(2004) 11 AP CK 0040

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1733 of 1999

The Inspector of Factories		APPELLANT
	Vs	
S.N. Kanchal, Occupier, L. Texmaco Limited, (Cement Division)		RESPONDENT

Date of Decision: Nov. 5, 2004

Acts Referred:

- Factories Act, 1948 - Section 108, 109, 11, 110, 12
- Factories Rules - Rule 66(3), 72

Citation: (2005) 2 ALD(Cri) 747 : (2005) 106 FLR 853 : (2005) 3 LLJ 846

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Public Prosecutor, for the Appellant; S. Ravi, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.
Heard Sri Mohd. Osman Shaheed, Additional Public Prosecutor and Sri S. Ravi, learned counsel representing the respondent-accused.

2. The Inspector of Factories, Cuddapah, represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad had preferred the present criminal appeal as against the order of acquittal recorded by the Judicial Magistrate of First Class, Kamalapuram in S.T.C. No. 31 of 1993 dated 30th December 1998.

3. The appellant-complainant filed the complaint against the respondent-accused for contravention of Section 7A(1) read with Section 36, Section 46(2)(b) and Rule 66 (3), Section 47 and Rule 72 of Factories Act, 1948 (hereinafter in short referred to as "the

Act'' for the purpose of convenience). The case of the prosecution in brief is that on 28.7.1992 at 9-00 A.M. the Deputy Chief Inspector of Factories, Kurnool and Inspector of Factories, Cuddapah inspected the Texmaco Limited (Cement Division), Yerraguntla and it is stated that respondent-accused was the occupier and on inspection they found that respondent-accused allowed the un-trained and in-experienced contract workers Chereddy Venkata Subbareddy, Sreenivasulu and Seenu to clear the clinker jammed in the extraction and discharge chutes at the belt conveyor No. 27, running inside the under ground tunnel of the clinker stock point. On 24.7.1992, without testing and inspecting the work place inside and without constant supervision, due to which Chereddy Venkata Subbareddy died. It is also the case of the prosecution that the respondent-accused also failed to extend canteen facility for the contract workers and also failed to provide separate! dining accommodation for women workers employed in the company. It is also the case of the prosecution that respondent-accused is failed to provide rest house for workers employed in the factory. Basing on the allegations made in the complaint, the case was taken on file u/s 7A(1) read with Section 36 and u/s 46(2) and Rule 66(3) and u/s 42 and Rule 72 of the Act and the Rules made thereunder. The prosecution examined P.Ws.1 and 2 and Exs. P1 to P10 were marked. D.W.1 was examined and Ex. D1-attested Xerox copy of correspondence pertaining to rest shed had also been marked. On appreciation of the evidence available on record in detail, the learned Magistrate recorded findings to the effect that the relevant material witness had not been examined. There is no acceptable evidence to establish the allegations made in the complaint and further the evidence of D.W.1 had also been relied upon and a further specific finding had been recorded that the prosecution as such, as against the alleged occupier-respondent-accused cannot be maintained in the light of the fact that it cannot be said that Texmaco Limited (Cement Division), Yerraguntla can be said to be the occupier within the meaning of Section 2(n) of the Act. Apart from this aspect of the matter, the evidence of P.Ws.1 and also P.W.2 had been discussed at length and in view of the fact respondent-accused was not the Director of the company as admitted by P.W.2, he cannot be said to be the occupier within the meaning of Section 2(n) of the Act and on that ground also acquittal had been recorded.

4. The learned Additional Public Prosecutor would contend that the evidence of P.Ws.1 and 2 is clear and categorical to the effect that respondent-accused had contravened provisions of the Act and the Rules with which respondent had been charged and acquittal had been recorded by the learned Magistrate taking a very narrow view which cannot be sustained. The learned Additional Public prosecutor had taken this Court through the evidence of P.Ws.1 and 2 and also D.W.1 and also would contend that on the material available on record it is clear that the requisite facilities were not provided by the respondent-accused and hence the contravention of the provisions of the Act and the Rules with which the respondent had been charged had been proved.

