section 2 (m). W. J. Thete worked as the Manager at the material time. He died during the pendency of the trial.
3. Shri A.P. Varkhedkar, Inspector of Factories, Madhya Pradesh, inspected the Patel Oil Mills on 13-9-50. He noticed certain irregularities which he recorded in his inspection report. A complaint against respondent and Thete was filed on 30.10.1950 in the Court of Magistrate, First Class, Akola.
4. The case of the prosecution was that the transmission machinery was not securely fenced. There was breach of Section 21, punishable under Section 92 of the Act. Workers were allowed to work without proper entries of their names and other particulars being made in the register of adult workers. This constituted a breach of Section 62, punishable under Section 92 of the Act. There was also a failure to maintain the register of leave wages with the prescribed entries duly filled in. There was a contravention of Section 83 read with Rule 91 of the Madhya Pradesh Factories Rules, punishable under Section 92 of the Act.
5. On behalf of the prosecution, A. P. Varkhedkar was examined. The respondent disclaimed responsibility for the breaches, if any. In his defence he examined 6 witnesses.

6. The trial Court held that there was no contravention of Section 21. The respondent Maganbhai was not liable for any contravention of Sections 62 and 83 and Rule 91. The question of breaches was not decided.

7. The trial Court was right in holding that there was no breach of the provisions of Section 21. Shamlal (D. W. 1) a Fitter in the Mills, in his evidence stated :

"I was present at the time when the Inspector of Factories had come for inspection. That time the guards over gears of the expellers were removed because one of the gear wheels had come out and it had to be refixed.

This refixation could not be done unless guards were taken out..... I had refixed the wheel and was taking trial of it without fixing the guard, and just then the Inspector arrived." It does not appear that he was cross-examined by the prosecution. To the same effect was the evidence of Ishaque (D. W. 2). Their testimony was believed by the trial Court. The finding of the trial Court is as follows :

"I have found that the two gears A and B parts of the machinery are dangerous parts and needed to be necessarily fenced. Gear C was well secured in spite of there being no guard and that the wooden gate was an appendage and not necessary fencing. I have further found that guards of gears A and B were thrown off in order to carry out repairing and adjustment of the machinery and this act was protected under Section 22."

8. The learned Additional Government Pleader did not contest the acquittal under Section 92 read with Section 21.

9. The learned Government Pleader says that the trial Court was wrong in its interpretation of Section 92. According to him, both Manager and Occupier are responsible for contravention of any of the provisions of the Act and the rules. The respondent should have been held liable even though the duty was cast on the Manager to maintain the registers.

10. We are of opinion that the trial Court was right in holding that the respondent could not be held liable for any contravention of the provisions of Sections 62 and 63 of the Act and Rule 91 by the Manager.

11. Section 92 is as follows :

"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 five hundred rupees or with both, and if the contravention is continued after conviction with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued."

An occupier will be liable for contravention of any of the provisions of the Act or rules if the responsibility for observing the provisions has not been imposed on some other person. If specific duty is laid on a particular person, the responsibility for the breach will be his.

12. Section 62 of the Act enjoins that the manager of every factory shall maintain a register of adult workers showing certain particulars specified therein. There is no reference to an occupier. The breach of Section 62 is punishable under Section 92. As the section does not require the occupier to maintain the register, he cannot be held liable for the failure of the manager to comply with the requirements of that section. The words in Section 92 "Save as is otherwise expressly provided in this Act" clearly absolve the occupier from liability for the contravention of Section 62 by the manager.

13. Section 83 is as follows :

"The Provincial Government may prescribe the keeping by managers of factories of registers showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors."

This section also speaks of managers and does not refer to an occupier.

14. Rule 91 is in the following terms :

"Leave with Wages Register : (1) The manager shall keep a register in Form No. 18 hereinafter called the "Leave with Wages Register" :

Provided that if the Chief Inspector is of the opinion that any muster-roll or register maintained as part of the routine of the factory or return made by the manager, gives, in respect of any or all of the workers in the factory, the particulars required for the enforcement of Chap. VIII of the Act, he may, by order in writing, direct that such muster-roll or register or return shall, to the corresponding extent, be maintained in place of and be treated as the register or return required under this rule in respect of that factory.

