Maneklal Jinabhai Kot vs State Of Gujarat & Ors on 30 January, 1967

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Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, M. Hidayatullah, S.M. Sikri

PETITIONER:
MANEKLAL JINABHAI KOT

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT:
30/01/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
HIDAYATULLAH, M.
SIKRI, S.M.

CITATION:
1967 AIR 1226 1967 SCR (2) 507

ACT:
Factories Act, (63 of 1948) s. 101-Manager or occupier-When can be absolved from liability.

HEADNOTE:
The appellant, who was the manager of a factory had issued notices. warning the heads of various departments in the factory to strictly comply with the provisions of the Factories Act and also that there should be no double employment. Certain workers were found working in a third shift contrary to the notice of periods displayed in the factory. A complaint was filed against the appellant for contraction of s. 63 of the Act.On receiving the summons ,

he filed in his turn a complaint under s. 101, impleading as accused the salesman and supervisor as actual offenders. The evidence showed that the appellant was not present when the offence was committed, that the salesman and supervisor were incharge of the department, that the appellant did not allow any worker to work in the third shift, on the material date, that he did not receive: any information from. the salesman and the supervisor about their proposal to have a third shift on that date, that he came to know about the occurrence the next day, and that, immediately thereafter, he took action, against the salesman and" supervisor. The salesman and the supervisor pleaded guilty to the charge. The trial Court held that the offence had taken place with the consent, knowledge or connivance of the appellant, from the fact that the wages were paid by the Mill to those workers, and convicted the appellant and discharged the salesman and supervisor. The High Court confirmed the order of the trial Court. in appeal to this Court :

HELD: The appellant should be discharged and the salesman and supervisor should be convicted.

Under s. 101, when the manager or occupier is charged, with an offence, he is entitled to make -a complaint, in his own turn, to establish facts. mentioned in the said section, viz., (i) that he has used due, diligence to enforce the execution of the Act, and (ii) that the alleged' actual offenders committed the offence in question without his consent, knowledge or connivance. If he is able to establish that it was such other person, who has committed an offence, and satisfies the other requirements of the said section, the manager or occupier is absolved from all liability. [516 F-H; 517 D]

The facts clearly established that the salesman and' supervisor pleaded' guilty to the charge, that the appellant had used due diligence to enforce the execution of the Act, and that the offence was committed by the salesman and supervisor without the connivance, knowledge or consent of the, appellant.

State of Gujarat v. Kansara Manilal Rhikhatal [1964]7 S.C.R. 656, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeals Nos.. 198- 205 of 1964.

Appeals by special leave from the judgment and order dated February 4, 1964, of the Gujarat High Court in Criminal Appeals Nos. 135-138 of 1962 and Criminal Revision Applications 176-179 -of 1963.

Purshottam Tricumdas and R. Gopalakrishnan, for the appellant (in all the appeals).

Y. L. Teneja, S. P. Nayyar and R. H. Dhebar, for respondent No. 1 (in all the appeals).

The Judgment of the Court was delivered by Vaidialingam. J. These appeals, by special leave, are directed against the judgment of the Gujarat High Court, confirming the conviction, by the City Magistrate, Ahmedabad, of the appellant of ,an offence under s. 92 of the Factories Act, 1948 (Act 63 of 1948) Thereinafter called the Act), for breach of s. 63 of the said Act, and canceling a rule issued by it to respondents 2 and 3, herein, to show cause against the order of discharge passed by the trial Court.

The appellant was the Manager of the Saranpur Cotton Ma- nufacturing Co. Ltd., Mill No. 2. The Inspector of Factories, Ahmedabad, found, on a visit to the factory concerned, at 3 a.m. on May 26, 1961, certain workers actually working in the stamping department, at that time. According to the register of workers, -Maintained by the factory, in the form of attendance register, those workers belonged to Group II, Relay 11. According to the notice of periods of work, displayed in the factory, the period of work for Group 11, Relay 11, was from 4 p.m. to 8 p.m., and from 8.30 p.m. to 1.00. a.m. According to the Inspector, the workers concerned were doing work at 3 a.m., on the said date, otherwise than in accordance with the notice of periods of work displayed in the factory and entries made in the register of adult workers and, therefore, there has been a contravention of the provisions of s. 63 of the Act, punishable -under s. 92 thereof. Inasmuch as several workmen were concerned, the Inspector had filed a group of 4 complaints, against the appellant, on August 4, 1961, before the City Magistrate, Ahmedabad.

