
(1986) 03 BOM CK 0072

Bombay High Court

Case No: Criminal R. Applns. No's. 328 to 331 of 1983

State of Maharashtra

APPELLANT

Vs

Malak Sultan A.H. Shivaji

RESPONDENT

Date of Decision: March 12, 1986

Acts Referred:

- Constitution of India, 1950 - Article 166(2)
- Industrial Disputes Act, 1947 - Section 25FFA, 30A, 34, 39

Citation: (1986) 2 BomCR 573 : (1993) 3 LLJ 36 : (1987) MhLj 131

Hon'ble Judges: A.D. Tated, J

Bench: Single Bench

Advocate: M.D. Gangakhedkar, for the Appellant; M.J. Rajani, for the Respondent

Final Decision: Allowed

Judgement

Tated, J.

These four Criminal Revision Applications directed against the common judgment and order passed by the learned Additional Sessions Judge, Pune in Criminal Revision Application Nos. 324, 325, 372 and 407 of 1982 decided on 20-4-1983 whereby the learned Additional Sessions Judge allowed the Applications and quashed the order of issuance of process passed by the learned trial Magistrate in Criminal Cases Nos. 3306/82, 2954/82, 3307/82 and 2953/82. In those four cases separate complaints were filed against the Respondents by the Assistant Commissioner of Labour for certain offences alleged to have been committed under the provisions of Section 25-R and Section 30-A of the Industrial Disputes Act, 1947 (hereinafter it will be referred to as an Act). The learned Judicial Magistrate took cognizance and issued process in those four Criminal cases against the Respondents. The Respondents preferred Criminal Revision Applications in the Sessions Court, Pune against the order of the learned Judicial Magistrate issuing process against them. The Respondents inter alia contended that the learned Judicial Magistrate should not have taken cognizance and should not have issued

process against them for want of valid authority as contemplated u/s 39 read with Section 34 of the Act. The learned Additional Sessions Judge thought that the Revisions could be disposed of on deciding the above contention of the Respondents and, therefore, he considered the above contention and he agreed with the learned Counsel appearing for the revision Petitioners and held that there was no delegation of powers as provided in Section 39 of the Act and as such the prosecution suffered from want of valid, authority. He held that the Government in those cases authorised the officer subordinate to it merely u/s 34 without any delegation of its powers u/s 39 of the Act and, therefore, the authority granted by the State Government to the Assistant Commissioner of Labour Shri P.N. Jadhav who filed the complaints was not valid. In this view of the matter, without deciding other contentions raised, by the present Respondents, he allowed the Revision petitions and quashed the order of the learned Judicial Magistrate issuing process against the present Respondents.

2. Feeling aggrieved with the aforesaid order passed by the learned Additional Sessions judge, Pune the State has preferred these Criminal Revision Applications.

3. The learned Public Prosecutor Shri Gangakhedkar contends that the State Government after considering the relevant facts decided to prosecute the Respondents for the offence punishable u/s 30-A read with Section 25-FFA of the Act and the State Government by order dated 13th September 1982 authorised Shri P.N. Jadhav, Assistant Commissioner of Labour, Pune to make a complaint for prosecution of the present Respondents for closing down their undertakings without complying with the provisions of Section 25-FFA, which is an offence punishable u/s 30-A of the Act. Shri Jadhav was also authorised to take all steps necessary and incidental to the prosecution of the Respondents. According to him, it was a valid authorisation required u/s 34 of the Act and it was not necessary to delegate the powers u/s 39 of the Act. The learned Counsel for the present Respondents Shri Rajani, on the other hand, submits that there could not be authorisation for filing the complaint against the Respondents without there being delegation of powers u/s 39 of the Act. According to him, the State Government should have delegated the powers to the Assistant Commissioner of Labour, Pune by issuing a notification and publishing it in an official Gazette, for the prosecution of the Respondents for the said offence and only in that event the Assistant Commissioner of Labour, Pune could have filed the complaints against the Respondents. Thus, according to him, the authorisation of the Assistant Commissioner of Labour, by the State Government without delegation or powers u/s 39 of the Act is bad. Mr. Rajani at this stage says that even the authorisation under the order dated 13th September, 1982 is itself a delegation of powers u/s 39 and as that order is not notified in the Official Gazette as required by Section 39 of the Act, the Assistant Commissioner of Labour could not file the complaints against the Respondents.

4. The learned Counsel Shri Rajani in support of his contention relied on the decisions in [Ramdas and Others Vs. K.M. Sen, Manager, Oriental Gas Co. Ltd., Calcutta](#), ; *Jiwan Das v. Rabin Sen and Ors.*, 1956 II LLJ 437 ; [Public Prosecutor Vs. S.A. Jabbar](#), ; [Jaswant Singh Vs. The State of Punjab](#), , [Feroz Din and Others Vs. State of West Bengal](#), . In *re R.B.S.S.N. Lakshmanan Chettiar and Ors.*, 51 Criminal Law Journal 1563 and [State of Kerala Vs. Mary C. Nidhiri Chacko](#), . The learned Counsel for the Respondents took me through all those decisions and on going through them I find that none of these decisions supports the contention of the learned Counsel that the appropriate Government could not authorise its subordinate official to file a complaint u/s 34 of the Act without delegating the powers as per provisions of Section 39 of the Act. The provisions of Section 34(1) of the Act were considered by the Supreme Court in the case of [Feroz Din and Others Vs. State of West Bengal](#), of the report Their Lordship have stated the law thus:

"The last point raised is about the propriety of the sanction. Section 34(1) of the Act provides:

"No court shall take cognizance of any offence punishable under this Act. save on complaint made by or under the authority of the appropriate Government."