(2) The Leave with Wages Register shall be preserved for a period of three years after the last entry in it, and shall be produced before the Inspector on demand."

The obligation to maintain the register is imposed on a manager and not on an occupier. An occupier cannot be held liable for the failure of the manager to comply with the requirements of Section 83 and Rule 91.

15. There are several sections where there is no reference to a manager or occupier. Section 21 is an instance. In case of contravention of Section 21, Section 92 makes both the occupier and the manager liable. There are some provisions under which the responsibility is cast on the occupier. In such cases a manager cannot be held liable for the contravention. Penal statutes have to be strictly construed. It is a cardinal principle of criminal law that unless the statute, either clearly or by necessary implication, rules out 'mens rea' as a constituent part of a crime, an accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind. The occupier cannot be said to have a guilty mind when he is not charged with the duty of maintaining the register under Sections 62 and 83 and Rule 91. The decisions in '*Provincial Govt. C. P. and Berar v. Seth Chapsi Dhanji*¹', '*Provincial Govt, C. P. and Berar v. Gajadhar Rudmal*²', (B); '*State Government, Madhya Pradesh v. Janabai*³', (C); '*State Government, Madhya Pradesh v. Holkarmal*⁴', (D) relied on by the learned Government Pleader are inapplicable to the present case.

16. In 'AIR 1938 Nagpur 406' (A) the prosecution was against the manager and agent under Section 60 (b) (i) read with Section 42, Factories Act, 1934. That case dealt with the question of good faith and 'mens rea'. It was pointed out that it was sufficient in a prosecution under the Factories Act to prove that the accused has infringed the Act or rules under the Act. Section 42 was as follows:

"No adult worker shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Adults displayed under Sub-Section (1) of Section 39 and the entries made beforehand against his name in the Register of Adult Workers maintained under Section 41."

There was no reference to manager or occupier. In the case of contravention Section 60 made both manager and occupier liable. Here the prosecution cannot say that the respondent has infringed Sections 62 and 83 and Rule 91 as no duty was cast by these provisions on him.

17. In 'Cri. A. No. 1 of 1949, D/-23-2-49 (Nag) (B)' the prosecution was for contravention of Sections 42 and 38, Factories Act and of Rule 48 (i), C. P. Factories Rules, 1935, punishable under Section 60. Section 38 did not refer to manager or occupier and was in general terms.

18. In 'Cri. A. No. 236 of 1950, D/-16.4.1951 (Nag) (C)' the prosecution was under Sections 60 (b) (i), 60 (c) and 60 (g), Factories Act, 1934. In 'Cri. A. No. 268 of 1951, D/-21.1.1952 (Nag) (D)' the prosecution was under Section 92 of the Act for contravention of Section 21.

19. We may also point out that the rule " 'Mens rea' is not an essential element in an offence under the Factories Act. It is, therefore, sufficient in a prosecution under the Act to prove that the accused has infringed the Act or rules under the Act and it is not necessary to show that the

accused intended to infringe the Act or the rules. Good faith is no defence," has to be read in the context of the Act of 1934. Section 60 imposed a penalty of fine only. It was, therefore, regarded as a minor offence. Section 92 of the Act, however, imposes a punishment of 3 months' imprisonment or fine. It cannot be classed as an offence on the same footing under Section 60 of the former Act.

20. The appeal fails and is dismissed.

Appeal dismissed.

¹ AIR 1938 Nag 406

² Cri. A. No. 1 of 1949, D/-23.2.1949 (Nag)

³ Cri. A. No. 236 of 1950, D/-16.4.1951 (Nag)

⁴ Cri. Appeal No. 268 of 1951, D/-2-1-52 (Nag)