On receiving summons from the Magistrate's Court, the appel- lant, who was, admittedly, the Manager of the Mill concerned, 'filed, on October 5, 1961, in his turn, a complaint before the Magistrate, under s. 92, read with s. 101 of the Act. To that complaint., respondents 2 and 3 were impleaded as accused. According .to the appellant, about 2,400 workers are employed in the Mill, of which he is the Manager; and the Mill consists of several departments, with competent heads, having been put in charge of each department. The appellant stated that the management had instructed all the departmental heads to comply with the provisions of the Act. He referred to the fact that he had specifically warned the various heads of the departments against double employment. He also averred that the second respondent was the Salesman of the Mill, for about twelve- years, and that he was in charge of some departments of the Mill, including the stamping department. The third respondent was a Supervisor in the stamping department and was in exclusive charge of the said department. The appellant further averred that the stamping department of the Mill was under the exclusive control of accused No. 1, on May 26, 1961, and that it was in the sole charge of accused No. 2 at 3 a.m., on May 26, 1961. Therefore, he alleged, that respondents 2 and 3 were responsible for allowing the concerned workmen to work at 3 a.m. in the stamping department of the Mills, on May 26, 1961, contrary to the notice of periods of work displayed in the factory. Therefore, he averred that those two respondents were the actual offenders who had violated s. 63 and thus committed an offence under s. 92 of the Act, by so employing those workers, referred to in the Factory Inspector's report. The appellant further stated that he was not present in the Mills when the said offence was committed by respondents 2 and 3, and that he had used due diligence to enforce the execution of the Act; and that respondents 2 and 3, who were the accused in his cross-complaint, had committed the offenses in question, without his knowledge,

consent or connivance. Therefore he prayed for an inquiry into his allegations and to hold respondents 2 and 3 guilty of the offence of violation of the provisions of s. 63 of the Act. Before we go into the further proceedings that took place before the Magistrate, it is desirable to refer to some of the material provisions of the Act, viz., ss. 63, 92 and

101. Those sections are as follows :

> "63. No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.
>
> 92. Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued.
>
> 101. Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court.
>
> (a) that he has used due diligence to enforce the execution of this Act, and
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> (b) that the said other person committed the offence in question without his knowledge, consent or connivance,that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager, of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence;

Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.

There is no controversy, in this case, that the appellant is the Manager of the factory concerned and he is the person who has been charged with having committed an offence punishable under the Act.

It was, when such a complaint was made against him that he, in turn, filed on October 5, 1961, the cross-complaint against respondents 2 and 3, which has been referred to earlier. There is also no controversy that he has complied with the requirement regarding the giving of notice, as contemplated under s. 101.

In this case, it has also been admitted that the workers, referred to in the complaint filed by the Factory Inspector, have been employed at 3 a.m., on May. 26, 1961, in the stamping department of this factory, contrary to the provisions of s. 63 of the Act, and, therefore, the commission of the offence with which the appellant was charged, has also been proved. Under those circumstances, it is open to the Manager of the factory, in this case the appellant to have recourse to the provisions of S. 101 of the Act, by complaining against persons who, according to him are the actual offenders and bring them before the Court. But, before a conviction of those persons, so brought before the Court, can be made for the offenses concerned, the appellant will have to prove to the satis-

faction of the Court (i) that he has used due diligence to enforce the execution of the provisions of the Act; and,

(ii) that such other person committed the offence in question, without his knowledge, consent or connivance. It must also be noted that the Appellant, in seeking to prove these circumstances, can be examined on oath and that he and any other witness, whom he places before the Court in his support, shall be subject to cross-examination, on behalf of the person he charges as the actual offender, and also by the Public Prosecutor. We are specially referring to this aspect because, we may have to consider the question as to whether, either respondents 2 and 3, whom the appellant charges as being the actual offenders, or, the prosecutor in this case, viz., the Factory Inspector has established, by cross-examination of the appellant that he has not proved the two essential conditions mentioned in clauses (a) and

(b) of s. 101.