The learned Advocate for the appellants relying on AIR 1948 82 (Privy Council) where a provision somewhat similar to Section 34(1) was considered by the Judicial Committee, contended that the sanction granted in the present case by the Government of West Bengal to file the complaint against the appellants was bad as it has been granted without reference to the facts constituting the offence. It is true that the sanction does not on the face of it refer to the facts constituting the offence. There is, however, ample evidence in this case, which we did not understand the learned Advocate for the appellants to challenge and which clearly establishes that the entire facts connected with the offence had been placed before the sanctioning authority and the sanction had been granted on a consideration of them. The Judicial Committee in the case above- mentioned itself observed that the sanction would be good if it was proved by the evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though these facts might not have been stated on the face of sanction itself. It therefore seems to us that the sanction in" the present case is unobjectionable".

The decision instead of supporting the contention of the learned Counsel supports the submission of the learned Public Prosecutor that the State Government in this case on considering all the relevant facts u/s 34 of the Act authorised the Assistant Commissioner of Labour, Pune to file the complaint and to do all necessary acts in prosecution thereof. The Supreme Court decision in [Jaswant Singh Vs. The State of Punjab](#), relied upon by the learned Counsel for the Respondents is in a Criminal Appeal arising out of the prosecution under the Prevention of Corruption Act. It does not in any way support the contention of the learned Counsel. It is not necessary to discuss the facts in other decisions referred to above and relied upon

by the learned Counsel for the Respondents, as none of the authorities supports his contention. In the decision in [Jiwan Das Vs. Rabin Sen and Others](#), Their Lordships of the Calcutta High Court considered the provisions of Section 34 of the Act and relying on the decision of the Privy Council in Gokulchand Dwarkadas v. The King 52 C.W.N. 325, and on the facts of that case held that as the authority so conferred contained no indication as to when and where the offence was committed, it could not be considered to be valid and sufficient within the meaning of Section 34 of the Industrial Disputes Act. Their Lordships of the Calcutta High Court do not lay down that before acting u/s 34 of the Act the appropriate Government first has to delegate its powers u/s 39 of the Act. The Privy Council authority in the case of Gokulchand Dwarkardas was considered by the Supreme Court in the case of Feroz Din and others referred to above. There is no authority to support the contention of the learned Counsel for the Respondents that before granting authority required to be granted by the appropriate Government for the Court to take cognizance of any offence punishable under the Act, the Government had to delegate its powers u/s 39 of the Act, The contention of the learned Counsel that the order dated 13th September, 1982 passed by the Government authorising Shri P.N. Jadhav, Assistant Commissioner of Labour to file the complaints against the Respondents is itself a delegation of powers u/s 39 of the Act and as the said order was not notified in the Official Gazette, the Assistant Commissioner of Labour, Pune could not file the complaints for the offence under the Act and that the learned Judicial Magistrate in view of the provisions of Section 34 of the Act could not take cognizance thereof, cannot be accepted for the simple reason that there is a lot of difference in the delegation of powers u/s 39 and granting of authority by the appropriate Government to its subordinate official for filing a complaint for the offence under the Act. Section 34 of the Industrial Disputes Act. 1947, reads as follows:
"Cognizance of offences: (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."

Section 39 reads as follows:-

"Delegation of powers:- The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or Rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also:-

(a) where the appropriate Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, may be specified in the notification, and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification."

The reading of Section 34 clearly indicates that unless a complaint is filed by or under the authority of the appropriate Government, the Court cannot take cognizance of the offence punishable under the Act. For the State Government to authorise any of its subordinate Officers to file a complaint for the offences punishable under the Act, it is not necessary that the State Government should delegate its powers to file a complaint to some officer or authority subordinate to it. It is open for the State Government to delegate its powers to file a complaint for the offences under the Act and in case it decides to delegate those powers, it has to follow the provisions of Section 39 of the Act. The order delegating the powers to the subordinate officer will have to be notified in the Official Gazette and if such delegation is made, the officer in whose favour such delegation is made, will be in the position of the State Government to decide whether any complaint for the offences punishable under the Act should be filed and also to authorise any officer for filing such complaint. If the Government does not want to delegate its powers, the Government will have to consider the relevant material and will have to form its opinion as to whether there has been violation of the provisions of the Act and whether a complaint is necessary to be filed for punishing the offender and after having formed such opinion the Government itself can file the complaint or can authorise any one to file the complaint under the Act. When the appropriate Government itself decides to file a complaint and authorises some of its subordinate officers to file a complaint under the Act, it is not necessary for the State Government to delegate its powers u/s 39 of the Act.

