

Raja Ram Kumar Bhargawa vs State on 26 April, 1952

Equivalent citations: AIR1953ALL324, AIR 1953 ALLAHABAD 324

ORDER

P.L. Bhargava, J.

1. The applicant, Raja Ram Kumar Bhargava is the 'occupier' of a factory known as the Upper India Couper Paper Mills Company Limited, Lucknow. He was prosecuted for an offence, punishable under Section 92, Factories Act (63 of 1948) for contravention of the provisions of Section 54 of the same Act. Section 54, Factories Act is in these terms :

"Subject to the provisions of Section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours on any day."

2. The case for the prosecution was that, on 12-4-1950, an Inspector of Factories discovered that, on 18-2-1950, five persons were 'allowed' to work in the factory, of which the applicant is the occupier, for more than nine hours.

3. Learned counsel for the applicant opened his arguments with reference to a letter from the Chief Inspector of Factories, Uttar Pradesh, addressed to the District Magistrate of Lucknow, which is not on the record of the case before me but which has been filed in a connected case, pending in the Court of the City Magistrate of Lucknow. A copy of the letter should have been placed on the record of the case if the applicant intended to rely upon it. However, in order to appreciate the arguments advanced on behalf of the applicant, and in view of the importance of the question raised before me, I have seen the letter and consider it worthwhile to quote it 'in extenso.' Its contents are as follows :

"I have the honour to send herewith seven complaints against Shri Raja Ram Kumar Bhargava, Occupier and Shri Henry Thimas Maclaughlin, Manager of the Upper India Couper Paper Mills Ltd., Lucknow, under the Factories Act and request you to kindly inform the Court concerned for further action. Copies of the complaints are sent to the City Magistrate Lucknow, direct.

"2. Will you please let me know the place and date fixed for hearing the case giving at least 15 days' notice so that the tour of the Inspector may be arranged accordingly and direct Shri Zami Abbas, Pleader, to conduct the case.

"3. The accused may be heard at the first hearing and the case decided without the presence of the Inspector, if they plead guilty, otherwise another date may be fixed and the Inspector summoned.

"4. In this connection your attention is invited to para. 5 of the G. O. No U-648(L)/XVIII 438(L)-42, dated 20-8-1943, addressed to all District Magistrates, and it is, therefore, requested that the Inspector concerned may please be summoned when the Court has made sure of the presence of the accused and has otherwise satisfied itself that the case is ready for hearing, as this would facilitate the work of the Inspectorate and reduce expenditure incurred on travelling allowance."

4. The letter was received by the District Magistrate, on 11-7-1950, and was dealt with by the Additional District Magistrate, who forwarded the same to the City Magistrate of Lucknow for disposal on 13-7-1950.

5. On the record of this case, there are two complaints, bearing the date 8th July and signed by the Chief Inspector of Factories. One of them has been exhibited and marked EX. P-1 in the case and the other, which is a copy of the same complaint, has been marked 'Duplicate.' A look at these complaints goes to show that the complaint which is marked 'Duplicate' is the original, while the complaint which has been exhibited is a carbon copy.

6. The order-sheet of the case before me opens with the order-sheet, dated 13-7-1950, which shows that the complaint was put up before the City Magistrate on that date and the case was registered, and the accused, the present applicant, was summoned to appear before the Court.

7. On 28-8-1950, an application was made on behalf of the applicant in the Court of the City Magistrate of Lucknow. In this application it was asserted that the Court had no jurisdiction to take cognizance of the offence as no complaint had been made within three months of the date on which the alleged offence came to the knowledge of an Inspector, It was pointed out that the offence complained of had come to the notice of an Inspector on 12-4-1950, while the cognizance of the offence was actually taken on 13-7-1950. The City Magistrate overruled the objection on the ground that a complaint in respect of the offence had, in fact, been made within the prescribed period; and as such it was immaterial when the cognizance was actually taken.