Reverting to the further proceedings before the Magistrate, summons were issued to respondents 2 and 3, on the cross- complaint filed by the appellant on October 5, 1961. On December, 1, 1961, the appellant pleaded not guilty to the charge leveled against him by the Factory Inspector. He stated that he had not committed any breach of s. 63 of the Act, and he specifically requested that the complaint filed by him against respondents 2 and 3 herein, who are the Salesman and Supervisor, respectively, be enquired into by the Court.

The second respondent, Bachubhai, on the same day, in answer to the charge leveled against him, by the appellant, that he and the third respondent were liable for the breach of provisions of s. 63 of the Act for permitting the concerned workers to work at 3 a.m, on May 26, 1961, pleaded guilty before the Magistrate. On the same day, he had filed a written statement, pleading guilty to the allegations made against him in the cross-complaint, and expressing regret for having committed a breach of the Act. He also admitted that he was in exclusive charge of the stamping department, on May 26, 1961. He further averred that the 3rd respondent approached him, on May 25, 196 1, and represented that it was quite necessary to work a third shift in the stamping department from I am.,,

on May 26, 1961, in view of heavy accumulation of work. He further stated that he allowed the third respondent to work a third shift but by employing new workers, and that it was only on May 27, 1961, that he came to know that the third respondent had employed the same workers in the third shift also and that he took him to task. He categorically stated that he had not informed the appellant about the proposed working of the third shift on May 26, and that it was without the knowledge, consent or connivance of the appellant, that this breach was committed. He admits that the appellant had specifically warned him against double employment. Ultimately, he pleaded, for being let off, with a nominal fine.

Similarly, the third respondent, who appeared before the Court on the same day, in answer to the same charge, pleaded guilty; and he also filed a written statement. In the written statement, he stated that he was the Stamping Supervisor of the Mill, on the relevant date and that due to accumulation of work in the stamping department, it was found necessary by him, to have a third' shift on the morning of May 26, 1961. He states that the 2nd respondent permitted him to start a third shift after engaging new workers. But, as new workers were not available on that date, the workers in the second shift were engaged by him; and he accepts that, by doing so, he has committed an offence, by mistake. He also categorically admits that he has not taken the permission of the appellant, for starting the said third shift and that it was done without the knowledge of the appellant. He also, ultimately, pleaded for being penalised, by imposing a small amount of fine. On the same date, the Factory Inspector, has given evidence as P.W. 1. He has spoken to the fact that at the time of his visit at 3 a.m., on May 26, 1961, he found, in the stamping department of the Mill, of which the appellant was the Manager, the concerned adult workmen working and that their employment was contrary to the hours of work prescribed for them in the notice put up in the factory. He has further stated that the appellant was not present in the Mill at the time of his inspection and that, on the other hand respondent No. 3, the Supervisor, was there. In cross-examination, he has referred to the fact that the Mill employs about 2,400 workers and that there are several departments in the Mill and that heads are appointed for each department. Though he has statedthat he does not know if the Manager has given instructionsto the heads of the departments to comply with the provisions of the Act, when the notices, Exhibits: 9 to 12, were shown to him, he accepted that those notices had been given by the appellant. He has also stated that, generally, the Salesman is the head of the Cloth department, including the Stamping Department. Pausing here for a minute, we may state that this answer of the witness will show that the second respondent, who was the Salesman, is the head of the Cloth Department, including the Stamping department and that the statement of the appel- lant, in that regard, stands corroborated. The appellant has given evidence, on December 6, 1961. In his evidence, he has referred to the fact that he attends to his duties from 11.30 a.m. to 6.30 p.m., and that there are about 2,400 workers employed in the Mill, which consists of several departments and for each of which a head had been appointed, by the Management. He has referred to the fact that provision is made in the terms and conditions of appointment that the heads of departments are to abide by the provisions of the Act. He speaks to the fact that he has given instructions to the heads of departments, from time to time, to follow the provisions of the Act and, in particular, he refers to, Exhibits 9 to 12, beginning from January 30, 1957 and ending with November 30, 1960, insisting upon the heads of departments to, comply strictly with the provisions of the Act and warning against double employment. He has deposed that the second respondent was in charge of the Cloth Department, of which the Stamping