5. Per contra, Sri Ravi, learned counsel representing the respondent-accused would contend that on the very face of allegations and also the evidence of P.Ws.1 and 2, it is

clear that Texmaco Limited (Cement Division), Yerraguntla was not in the management of the factory or the premises at the relevant point of time and hence cannot be said to be the occupier of the said factory within the meaning of the Act. The learned counsel also pointed out to the evidence of D.W.1, Senior Officer (personnel welfare) of Zuari Cements, Yerraguntla and would contend that in the light of the same there cannot be any controversy in relation to the fact that this factory was taken over by Zuari Cements, Yerraguntla and hence the very prosecution of respondent-accused is misconceived. Even otherwise the counsel would contend that there is clear admission of P.W.2 that respondent-accused was not the Director of the said company and hence in view of the same, the acquittal recorded may have to be confirmed. The learned counsel also explained the definition of occupier as it originally stood and the subsequent amendments introduced thereto inclusive of the amendment in the year 1987. Strong reliance was placed on the decision of the Apex Court in J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others,

6. Heard both the counsel.

7. Perused the evidence of P.Ws.1, 2 and also D.W.1, Exs. P1 to P10 and Ex. D1 and the findings recorded by the learned Magistrate in this regard. P.W.1 deposed that he investigated into the case and also further deposed that the accident occurred due to lack of safety precautions and unsafe methods of work. P.W.1 further deposed that ! he had recorded the statements of workers may not be inclined to support the version of the prosecution as against the management. P.W.1, as such sent an eye witness to the incident. No doubt, P.W.1 deposed in detail the contravention with which the respondent-accused had been charged. P.W.1 also clearly deposed that the occupier of the factory failed to extend canteen facility for contract workers and failed to provide separate dining accommodation for women workers working in the factory. No doubt, it is explained in the light of Exs. P6, P7 and P8 that there were no women workers. This aspect whether there are women workers or not working in the factory is a question of fact. Unless the prosecution had established the applicability of the Act and the provisions relating thereto, it is needless to say that the prosecution is bound to fail. Section 2(n) of the Factories Act deals with occupier of a factory and reads thus:

"Section 2(n): "occupier of a factory" means the person who has ultimate control over the affairs of the factory,(xxx) (Provided that-

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government; or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local

authority, as the case may be, shall be deemed to be the occupier".)

(Provided (further) that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire-

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under-

(a) Section 6, Section 7, (Section 7A, Section 7B) Section 11 or Section 12;

(b) Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(c) Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relating to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or u/s 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII, or Chapter IX or Section 108, Section 109 or Section 110, in relation to-

(a) the workers employed directly by him, or by or through any agency; and the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or Person).

8. The evidence of P.W.2 and the admissions made by P.W.2 also had been taken into consideration by the learned Magistrate while recording acquittal. In John Donald Mackenzie and Another Vs. The Chief Inspector of Factories, Bihar, Ranchi and Others, the expression "occupier" as it stood then had been dealt with by the Apex Court and it was held

"The expression "occupier" as defined in S.2 (n), Factories Act is not to be equated with "owner". No doubt the ultimate control over a factory must necessarily be with an owner unless the owner has completely transferred that control to another person. Whether that was done in a particular case is a question of fact. Therefore, the manager of a factory who claims to be an occupier of the factory must lay before the Chief Inspector of Factories the necessary material for showing that the company had in some manner transferred the entire control over the factory to him. In the absence of such material an application for renewal of license signed by the manager is not in proper form and cannot be acted upon."

Strong reliance was placed on J.K.INDUSTRIES LTD., AND ORS. v. CHIEF INSPECTOR OF FACTORIES AND BOILERS AND ORS. (1st cited) where the expression "Person"-"Ultimate", "ultimate control" and "immediate or day-to-day control within the meaning of the Act had been explained in detail by the Apex Court. In the light of the findings recorded by the learned Magistrate on the strength of the evidence of P.W.2 and the admissions made by P.W.2 and also the absence of other acceptable evidence, except the evidence of P.Ws. 1 and 2 coupled with the evidence of D.W.1, this court is of the considered opinion that the order of acquittal recorded by the learned Magistrate need not be disturbed and accordingly the same is hereby confirmed.

9. The criminal appeal stands dismissed.