

(1953) 07 AHC CK 0024

Allahabad High Court (Lucknow Bench)

Case No: Criminal Ref. No. 10 of 1953

Madanlal Haweliwala and
Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 22, 1953

Acts Referred:

- Factories Act, 1948 - Section 106, 92
- Factories Rules, 1950 - Rule 130

Citation: AIR 1954 All 27 : (1953) 23 AWR 439

Hon'ble Judges: R. Singh, J

Bench: Single Bench

Advocate: B.N. Khanna, G.K. Khanna and Umashankar Srivastava, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Singh, J.

This is a reference by the Additional Sessions Judge of Bahraich recommending that the order of the Sub-Divisional Magistrate, Nanpara, convicting and sentencing Madan Lal Haweliwala & another to pay a fine of Rs. 50/-under Section 92 of the Factories Act of 1948 be set aside.

2. The facts of this case are simple. Sri Madan Lal Haweliwala is the proprietor and occupier of Janki Rice Mills Rupaidiha and Sarju Prasad is his son and manager of the mill. An inspector of Factories inspected the mill on 10-7-1950 & found that a certain register required to be maintained under the Factories Rules could not be produced. This involved a breach of Rule 130(b) of the Factories Rules of 1935. The Chief Inspector of factories sent a complaint bearing date 7-10-1950 against the owner and manager of the factory to the City Magistrate of Bahraich. This complaint seems

to have reached the City Magistrate on 10-10-1950, and the City Magistrate passed an order for the first time on 12-10-1950. The file was sent on 8-12-1950, to the Sub-Divisional Magistrate, Nanpara, for disposal as the place where the offence is said to have been committed lay within, the jurisdiction of the Sub-Divisional Magistrate, Nanpara, and not of the City Magistrate. The case was ultimately tried, it appears, by the Sub-Divisional Magistrate, Nanpara, who convicted Madan Lal Haweliwala and the other accused as mentioned above. An application for revision was then filed by Madan Lal Haweliwala to the Sessions Judge who has made the recommendation which is before me.

3. It is not disputed that the place where the offence is said to have been committed lay within the jurisdiction of the Sub-Divisional Magistrate, Nanpara. It was he, therefore, who was empowered to take cognizance of the offence. A complaint could also have been filed to the District Magistrate. In the present case, however, no complaint was made either to the Sub-Divisional Magistrate, Nanpara, or to the District Magistrate, but one was sent to the city Magistrate who had evidently no jurisdiction to entertain the complaint in respect of the offence committed within the jurisdiction of the Sub-Divisional Magistrate Nanpara. The Sub-Divisional Magistrate, Nanpara, took cognizance of the case after 11-12-1950, that is more than three months after the offence had been committed. It is provided in Section 106 of the Factories Act that cognizance of an offence committed in connection with the Factories Act or Rules could be taken only within three months of the date of the offence. In the present case no complaint was in fact made to the proper person, within three months of the date of the offence and no cognizance of the offence was taken by the Sub-Divisional Magistrate, Nanpara, within three months. The conviction of Madam Lal Haweliwala and Sarju Prasad by the Sub-Divisional Magistrate, Nanpara, was therefore bad and should be set aside.

4. The reference made by the Sessions Judge is therefore accepted. The order of conviction and sentence of fine passed upon. Madan Lal Haweliwala and Sarju Prasad u/s 92 of the Factories Act. 1948. are therefore set aside. They are acquitted. The fine, if paid, shall be refunded to them.