De- partment formed part. The third respondent, according to him, is the Supervisor of the Stamping Department; and that when he. came to know about the breach alleged against him, on May 27, 1961, he enquired into the matter and suspended the third respondent for 4 days and severely warned the second respondent after receiving his explanation. He has also stated that he did not receive any information from either the 2nd respondent or the 3rd respondent, that there was to be a third shift on the morning of May 26, 1961, and that he had not allowed any worker to work in the third shift after they had worked in the second shift. He has also stated that he did not give any consent to the working of those. workers and he had no knowledge at all about it. In crossexamination he has stated that he goes round the entire mill, sometimes daily, and on some occasions, on the second or third day. He has denied a suggestion that he was aware that the second respondent had asked the third respondent to make the same workers work during the third shift.

The point to be noted, in the evidence of the Factory Inspector, and of the appellant, is that the Inspector admits that the appellant was not present at the time of his inspection and that the third respondent was present and that the 2nd respondent is the Salesman and the 3rd, the Supervisor. He accepts that particular persons have been appointed in the Mill as heads of the various departments and that the Salesman is generally the head of the Cloth Department, including the Stamping Department. He also admits that the appellant has issued notices, exhibits 9 to 12, warning the heads of departments to strictly comply with the provisions of the Act and also stating that there should be no double employment. The appellant's evidence, that the second respondent was incharge of the Cloth Department, at the material time, and that he has been warned against double employment on several occasions, and that he was not aware of the employment of the workers concerned, in the third shift, on the morning of May 26, 1961, have not been challenged. The answers given by the appellant that he did not give his consent to the working of those concerned workers and that he has no knowledge about their having worked at the material time is not also seriously challenged. More than that, there is absolutely no suggestion made to the appellant that there is any sort of collusion between him and respondents 2 and 3, and that the latter are merely admitting the offence in the cross- complaint filed by the appellant, ,to oblige him. Respondent 2 and 3 have categorically admitted the offence mentioned against them in the cross-complaint; and the .appellant has not been cross-examined by them, as they are entitled to under the first proviso to s.

101. We are particularly referring to some of these aspects, because, in our opinion, those are all matters which should have been properly taken into account, by the Magistrate and the High Court, for considering the question as to whether the appellant has proved, to the satisfaction of the Court the two essential matters dealt -with by clauses (a) and (b) of s. 101 ;of the Act.

On this state of evidence, the learned Magistrate held that the .appellant cannot be considered to have established either that he has used due diligence to enforce the execution of the Act as required under cl. (a) of s. 101, or that respondents 2 and 3 committed the offence, in question, without his knowledge, consent or ,connivance. According

-to the trial Court, from the mere 'fact that respondents 2 and 3 have pleaded guilty, it cannot be -said that they have committed the breach without the connivance of the appellant. The Magistrate,

while realising that there was no -direct evidence of consent or knowledge on the part of the appellant, yet, from the fact that the wages were paid by the Mill to those workers, held that it could be safely inferred that the offence must have taken place on the material date with the consent, knowledge or connivance of the accused. On these findings, the Magistrate discharged respondents 2 and 3 and found the appellant guilty of having violated the provisions of s. 63 of the Act, and as such, convicted him under s. 92, and ordered him to pay a fine of Rs. 400/or, in default, suffer simple imprisonment for 3 weeks.

