# State Of Punjab vs Satpal And Anr. on 24 November, 1969

## Equivalent citations: AIR1970SC655, 1970CRILJ738, [1970(20)FLR89], 1970LABLC772, (1970)IILLJ64SC, (1969)3SCC910, AIR 1970 SUPREME COURT 655, 1970 LAB. I. C. 772, 20 FACLR 89, 1970 2 LABLJ 64

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## Bench: A.N. Grover, A.N. Ray, I.D. Dua, M. Hidayatullah

JUDGMENT

M. Hidayatullah, C.J.

1. The State has appealed in these three appeals (which will be governed by this judgment), against the acquittal of the respondent Satpal who was prosecuted along with a firm M/s. Jai Bharat Metal Industries under Section 14 of the Employees' Provident Funds Act, 1952 read with Para 76 of the scheme framed under that Act for breach of Section 16(1)(b) of the Act. The prosecution ended in acquittal. Against the acquittal, appeals were filed in the High Court which were dismissed summarily on August 16, 1966. The present appeals have been filed by special leave against the judgments and orders of the High Court dismissing the appeals against the acquittals.

2. The facts disclosed in the case are as follows:

> One Tirath Ram (who was examined as P.W. 4) started a factory by the name of Net Ram Tirath Ram on November 9, 1957. The factory was manufacturing in the years 1958-59 tavas, chaff-cutter blades. Later, the name of this manufacturing concern was changed to Jai Bharat Metal Industries. Tirath Ram was then the sole proprietor of the concern. In September 1962, Satpal the present accused and three others joined Tirath Ram as Partners. The firm, however, continued under the same name till February 13, 1963. On that date, the old partnership was dissolved. Tirath Ram went out of the business and the remaining partners continued running the factory jointly. This went on till April 30, 1963. The factory was run in the same premises with the same labour and under the same name. In April 1963, the factory was removed to other premises, a new electrical connection was obtained but the old machinery of the factory save the electric motor was installed, and the factory continued, although not for the original business, but for the business of manufacturing iron nails for shoes for the bullocks.

3. The firm did not at that time maintain a register of provident funds. It appears that it had been employing less than 20 workmen till November 13, 1962 when it began to employ 20 or more workmen. The factory reached the figure of 20 in the employment of workmen while the factory was still in the old premises. In other words, when the factory first employed 20 workmen, a period of 5 years had already elapsed from the initial establishment of the factory by Tirath Ram.

4. Several pleas were taken to defence by the respondents. Only one of them prevailed in the Court of trial and that was that the prosecution had not led any evidence to show that the factory ever employed 20 persons prior to November 13, 1962. It was, therefore, held that the period of 5 years' grace allowed by Section 16(1)(b) of the Employees' Provident Funds Act would have elapsed on November 13, 1967 and no prosecution for the breach of the section in respect of 1964 and 1965 could have-been started in these three cases. On the other points the findings of the trial court were against the respondents. However, in view of this point, acquittal was ordered. In appeal to the High Court, the State of Punjab took the ground that the infancy period of 5 years during which the factory was exempt from the operation of Section 16(1)(b) was to be reckoned from the date on which the establishment was or had been set up, and not from the date on which factory establishment first began to employ 20 or more workmen. This g round was not accepted by the High Court Hence these appeals.

5. The Employees' Provident Funds Act, 1952 was passed to provide for institution of provident funds for employees in factories and other establishments. It provided for the establishment of a fund in the hands of a Board of Trustees and establishments liable to make contributions of provident fund had to recover the contributions of the workmen, add to them their own contribution plus an administrative charge of 3% and hand over the amount periodically to the Central Provident Funds Commissioner appointed for this purpose. Para 76 of the scheme which was framed under the Act provided for punishment for failure to pay contributions and to furnish returns etc. It is stated in that para that if any person fails to pay any contribution which he is liable to pay under the scheme, deducts or attempts to deduct from the wages or other remuneration of a member the whole or any part of the employer's contribution, or fails or refuses to submit any return etc., or obstructs any inspector or other official appointed under the Act or the scheme in the discharge of his duties or fails to produce any record for inspection by such Inspector or other official, or is guilty of contravention of or non-compliance with any other requirement of the scheme, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both. The Act, however, gives breathing time to new establishments by providing in Section 16 that the Act is not applicable to them for some specified periods. We are concerned in these appeals with the exemptions granted to infant establishments under Section 16(1)(b) which reads as follows:

> 16. Act not to apply to establishments belonging to Government or local authority and also to infant establishments-
>
> (1) This Act shall not apply-
>
> (a) ** ** **

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty, persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation: For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

6. The contention of the respondents is that the business which they were running in 1964-65 was an entirely different business and was not the same business which Tirath Ram had started. They referred in particular to the kind of articles that Tirath Ram was manufacturing and submit that the manufacturers had been changed when action was taken under the Employees' Provident Funds Act. In other words, they draw attention to the difference between the manufacture of Tawas and Knives on the one hand and nails for bullock shoes on the other. We do not think that this makes any difference. In fact, the business had already changed in the hands of the partnership long before the establishment changed its premises. The business of the partnership was running an iron-smithy for the manufacture of iron articles and the factory continued even though the manufacturing process changed from one article to another. We must, therefore, hold that the same factory continued in spite of the change from Tawas to iron nails in the manufacturing process.

7. The next submission on behalf of the respondents is that the partnership changed and therefore a new business came into existence. Here again, we are not concerned with the law of partnership but with the Employees' Provident Funds Act. The law takes into account only the existence, of establishments and the employment of a certain number of persons in factories over a given period. It is for this purpose that change of location or change of composition of partners or even a change in the manufacturing process is not considered vital in the application of this law. This was laid down by this Court in very explicit terms in Civil Appeals Nos. 572 and 573 of 1964, D/- 6-10-1965 (SC) (Lakshmi Rattan Engineering Works v. Regional Provident Fund Commissioner Punjab).

8. The most important question which arises for consideration in this case is whether the period of infancy is to be calculated from 9-11-1957 when the establishment was first begun or from 13-11-1962 when the employment of 20 or more workmen first commenced. This point is also covered in the case we have cited above. A further ruling on the subject exists in R. Ramakrishna Rao v. State of Kerala . In that case also employment of 20 or more persons began later than the commencement of the establishment. Explaining the sub-section, this Court states that the word 'is' in the sub-section clearly indicates a newly started business, and the words 'has been' a business which has been in existence before. It is, therefore, held that the period of infancy must be calculated from the first establishment of the factory and not from the moment of time when the figure of 20 or more is first reached.

9. Applying these rulings, it is quite clear that in this case, the factory must be taken to have started in the year 1957 and that is the point of time when the establishment first came into existence. On 13th November, 1962, it had already a life of 5 years, and on that date when 20 workmen came to be employed, the scheme under the Employees Provident Funds Act began to apply. The learned

Magistrate was therefore wrong in calculating the period of infancy from the first employment of 20 workmen. He had to calculate that period from the first day on which the establishment came into existence. The acquittal of the respondent Satpal in the three appeals was therefore erroneous and must be set aside. We accordingly set aside the acquittal of Satpal and convicting him under Section 14 of the Act read with Para 75, sentence him to pay a fine of Rs.

50/- in each case; in default of payment of fine, there will be simple imprisonment for a period of one week, in respect of each default. We do not consider it necessary to record a finding about the partnership firm.