

APPELLATE CRIMINAL.

Before Costello J.

RAMDIT MALL

v.

EMPEROR.*

1933
Dec. 19.

Factory—Employment Register—“Up to date,” Meaning of—Indian Factories Act (XII of 1911), ss. 35, 41(h), 2(2).

In order that an employment register, kept under section 35 of the Indian Factories Act, 1911, can properly be said to be up to date, within the meaning of section 41(h) of the Act, it is clearly necessary that it should contain, day by day, the names of the persons employed in the factory, their hours of work and the nature of their employment. If there be some entries on a particular day, which do not contain all the particulars required by section 35, it cannot be said to be up to date.

Under section 2, sub-clause (2), of the Act, any person found working in a factory, whether for wages or not in any of the ways enumerated in that clause, shall be deemed to be employed in that factory.

CRIMINAL APPEALS.

The material facts of the case and the arguments in the appeals appear from the judgment.

Surajitchandra Lahiri for *Sureshchandra Talukdar* for the appellant.

Anilchandra Ray Chaudhuri for the Crown.

COSTELLO J. These two appeals arise out of a judgment, given by the Chief Presidency Magistrate, in connection with two cases brought against the present appellant Ramdit Mall. In those cases the appellant was charged, under section 22 and under section 35 of the Indian Factories Act, 1911. Section 22 provides for a weekly holiday of persons employed in factories and it enacts that

No person shall be employed in any factory on a Sunday, unless—

(a) he has had, or will have, a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday, and

*Criminal Appeals, Nos. 821 and 822 of 1933, against the order of S. K. Sinha, Chief Presidency Magistrate of Calcutta, dated Oct. 14, 1933.

(b) the manager of the factory has previous to the Sunday or the substituted day, whichever is earlier, given notice to the inspector of his intention so to employ the said person and of the day which is to be substituted and has at the same time affixed a notice to the same effect in the place mentioned in section 36,

that place being some conspicuous place near the main entrance of the factory.

Section 35 provides :

In every factory there shall be kept, in the prescribed form, a register of all the persons employed in such factory, of their hours of work and of the nature of their respective employment ;

and in rule 69(i) of the Bengal Factories Rules, 1928, it is laid down :

In all factories, subject to the exception permitted under section 35 of the Act, there shall be kept correctly and up to date a register of all the persons employed. The register prescribed for each factory or class of factories shall be in the form shown in the schedule annexed to these rules. In factories where children are employed, the register shall be maintained in two separate parts, *viz.*, Part I to include all adults and Part II to include all children. Such registers shall be called in all prescribed communications the "Employment Register."

The two charges against the appellant were dealt with by the learned Chief Presidency Magistrate in the judgment now appealed against, dated the 14th of October last and, as a result of the conclusion to which the learned magistrate arrived, he convicted the appellant on both the charges and sentenced him to pay a fine of Rs. 500 or in default to undergo three months' simple imprisonment in respect of each charge, so that the appellant has to pay a total fine of Rs. 1,000 or in default to undergo a total of six months' imprisonment.

It appears that the Inspector of Factories visited the premises, known as the Punjab Fine Art Press, of which the present appellant was the manager, on Sunday, the 27th of August, 1933, at 11-30 in the morning; and, according to the evidence which he gave in support of the complaints which he made under the two sections I have mentioned, he found the whole factory, including the machinery, working. He managed to take the names of thirteen men, who were working; but others were sent away before he could take their names and the machine room was closed before he could get to it. He also stated that

1933

Ramdit Mall

v.

Emperor.

Costello J.

1933

Ramdit Mall
v.
Emperor.
Costello J.

he had examined the employment register and found not only that it was not up to date, in that it was written only up to the 24th August, 1933, but also that the names of three book-binders—Pandwal, Oudhinudin and Munostim—and the names of four *duftries*—Hossain, Rahimaddin, Abdul Latif and Kalo Miyan—were not entered in the register at all, though the men themselves were working on the premises on that day—Sunday, the 27th of August. He apparently also stated that two men, named Bhattacharjya and Biswas, were found by him working on a hand-press. The defence set up was that no work was being done on that particular day, and two of the *duftries* were called as witnesses for the defence, that is to say, Kalo Miyan and Hossain. They admitted that they went to the factory on the Sunday in question, but they declared that it was only to deliver some work done by them at home and to receive payment. The inspector's evidence, as I have stated, was that they were actually working in the factory itself. The learned Presidency Magistrate stated his conclusion in these terms :

It has, therefore, been conclusively established that the factory was working on a Sunday and that the employment register was not up to date and did not show the names of the persons employed that day.