The appellant filed appeals before the Gujarat High Court

-against the judgment of the Magistrate, challenging his conviction. It is seen that the High Court issued notices to the 2nd and 3rd respondents, to show cause why the order of discharge passed by the Magistrate, for offenses under ss. 63., 92 and 101 of the Act, ,should not be set aside; and those references have been numbered, in the High Court, as Criminal Revision Applications Nos. 176 to 179 of 1963. All the matters were heard together and disposed of ;by a common judgment 'by the High Court. The learned Judges of the High Court have upheld the judgment of the Magistrate,holding the appellant guilty,. In view of this direction, the High Court discharged the rule issued to respondents 2 and 3.

The learned Judges are also of the view that the appellant can-not be considered to have established that he had used due diligence to enforce the execution of the Act. The reliance which has been placed by the appellant regarding the circulars issued by him, evidenced by 'Exhibits 9 to 12, has not impressed the learned -Judges. Though there is no separate and independent discussion as to whether the appellant has been able to establish that respondents 2 and 3 have committed the offenses, without his knowledge, consent or connivance, there is. a general finding by the learned Judges that the fact that the appellant had specifically mentioned, in his circulars issued, about, double employment and the fact that the wages for the workers concerned have been met by the factory, will lead to the inference that the employment of the workers, which is the subject of the charge, could not have been made without the knowledge, consent or, in any case, the connivance of the accused. There is, again, no separate consideration, by the learned Judges, about the plea of guilt made by respondents 2 and 3. Ultimately, holding that the appellant had not proved that he has used due diligence to enforce the execution of the Act and that respondents 2 and 3 have committed the offence without his knowledge, consent or connivance, the learned Judges dismissed the appeals filed by the appellant against his conviction and also cancelled the rule issued to respondents 2 and 3. This comprehensive order, passed by the High Court, confirming the order of the Magistrate convicting the appellant, and discharging the rule issued to respondents 2 and 3 in 'the criminal revisions and dismissing the said revisons, is the subject of attack in these proceedings. Mr. Purshottam Tricumdas, learned counsel for the appellant, has urged that the entire approach made by both the Magistrate and the learned Judges of the High Court, for holding the appellant guilty 'of the offence, with which he was charged, is erroneous in law. Counsel also urged, that, in this case, the appellant has let in unchallenged and uncontroverted evidence to establish the two essential matters referred in cls. (a) and (b) of s. 101 of the Act and these aspects have not been properly considered in law. Counsel also pointed out that, without adverting to the material evidence on record, the inference drawn by the Court that the -appellant has not proved those matters, is totally

opposed to the evidence adduced in the case. In fact, counsel pointed out, that the evidence adduced by' the appellant to establish that he has used due diligence to enforce the execution of the Act and that respondents 2 and 3 committed the offence in question without his knowledge, consent or connivance, apart from not being, challenged in cross-examination, has really been supported by the evidence given by the Factory Inspector, as P.W. 1, and the written statements filed by respondents 2 and 3. In short, according to the counsel, s. 101 of the Act has not been properly applied.

On the other hand, Mr. Taneja, counsel for the State of Gujarat.. has pointed out that the findings arrived at by both the Magistrate and the learned Judges of the High Court are, on facts, as against the appellant, which findings have been arrived at, after an appreciation of the material evidence adduced in the case.

M2Sup. CI/67-4 We are not satisfied that there has been a correct legal approach made either by the Magistrate or the High Court, to a decision on the plea recorded by the appellant, especially with regard to matters referred to in s. 101 of the Act. It is not necessary for us, in this case, to consider, in any great detail, the ingredients of an offence under s. 63 of the Act, because a violation of the said provision is admitted by the appellant, as well as by respondents 2 and

3. The appellant has invoked S. 101. In considering this provision, it is necessary to refer to the observations made, by this Court, in State of Gujarat v. Kansara Manilal Bhikhalal(1) regarding the scope of s. 101 of the Act. In that case, the manager of a factory was charged with the violation of S. 63 of the Act. He raised several pleas in answer to that charge, but he did not have recourse to S. 101 of the Act. Ultimately, the manager was convicted, under s. 63 of the Act, read with S. 94. Hidayatullah, J., observed, with reference to s. 101, as follows at page 662.

