State Government Vs Krishnadas Nima

Court: Bombay High Court (Nagpur Bench)

Date of Decision: April 5, 1954

Acts Referred: Factories Act, 1948 â€" Section 92

Citation: (1955) CriLJ 1084

Hon'ble Judges: Mudholkar, J; Chodhuri, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is filed by the State Government of Madhya Pradesh against the order of acquittal of the respondent Krishnadas Nima passed by

the Judge Magistrate, Harda, in Cr. Case No. 104 of 1952.

2. The respondent is manager of an oil-mill at Harda. He was prosecuted u/s 92, Factories Act on a complaint made by Shri B. V. Desai,

Inspector of Factories for the following contraventions of the provisions of the Act:

(i) For having failed to cover dangerous part of the machine as provided u/s 21, Factories Act.

(ii) For failing to maintain a medicine box as required by Rule 65, and

(iii) For failing to maintain leave with Salary Register as required by Rule 91.

The contraventions were detected on 3-3-1952.

3. The prosecution was sanctioned by the District Magistrate, Hoshangabad, u/s 105(1), Factories Act on 27-5-1952 and the complaint was

forwarded to Shri G. S. Pawar, Magistrate First Class, Hoshangabad, for disposal according to law. On 27-6-1952 the case was transferred to

the Court of the Judge Magistrate, Harda, for disposal. It was received by him and registered on 10-7-1952.

4. The respondent ''inter alia'' contended before the Magistrate that u/s 106, Factories Act the proceedings against him were barred as they were

filed, more than three months after the detection. The contention prevailed before the trial Court. The trial Court was of opinion that Shri Pawar,

Magistrate First Class, Hoshangabad was not competent to entertain the complaint on 29-5-1952 for want of territorial jurisdiction and therefore

the complaint should be deemed to have been filed on 9-7-1952 when he received it and the offence having been detected on 3-3-1952 the

complaint was "prima facie" barred. The respondent was, therefore, acquitted.

5. It was argued on behalf of the State Government that the real date for calculation of the period of three months under S, 106, Factories Act

would be 29-5-1952 when the complaint reach" ed the Magistrate First Class Shri G. S. Pawar and cognizance was taken by him, and the

subsequent transfer of the case to the Magistrate First Class, Harda, who received it on 9-7-1952 could not in any way affect the period of

limitation.

6. As against this it was contended on behalf of the respondent that the offence was committed in Harda and the proper Court for entertaining the

complaint under the Factories Act was the Sub-Divisional Magistrate, Harda, and not Shri G, S. Pawar, who was Magistrate First Class,

Hoshangabad, and therefore, the date on which the complaint was received by the Sub-Divisional Magistrate, Harda, would be the date for

calculating the period of limitation u/s 106, Factories Act.

7. We obtained the distribution memo of Hoshangabad district and also the date of appointment of Shri G. S. Pawar as an Extra Assistant

Commissioner in Hoshangabad district in order to determine the question of jurisdiction. Shri G. S. Pawar, who was officiating Tahsildar, was

appointed Extra Assistant Commissioner in Hoshangabad district vide Appointments Department Memorandum No. 915-623-1 dated 12-3-

1951. He was appointed Sub-Divisional Magistrate, Harda, where he assumed charge on 18-3-1951. On his appointment as an Extra Assistant

Commissioner he was exercising First Class Magisterial powers by virtue of the Judicial Department Notification No. 2702-122/XIX dated 12-

12-1944. He was Sub-Divisional Magistrate, Harda, from 1-3-1951 to 22-8-1951, and on relief by Shri B. P. Jain he was transferred to

Hoshangabad where according to the distribution memo, he was doing the work of Land Acquisition Officer, District Refugee Officer, Nazul

Officer and also trying the criminal cases pending on his file.

8. It is clear that Shri Pawar became Magistrate First Class in Hoshangabad district by virtue of his appointment as an Extra Assistant

Commissioner u/s 12(1), Cr.PC His jurisdiction "as Magistrate First Class extended throughout the [district of Hoshangabad as provided by Sub-

section (2) of Section 12 "ibid". There is no notification under iS. 12(1), Cr.PC limiting his jurisdiction. He, though stationed at the Head quarters

of the district, was competent to exercise jurisdiction u/s 12(2) "ibid" throughout the whole of the district (Vide - "Golam Rahaman Khan v. Kali

Pada Manna" AIR

9. The mere definition of areas under distribution memo cannot be taken as a provision excluding jurisdiction of the rest of the district, for if it did,

Sub-section (2) of Section 12 would have no meaning. This sub-section clearly requires some provision excluding jurisdiction in the rest of the

district which is either express or must be inferred by necessary implication. The power of the District Magistrate to limit the territorial jurisdiction

of a Magistrate fs exercisable only with the concurrence of the State Government. There is nothing to show that such concurrence was obtained in

this case when Shri Pawar was appointed Sub-Divisional Magistrate, Harda. We are of opinion that Shri G. S. Pawar, who was Magistrate First

Class for the district of Hoshangabad, was competent to receive the complaint on 29-5-1952 u/s 92, Factories Act in respect of the offence which

was detected at Harda which is a sub-division of Hoshangabadl district.

10. The order sheet dated 29-5-1952 shows that Shri Pawar had taken cognizance of the offence as the summons to the respondent was issued

for appearance on 26-6-1952, The complaint having been filed within three months of the date of the detection of the offences was definitely within

time. The trial Court was in error in dismissing the complaint as time-barred.

11. The appeal is allowed. The order of acquittal is set aside and the case is remanded to the lower Court for trial.