5. In those four cases the orders passed by the State Government authorising Shri P.M. Jadhav, Assistant Commissioner of Labour, Pune to file the complaints against the Respondents for the offences punishable u/s 30-A read with Section 25FFA are similar mutatis mutandis. The authorisation order in Criminal Case No. 2953 of 1982 reads as follows:-

"ORDER"

Industries, Energy and Labour Department,

Mantralaya, Bombay-400 032 Dated the 13th September, 1982.

No. MSC-70281/2355(ii)Lab-2. Whereas it has been brought to the notice of the Government of Maharashtra that M/s. Eagle Flask Private Limited (Glass Division) having the registered office and their factory at Eagle Estate, Eagle Flask Road, Talegaon, Dist. Pune (hereinafter referred to as the "said undertaking") and the Directors and Manager thereof mentioned in the Schedule hereto (hereinafter referred to as the "said persons") have given notice on 13.1.1982 u/s 25FFA of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") intending to

close down the manufacturing activities of said undertaking with effect from 15.3.1982.

And whereas Government is of the opinion that it was necessary for the said persons to apply to the Government of Maharashtra for permission to close the said undertaking u/s 25 of the Industrial Disputes. Act, 1947 as amended by Industrial Disputes (Maharashtra Amendment) Act, 1981 (III of 1982).

And whereas the said persons have closed the said undertaking with effect from 13-1-1982 without sending application to Government u/s 25 of the said Act and have thereby committed a breach of that Section and hence are punishable u/s 25-R of the said Act.

And whereas, the Government of Maharashtra is appropriate Government in this case.

And whereas, the Government of Maharashtra having fully considered the material before it in regard to said breach and after sending show-cause notice to the said persons and having received reply, is satisfied that there is a prima facie case against the said persons, and it is necessary, in the interest of justice that the said persons should be prosecuted for the breach of the said provisions;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 34 of the said Act, the Government of Maharashtra hereby authorises Shri P.N. Jadhav, Assistant Commissioner of Labour, Pune to make a complaint for prosecution of the said persons for closing down the said undertaking without complying with the provisions of Section 25-O of the said Act which is an offence punishable u/s 25-R of the said Act.

Shri P.N. Jadhav, Assistant Commissioner of Labour, Pune is also authorised to take legal assistance, if necessary, of the Public Prosecutor, Pune.

SCHEDULE

(1) Shri Alimohamed C. Padamsee, Director, M/s. Eagle Flask Private Limited, Glass Division, Talegaon.

(2) Shri Ismail H Padamsee, Director, M/s. Eagle Flask Pvt. Limited, Glass Division, Talegaon.

(3) Shri Naushed I. Padamsee, Director, M/s. Eagle Flask Pvt. Limited, Glass Division, Talegaon.

(4) Shri Riaz A. Padamsee, Executive Director, M/s. Eagle Flask Pvt. Limited, Talegaon.

(5) Shri Abdul Hussain I. Shivji, Director, M/s. Eagle Flask Pvt. Limited, Talegaon.

(6) Shri Mumtaj At Padamsee, Director, M/s. Eagle Flask Pvt. Limited, Glass Division, Talegaon.

(7) Shri S.N. Kaul, Production Manager, M/s. Eagle Flask Pvt. Limited, Talegaon.

By order and in the name of the Governor of Maharashtra.

Sd/-

(V.B. Khodke)

Assistant Secretary to Government.

6. The reading of the above order and similar orders in three other Criminal Cases clearly show that the State Government considered the relevant material and decided to file the complaints against the Respondents for breach of Section 25FFA punishable u/s 30-A of the Act and authorised Shri P.N. Jadhav, Assistant Commissioner of Labour, Pune to file the complaints. The orders dated 13th September, 1982 have been passed by the State Government "By order and in the name of the Governor of Maharashtra." They are authenticated as per Rules of business under the provisions of Article 166(2) of the Constitution of India. It is valid authorisation by the State Government in favour of Shri P.N. Jadhav, Assistant Commissioner of Labour, Pune to file the complaints against the Respondents. Therefore, the trial Court could take cognizance of the offence on the complaint of Shri P.N. Jadhav. The contention of the learned Counsel for the Respondents that the order, dated 13th September, 1982 amounts to delegation of powers u/s 39 of the Act and as it was not notified in the Official Gazette, the authorisation was bad, cannot be accepted.

7. In the result, I find that the learned Additional Sessions Judge was wrong in quashing the process issued by the learned Judicial Magistrate in the four cases on the ground that the order dated 13th September, 1982 was bad for want of delegation of powers u/s 39 of the Act. Hence the orders passed by the learned Additional Sessions Judge in the four Revision Applications cannot be sustained.

8. The learned Additional Sessions Judge did not consider other contentions raised by the Respondents who were petitioners before him and, therefore, the matter has to be remanded for decision of the Revision Petitions according to law. In the result, the rule is made absolute. The parties are directed to appear in the Court of Additional Sessions Judge, Pune on 7.4.1986.

Order accordingly.