> "Where an occupier or a manager is charged with an offence he is entitled to make a complaint in his own turn against any person who , was the actual offender and on proof of the commission of the offence by such person the occupier or the manager is absolved from liability. This shows that compliance with the peremptory provisions of the Act is essential and unless the occupier or manager brings the real offender to book, he must bear the responsibility..... It is not necessary that mens rea must always be established as has been said in some of the cases above referred to. The responsibility exists without a guilty mind. An adequate safeguard, however exists in S. 101 analysed above and the occupier and manager can save themselves if they prove that they are not the real offenders but who, in fact, is. No such defence was offered here."

From the observations quoted above, it is clear that there is a duty ,cast, under the Act, upon the occupier or manager, to comply with the peremptory provisions of the Act: but, under s. 101, when the manager or occupier is charged with an offence, he is entitled to make a complaint, in his own turn, to establish facts mentioned in the said section; and, if he is able to establish that it was such other person, who has committed an offence, and satisfies the other requirements of the said section, the manager or occupier is absolved from all liability. It is also emphasized that an adequate safeguard has been provided, under S. 101, under which, in circumstances mentioned therein, the

occupier or manager can save himself, if he proves that he is not the real offender, but some other person, ,charged by him, is.

(1) [1964] 7 S. C. R. 656.

Applying the principles referred to above, the approach made by the trial Court, and by the High Court, in this case, in our opinion, is erroneous. We have already indicated that the employment of the workmen concerned, referred to in the complaint filed by the Factory Inspector, in the factory, and at the material time, is established; and that clearly shows that the commission of the offence, with which the appellant has been charged, has been proved. Without anything else, the appellant will have to be found guilty. But the only question is, whether he has been able to save himself, by establishing that he is not the real offender, and that respondents 2 and 3 have committed the offence. Even here, we have already indicated, with reference to the pleas raised by respondents 2 and 3, before the Magistrate, in answer to the cross-complaint against them and the written statements filed by them, that they have pleaded guilty to the charge. Therefore, in our opinion, the appellant can also be considered to have established that the offence was committed by respondents 2 and 3. But, it is further necessary for the appellant to establish the two essential facts mentioned in s. 101 of the Act, viz., (i) that he has used due diligence to enforce the execution of the Act and (ii) that respondents 2 and 3 committed the offence in question without his consent, knowledge or connivance.

With regard to the first, the question is as to whether the appellant has established that he has used due diligence to enforce the execution of the Act. The appellant has stated, in his evidence, that each department in the Mill has got a head appointed by the Management and each department has sections and there are heads for those sections also, and that they have been required to comply with the provisions of the Act. He has also stated that, on the material date, the 2nd respondent was a salesman, in-charge of the Stamping Department, which was part of the Cloth Department and that he had been directed to guard against double employment in the Mill. He has spoken to the fact that the third respondent was the Supervisor and was in exclusive charge of the Stamping Department at the material time. This evidence of the appellant has not been, in any manner controverted by the prosecution. There is no suggestion by the prosecution that the division of the various departments, is, in any manner, fictitious or a make-believe affair and that those heads of departments did not have effective control or check over the departments in their charge. On the other hand, the Factory Inspector has admitted, as P.W. 1, that there are several departments in this Mill and that heads are appointed to be in charge of each department. He has also admitted that the Salesman is the head of the Cloth Department, including the Stamping Department. Both respondents 2 and 3, have, in their statements stated that the 2nd respondent was in-charge of the department, at the material time. It is also in evidence, which is not controverted, that the appellant has issued various circulars from time to time, evidenced by Exhibits 9 to 12, to the various heads of departments, insisting upon the strict compliance with the provisions of the Act; and, in particular, he has also warned the departmental heads against double employment Though the Factory Inspector pretended ignorance about the appellant having issued these circulars, Ultimately, he has accepted, in his evidence, that these notices have been issued by the appellant. We do not find that either the trial Court, or the High Court, has disbelieved this evidence of the appellant, nor have they held that these circulars are

only a make-believe' affair. Under these circumstances, in our opinion, the proper conclusion to be drawn is that the appellant has used due diligence to enforce the execution of the Act, in which case, clause (a) of s. 101 is satisfied.

