

Baldev Das And Anr. vs The State on 25 March, 1952

Equivalent citations: AIR1952ALL937, AIR 1952 ALLAHABAD 937

ORDER

Brij Mohan Lall, J.

1. This is a reference under Section 438, Criminal P. C., by the learned Sessions Judge of Banaras recommending that the convictions recorded against Baldeva Das and G.P. Manan under Section 92, Factories Act, by a learned Magistrate of Banaras be set aside.

2. Several points arise for decision. But it has been brought to my notice by Mr. Shanti Bhushan, who appears in support of the reference, that the convictions can be set aside on the question of limitation only. He points out that the offence was detected by the Inspector of Factories on 13-8-1949 but the Magistrate did not take cognizance of the case till as late as 3-12-1949.

3. It is provided by Section 106, Factories Act, that:

"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 the Inspector."

4. In the present case the complaint bears no date. It was addressed to the City Magistrate but was received by post in the office of the District Magistrate on 12-11-1949. In the margin there is an endorsement which runs as follows: "To C. C. Illegible for D. M. 12-11-1949."

5. A report was sent for from the District Magistrate's Court as to who had signed this endorsement. It has now been ascertained that the Office Superintendent of the District Magistrate's Office had signed this endorsement. After this endorsement it was sent to the City Magistrate and the first order on his order sheet is dated 5-12-1949. It is contended by Mr. Shanti Bhushan that the complaint was, in fact, made to the City Magistrate on 5-12-1949, i.e. on the day on which it was put up before him and he took cognizance thereof.

6. Had the District Magistrate himself signed the endorsement quoted above it might have been possible to argue that the District Magistrate himself took cognizance on 12-11-1949 and thereafter he transferred it to the City Magistrate. But such is not the case. The Office Superintendent, who was not a Magistrate, had no power to take cognizance of the case. Nor had he any power to order the transfer of the case. He merely performed the administrative duty of forwarding to the addressee a document which had been wrongly received by post in the District Magistrate's Office.

7. It is true that the complaint must have been signed on or before 12-11-1949, i.e., within three months of the detection of the offence. But can it be said in the circumstances of the present case that the complaint was really made within three months of the detection of the offence? I am definitely of the opinion that it was not. If a complainant writes out a complaint within the period allowed by law for making a complaint but does not take further steps to have the complaint presented before the appropriate Magistrate within the period permitted by law he cannot be deemed to have made the complaint within the aforesaid period.

I am, therefore, of the opinion that the complainant cannot be deemed to have made the complaint at any time prior to 5-12-49. He cannot lay the blame on the District Magistrate or his office for causing delay in the transmission of the complaint. Sending by post is not the proper method of presenting the complaint. The complainant should have either personally presented the complaint before the City Magistrate or should have engaged a lawyer to perform the duty of presenting the complaint in person. A complaint sent by post is not a validly presented complaint unless the rules permit it in any given locality, e.g. in Kumaun. The District Magistrate and his staff were under no obligation to forward the complaint to the City Magistrate and the blame for the delay in sending the complaint cannot be laid on their shoulders.

8. I am, therefore, of the opinion that the complaint was not made within three months of the detection and the Magistrate could not, therefore, take cognizance of it.

9. The reference is accepted. The convictions and sentences are set aside. The fine, if realised, shall be refunded.