8. The matter was taken up in revision before the Sessions Judge of Lucknow, who found no force in the revision and upheld the order of the City Magistrate. In his order rejecting the revision, the learned Sessions Judge pointed out that the complaint in the case was received by the District magistrate not as Inspector of Factories but as District Magistrate on 11-7-1950, that is, within three months of the date on which the offence came to the knowledge of an Inspector and that the complaint must, therefore, be deemed to have been made within the prescribed period of three months and as such the City Magistrate, to whom the complaint was transferred, was justified in taking cognizance.

9. The applicant has now come up to this Court in revision and the same objection has been repeated before me. In my opinion, the view taken by the Courts below in this case is perfectly correct. Section 106, Factories Act, which provides the limitation for prosecutions, is as follows :

"No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector." ' In order to enable any Court to take cognizance of an offence punishable under the Act, the only condition imposed by the said section is that a complaint in respect of the offence complained of must be made within three months of the date on which commission of the offence came to the knowledge of an Inspector. In the present case, the commission of the offence came to the know-ledge of an Inspector on 12-4-1950; and before the expiry of three months from the said date the Chief Inspector of Factories made a complaint in respect of the offence said to have been committed by the applicant to the District Magistrate of Lucknow, by means of a letter, dated 8-7-1950.

10. Learned counsel for the applicant has contended that the letter was merely a communication from the Chief Inspector of Factories to the District Magistrate who, in view of the provisions of Section 8(4), Factories Act, was himself an Inspector of his district. The letter, which has been quoted above 'in extenso', clearly shows that the letter was addressed to the District Magistrate as such and the complaints were enclosed with the letter for being forwarded to the Court concerned for further action. It was further stated in the letter that the copies of the complaint had already been forwarded to the City Magistrate of Lucknow, which was the Court concerned. The complaints which were enclosed with the letter mentioned the offences said to have been committed by the applicant and a request was made for his prosecution. A request was made in the letter for the communication of the date and place fixed for the hearing of the case; and the procedure to be followed in informing the Inspector and the Pleader in-charge of the prosecutions of such cases was also indicated. At the stage at which the letter was sent a decision had been taken to prosecute the applicant for the offence said to have been committed by him and at that stage there was no point in the Chief Inspector of Factories informing the District Magistrate as Inspector of Factories about the offences said to have been committed by the applicant.

In my opinion, therefore, the letter and its accompaniments were 'complaint' within the meaning of that expression used in Section 106, Factories Act. It follows, therefore, that a complaint of the offence was in fact, made within the time prescribed by Section 106, Factories Act, and that being so, the City Magistrate was quite competent to take cognizance of the offence complained of.

11. Further, it may be pointed out in this connection that, as indicated in the letter of the Chief Inspector of Factories, copies of complaint had been forwarded to the City Magistrate of Lucknow direct, and the fact that they had reached the City Magistrate's Court is evident from the fact that on the record of this case there are, as already stated, two copies of the complaint. The copy of the complaint, which is dated 8-7-1950, must have, in the ordinary course, reached the City Magistrate on or before 11th July 1950. The letter, dated 8th July 1950, from Chief Inspector of Factories to the District Magistrate had reached the latter on 11-7-1950, and that is the date mentioned as the date of complaint in the record of the proceedings of the summary trial in this case. The complaint of the offence had, therefore, reached not only the District Magistrate but also the Court concerned, --the City Magistrate of Lucknow--within the prescribed period of 3 months.

12. It remains for me to consider an unreported decision of this Court, to which my attention has been invited by the learned counsel for applicant. It is the decision of this Court in a Criminal Reference P. C. Bhargava v. Rex, decided on 12-5-1949. That decision, no doubt, supports the argument advanced on behalf of the applicant. But, I find that that case is distinguishable on two grounds. In that case, firstly, there was no evidence, as in this case, that a copy of the complaint had been sent by the Chief Inspector of Factories direct to the City Magistrate and it had reached his Court within the prescribed period, and, secondly, it was found that the Chief Inspector of Factories had reported the matter to the District Magistrate as Inspector for the District of Lucknow, while, as pointed out above, that is not the case here.

13. For the reasons stated above, I am of opinion that the decision of the Courts below is correct and there is no reason to interfere with it in revision. The revision is, accordingly, rejected. The order staying proceedings is discharged. Let the record be returned to the Court concerned as soon as possible.