We shall then consider the question as to whether the appellant has established that respondents 2 and 3 are the persons who committed the offence, in question, without his knowledge, consent or connivance. So far as that is concerned, we have already referred to the nature of the evidence given by the Factory Inspector, as well as the appellant; and we have also referred to the matters contained in the written statements filed by respondents 2 and 3. The Factory Inspector has accepted that the appellant was not in the Mill at the time of his inspection and that respondent 3 was there at that time. The appellant has given evidence to the effect that he did not allow 1 any worker to work in the third shift, on the material date, and that he did not receive any information from respondents 2 and 3 about the proposal to have a third shift on that date. He has stated that he came to know about the occurrence only on May 27, 1961, and that, immediately thereafter, he took action against respondents 2 and 3. These answers have not been challenged in cross-examination of the appellant. More than that, respondents 2 and 3, who are specifically charged by the appellant, in his cross complaint, of having committed the offence, did not cross-examine the appellant at all. On the other hand, they categorically admitted, in their pleas in answer to the charge before the Court, as well as in the written statements filed by them, that they are guilty of the offence. Both of them have categorically admitted their guilt and they have stated that the appellant was not informed by either of them about the proposed working, of the third shift on the morning of May 26, 1961. They have also stated that the working of the third shift was without the knowledge, consent or connivance of the appellant. Both of them have stated that the appellant had specifically warned them against double employment. These statements, made by respondents 2 and 3, and the evidence given by the appellant which, as we have already referred to, have not been challenged by the prosecution and they, in our opinion, clearly establish that the offence was committed by respondents 2 and 3 without the knowledge and consent of the appellant. There is also no evidence from which it is possible to come to the conclusion that the offence has been committed by respondents 2 and 3, with the connivance of the appellant, in the sense of passive cooperation, by the appellant, as by consent or pretended ignorance in the wrong doing. Therefore, we are satisfied that the appellant has proved that respondents 2 and 3 committed the offence, in question, without his knowledge or consent and that they did so without his connivance either, in which case, cl. (b) of s. 101, is also satisfied. From what is stated above it follows that the conviction of the appellant for an offence, under s. 92 of the Act, for breach of s. 63, cannot stand. We have already stated that the Magistrate discharged respondents 2 and 3; and that the High Court issued notices to them to show cause as to why the said order of discharge should not be set aside. These were numbered' as Criminal Revision Applications Nos. 176 to 179 of 1963. In view of the fact that the appellant's conviction was being confirmed, the High Court discharged the rule, issued by it, to respondents 2 and 3. But, in the view that we now take, these respondents have to be convicted, in accordance with the provisions of s. 101 of the Act. The appellant has also filed appeals in this Court, impleading these two respondents as parties, challenging the order of discharge passed in their favour. On the basis of our above findings, the appellant has to be discharged from any liability under the Act, in respect of the offence charged; and respondents 2 and 3 must be held to have committed the offence in question, by violating the provisions of s. 63 of the Act. in consequence, respondents 2 and 3 are

found guilty of violating the provisions of s. 63 and are, accordingly, convicted under s. 92 of the Act; and each of them is sentenced to pay a fine of Rs. 100/-, in default to undergo simple imprisonment for one week. In the result, all the appeals are allowed and the conviction and sentence of the appellant are set aside and he is discharged from any liability under the Act, in respect of the offence with which he was charged. The order of discharge of respondents 2 and 3 is set aside and they are convicted and sentenced, as stated above. The fine if paid shall be refunded.

Y.P. Appeals allowed.