

OSHI v Canephora Ltd

2024 IND 71

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 78/2024

OSHI

v.

Canephora Ltd

SENTENCE

1. Following its guilty plea, the Accused company stands convicted for the offence of operating a factory without it being registered under the Occupational Safety and Health Act 2005 ("the Act"), in breach of section 88(1) coupled with section 94(1)(i)(vi) of the Act, and that of failing to make a suitable and sufficient assessment of any risk to the safety and health to which any employee is exposed whilst he is at work within 30 days of the start of operation of its undertaking, in breach of section 10(1)(a) coupled with section 94(1)(i)(vi) of the Act.

2. The facts of the case as revealed during the hearing are to the effect that, during an inspection by the Occupational Safety and Health Inspectorate of the Ministry of Labour at the factory of the Accused company situate at Caudan Waterfront, Port Louis on 13 May 2022, it was found that the said factory was operating with 10 employees without registration. It was also found that no suitable and sufficient assessment of any risk to the safety and health to which any employee is exposed whilst he is at work within 30 days of the start of operation of the factory had been

made. The Accused company was thus booked for these two offences. On 06 June 2022, the Accused applied for the factory's registration in compliance with the law.

3. In its out-of-court defence statement, the Accused, through its duly authorised representative, admitted the charges. The latter stated that she was unaware of the applicable legal provisions. In Court, the company's representative apologised and stated from the dock that remedial action was taken by the Accused as soon as it became aware of the legal requirements regarding the operation of a factory.

4. According to section 88(1) of the Act, *"no person shall operate a factory unless it is registered under this Act."*

5. Moreover, section 10(1)(a) of the Act provides:

"10. Risk assessment by employer

(1) Every employer shall, within 30 days of the start of operation of his undertaking, make a suitable and sufficient assessment of ... any risk to the safety and health to which any employee is exposed whilst he is at work ... for the purpose of identifying the measures he needs to implement in order to comply with the requirements imposed upon him by this Act, and any other enactment."

6. Any person who contravenes the above provisions commits an offence – vide section 94(1)(i)(vi) of the Act. Pursuant to section 94(3)(b) of the Act, the Accused is liable *"to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year"* under each count of the information.

7. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court highlighted the need to individualise sentences and held that *"the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant personal circumstances of an accused party."* In **Hossen v. The State (2013) SCJ 367**, the Supreme Court referred to the principle of proportionality which must imperatively be applied in order to reach the appropriate sentence in any given case.

8. As regards the Accused's unawareness of the requirements of the law, I find the following extract from the case of **Director of Public Prosecutions v. Maroam (2014) SCJ 56** particularly pertinent:

*"[The Accused's] belief that his action was not criminal, however honest, is no defence in law. Although it cannot be presumed that everyone knows the law, there is a rule of law that ignorance of the law does not excuse. (Vide **Evans v Bartlam [1937] A.C 473, Johnson v Youden [1950] 1 K.B.544, Saury Pike Ltd v The State [2011 SCJ 357]**)."*

9. I have considered the facts and circumstances of this case. I note that the Accused has a clean record as stated by the prosecutor. The Accused admitted the charges at the earliest opportunity and has offered a timely guilty plea in Court. I further note that the charges are administrative in nature and are at the lower end on the scale of gravity of offences. These are strong mitigating factors.

10. In the light of all the above, I sentence the Accused to pay a fine of Rs 2,000. under each count of the information, together with Rs 200. as costs.

27 November 2024

M. ARMOOGUM

Magistrate