Now, it is quite true that these are appeals in which it is open to the appellant to ask this Court to reconsider the matters of fact; but one would hesitate a long time before deciding that a magistrate of such experience as the present learned Chief Presidency Magistrate is has gone wrong on any pure question of fact. The learned advocate for the appellant invited me to examine the evidence which was given before the learned Chief Presidency Magistrate and that I have done and I am bound to say that, upon a scrutiny of the evidence given in the course of the two cases, it is impossible to come to any other conclusion than that the findings arrived at by the learned Chief Presidency Magistrate are amply justified, indeed, such findings were inevitable, having regard to the evidence given. Now, upon the

assumption that the findings of fact arrived at by the learned Chief Presidency Magistrate are correct, this Court has to see whether there is any point of law available to the appellant. The learned advocate for the appellant sought to argue at the outset that the section of the Act, which imposes penalties for violation of the provisions of the Act, namely, section 41, does not, in terms, impose any penalty for failure to enter in the register the names of the persons employed; in effect, he said that section 41 contains no penalty for violation of section 35 other than that laid down in section 41(h), which says that if the register, prescribed by section 35, is not kept up to date, then the occupier and manager shall be liable to a fine which may extend to five hundred rupees. In the present case the employment register was not kept up to date, in the sense that there was no entry at all in the register at the time the inspector visited the factory on the 27th August, covering the dates 25th, 26th and 27th August, and, therefore, the matter obviously falls within the purview of section 41(h). But, even if there had been some entries relating to the 25th of August or the 26th of August or the 27th of August, if those entries did not contain all the particulars required by section 35, still it could not be said to be up to date. In order that the employment register can properly be said to be up to date, it is clearly necessary that it should contain, day by day, the names of the persons employed in the factory, their hours of work and the nature of their employment. It follows, therefore, that the appellant is clearly guilty of the offence dealt with by section 35 read with section 41(h) of the Act.

As regards the other charge, the learned magistrate, having accepted the inspector's statement that the factory was working* on the Sunday, that would in itself be sufficient to conclude the matter. The learned advocate for the appellant sought to argue that there would be no offence if certain persons happened to be doing some kind of work within the

1933

*Ramdit Mall*v.
*Emperor.**Costello J.*

1933

Ramdit Mall
v.
Emperor.
Costello J.

four walls of the factory on a Sunday, unless it were also shown that those persons were actually employed by the owners of the factory. In that connection, however, it is important to bear in mind the definition given in section 2(2) of the Act, which provides that a person who works in a factory, whether for wages or not, in any of the ways enumerated in that clause, shall be deemed to be employed in that factory. The inspector stated quite definitely that the persons, whose names he mentioned, as well as a number of other persons, were actually engaged in work in the factory on that Sunday, the 27th of August. In these circumstances, it must be presumed, I think, that they were actually employed in the factory, having regard to the nature of the work mentioned in the complaint, which was of the kind included in the definition given in section 2(2). In my opinion, therefore, the appellant was rightly convicted on both the charges.

The learned advocate for the appellant has asked me to consider the question of the sentences imposed. It has been pointed out that, although the breaches of the two sections were comparatively trivial in their nature, the learned magistrate has thought fit to impose the maximum penalty. It is to be borne in mind, however, that legislation such as the Factories Act is designed for the protection of persons working in factories and to secure for them reasonable and decent conditions of labour. The employers and managers of factories must have it impressed upon them that a breach of a piece of legislation of this kind is a very serious matter. In the present case, moreover, as the learned Chief Presidency Magistrate pointed out, the appellant had been convicted and fined Rs. 300 for similar offences as recently as June last, that is to say, only about two months before the date, I am now considering. One would have thought that the imposition of a comparatively heavy fine might have had a deterrent effect upon this man Ramdit Mall, but apparently it had not. Therefore, the learned

Chief Presidency Magistrate, in my opinion, quite rightly came to the conclusion that the only thing to do was to impose the maximum penalty under each of the sections. Having regard to the fact that the appellant was convicted after previous convictions for similar offences, I do not feel called upon to interfere with the sentences imposed by the court below.

These two appeals are, accordingly, dismissed.

Appeals dismissed.

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1933

Ramdit Mall

v.

Emperor.

Costello J.