

## **Gopal Das Sakseria And Anr. vs The State on 13 April, 1955**

**Equivalent citations: AIR1955ALL511, 1955CRILJ1232, (1956)ILLJ11ALL, AIR 1955 ALLAHABAD 511**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal**

### **JUDGMENT**

Raghubar Dayal, J.

1. The Chief Inspector of Factories, U.P., addressed a complaint to the Court of City Magistrate, Agra, in August 1950, against Gopal Das Saksaria and Brij Mohan Jha for an offence under Section 92, Factories Act, 1948. He sent the typed and signed complaint with a covering letter to the District Magistrate, Agra, requesting him to inform the Court concerned for further action and informing him that a copy of the complaint had also been sent to the City Magistrate, Agra, direct.

The District Magistrate, Agra, forwarded this complaint to the Sub-Divisional Magistrate, Firozabad, for trial on 1-9-1950. It is not known when this complaint reached the Sub-Divisional Magistrate, Firozabad, but he appeals to have ordered the registering of the case and the issue of summons to the accused on 6-9-1950.

2. Meanwhile an unsigned copy of the complaint was sent to the City Magistrate, Agra, direct by the Chief Inspector of Factories. The City Magistrate forwarded it to the Factory Magistrate for disposal on 28-8-1950. It is not known again when this reached the Sub-Divisional Magistrate Firozabad. It was on 6-9-1950, that a case was registered on this complaint and the accused were ordered to be summoned for 28-9-1950. The summons was actually issued on 9-9-1950. This date has been wrongly read by Sri S. Goswamiji, who was the Sub-Divisional Magistrate, Firozabad, as 1-9-1950,

3. Objection was taken on behalf of the accused that the trial was bad in law as it was in contravention of Section 106, Factories Act, which is:

"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:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the

offence is alleged to have been committed."

4. The learned Magistrate rejected the contention and held that the complaint received through the City Magistrate has been received within three months by a competent Magistrate and that therefore it could not be said that a proper complaint had not been made to the City Magistrate within the period of limitation. The accused then went up in revision to the District Magistrate, Agra who did not agree with the view of the Factory Magistrate and made this reference to this Court.

5. A learned Single Judge of this Court referred the case to the Division Bench on account of the importance of the question raised and an apparent difference of opinion between two learned Judges of this Court on the interpretation of Section 106, Factories Act.

6. We have been referred to three cases. The first is -- 'Baldev Das v. The State', AIR 1952 All 937 (A). In this case the offence was detected on 13-8-1949. It is not known when the complaint actually reached the City Magistrate, who passed his first order on 5-12-1949. It was contended in the case that the complaint was, in fact, made to the City Magistrate on 5-12-1949, that is on the day on which it was put before him and he took cognizance thereof. Brij Mohan Lall J. did not deal with the question whether Section 106, Factories Act, required the cognizance of the offence to be taken within three months or merely required that complaint be made within three months of the detection of the offence. He held that the complaint must be held to be made on 5-12-1949, and that, therefore, it was not made within three months of the detection and that, therefore, the Magistrate could not take cognizance of it. The view expressed cannot be said to have laid emphasis on the question of cognizance being taken- within three months.

7. The next case is -- 'Madan Lal v. The State', AIR 1954 All 27 (B). In this case no complaint was made within three months and naturally no cognizance could have been taken within that period. Randhir Singh J. mentioned at page 28 of the judgment: -

"It is provided in Section 106, Factories Act that cognizance of an offence committed in connection with the Factories Act or Rules could be taken only within three months of the date of the offence."

This may mean that he held that Section 106 of the Factories Act required cognizance of the offence to be taken within three months of the Inspector's knowledge about the commission of the offence.

8. In the third case -- 'Shiva Behari v. State', AIR 1954 All 255 (C), Randhir Singh J. has clearly laid down a different view. He has said:

"This section does not enjoin that" cognizance should also be taken within three months of the offence. All that it requires is that a complaint should be made within three months."

9. We are of opinion that what Section 106, Factories Act requires is that a complaint must be made within three months of the date on which the alleged commission of the offence came to the

knowledge of the Inspector and not that the Court must take cognizance of the offence within such period and that the observation about the provision of Section 106, Factories Act in AIR 1954 All 27 (B), is not correct.

10. The next point to determine in the present case is when the complaint was made to the competent Court. The unsigned copy of the complaint sent to the City Magistrate is no complaint in the eye of law. It was received by the City Magistrate within three months of the detection of the offence. It is not known when it was received by the Sub-Divisional Magistrate, Firozabad, who at the relevant time was authorised to try Factories Act cases of the entire district. The complaint, it may be mentioned, was addressed to the City Magistrate because the City Magistrate used to do these cases till the District Magistrate passed a fresh order about the distribution of work on 1-8-1950.

This complaint being no complaint cannot form a good basis for taking cognizance of the offence by the Sub-Divisional Magistrate, Firozabad, against the accused.

11. The signed complaint addressed to the City Magistrate was sent to the District Magistrate with a covering letter. This undoubtedly did not reach the Sub-Divisional Magistrate, Firozabad, till 30-8-1950, the last date of the three months since the detection of the offence. Clearly therefore the Sub-Divisional Magistrate, Firozabad, could not have taken cognizance of the offence on the basis of this complaint which was received by him beyond three months of the detection of the offence.

12. The question arises whether the receipt of this complaint by the District Magistrate would amount to the making of the complaint to the District Magistrate by the Chief Inspector of Factories.

The District Magistrate did receive this complaint according to the order of Sri S. Goswamiji on or before 29-8-1950, on which date it was placed before the Additional District Magistrate. The complaint was addressed to the City Magistrate and the contents of the forwarding letter make it clear that the Chief Inspector of Factories did not make the complaint to the District Magistrate.

He simply forwarded the complaint to him for purposes of being forwarded to the Court concerned. The covering letter contained several matters in connection with the case which could not have been properly mentioned in a letter to the Magistrate to whom a complaint is being made for necessary action under the Criminal Procedure Code. The District Magistrate is an Inspector of Factories in view of Section 8, Sub-section (4), Factories Act, and is competent himself to make a complaint under Section 105, Factories Act.

It appears to us therefore that the Chief Inspector of Factories did not send this complaint to the District Magistrate for his taking action as a Magistrate but for his taking action on the executive side as an Inspector or just as a senior officer in the executive hierarchy. It follows, therefore, that no proper complaint to a competent Magistrate was made within three months of the detection of the offence and that, therefore, the Sub-Divisional Magistrate of Firozabad could not have taken cognizance of this offence.

The trial of the case before him, therefore, is without jurisdiction. We, therefore accept the reference and quash the proceedings in the case against Gopal Das Sakscia and Brij Mohan Jha.