

**CRIMINAL REVISION.**

*Before Mr. Justice Scott-Smith and Mr. Justice Dundas.*

**LORINDA RAM-SEWA RAM (ACCUSED)—**  
*Petitioner,*

*versus*

**THE CROWN—Respondent,**

**Criminal Revision No. 619 of 1919.**

*Criminal Procedure Code, Act V of 1898, section 556— whether District Magistrate can try a case under the Indian Factories Act, XII of 1911, where he himself, as Inspector of Factories, ordered inquiries and sanctioned the prosecution.*

*Held*, that a District Magistrate, who as Inspector of Factories ordered an enquiry to be made and in the same capacity sanctioned the prosecution, is disqualified by section 556 of the Code of Criminal Procedure from trying the case.

*Mangal v. Emperor* (1), referred to.

*Queen Empress v. Chenchi Reddi* (2), distinguished.

Case reported by Khan Sahib Mirza Zafar Ali, Sessions Judge, Lyallpur, with his No. 491 of 15th May 1918.

**BHAGAT RAM, PURI, for Petitioner,**

**GOVERNMENT ADVOCATE, for Respondent.**

The facts of this case are as follow :—

On receiving information that certain factories at Lyallpur worked at night, the District Magistrate, Lyallpur, by his order, dated the 3rd January 1918, required an Extra Assistant Commissioner to report. The Extra Assistant Commissioner visited the factories on the ensuing night and found the factory of Lorinda Ram-Sewa Ram at work employing women without permission contrary to sections 24 and 27 of the Act, and children under 14 years of age in defiance of section 23—and he reported accordingly on the 4th January. On receiving this report the District Magistrate asked the Extra Assistant Commissioner to furnish details of the nights on which women were employed. This the Extra Assistant Commissioner did the next day (5th January 1918) and thereon the

(1) 5 P. W. R. 1919.

(2) 1900 I. L. R. 24 Mad. 238.

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District Magistrate recorded an order sanctioning the following prosecutions under the Factory Act :—

(a) Working at night against the provisions of section 27, Factories Act,	27 cases.
(b) Working on Sunday (section 22),	6 cases.
(c) Employing Kesar, minor, without a certificate (section 23),	8 cases.
(d) Employing Iehhar, minor, without a certificate.	3 cases.
Total	44 cases.

After recording this order, he issued summons to the owner and manager of the factory in all the cases for 10th January 1918. On that date *Lala Devi Ditta Mal*, Pleader, appeared before the District Magistrate on behalf of the manager of the factory and contended, *inter alia*, (1) that the Factory Act was not applicable, because the number of persons simultaneously employed in the factory never exceeded 49 on anyone day in the year (section 3 (e)); (2) that section 27 did not contemplate that sanction of Inspector was required to employ women at night.

The District Magistrate without taking any evidence or examining the accused overruled these contentions and imposed a fine of Rs. 50 in each case of class (a) and (b) and of Rs. 10 in each of the remaining 11 cases. Thus the total of fines imposed was Rs. 1,760.

The proceedings are forwarded for revision on the following grounds :—

- (1) There was no proper inquiry.
- (2) It is doubtful whether the accused's main contention, that the Act was not applicable, could be overruled on a correct interpretation of term "employed" used in section 3 (1) (e) and 2 (2).

Section (3) (1) (e) runs as below :—

Nothing in the following chapters shall apply to any factory wherein on no day in the year are more

than forty-nine persons simultaneously "employed".

Section (2) (2) defines "employed." It is difficult to say that *chowkidars*, clerks, store-keepers and others who do not work in a manufacturing process or handicraft or in any other kind of work incidental to or connected with the manufacturing process or handicraft, etc., can fall within the purview of "employed." It is clear that the term "employed" is defined to restrict its general significance and I am of opinion that in its restricted sense it is not applicable to *chowkidars*, etc.

Section 27 would not apply if the number of women employed was sufficient in the opinion of the Inspector to make the hours of each woman not more than 11 in any one day. There was no evidence on this point.

The District Magistrate was "Inspector" too and sanctioned the prosecutions as such. The illustration to section 556, Criminal Procedure Code, would show that he could not try the cases himself. Provisions of section 191, Criminal Procedure Code, were complied with, but that section did not govern the case.

The cases are of sufficient importance on account of the law points involved, on which an authoritative pronouncement is necessary. In any case there should be a proper trial.

The order of the Court was delivered by—

SCOTT SMITH, J.—This is an application for revision of the order of the District Magistrate, Lyallpur, convicting the petitioner of certain offences under the Indian Factories Act, XII of 1911. The ground taken by the petitioner's advocate before us is that having regard to section 556 of the Criminal Procedure Code, Mr. Kitchin, who tried the case, had no power to do so, as he was personally interested in it within the meaning of the section. It appears that the District Magistrate on receiving certain information directed an inquiry to be made and as a result of the inquiry he sanctioned certain prosecutions under the Factories Act on the 5th of January 1918. On the same day he directed that summons should issue to the owner and manager of the firm of Lorinda Ram-Sewa Ram, to

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which the factory belonged. He subsequently took cognizance of the present cases against the petitioner and convicted him on a number of charges.

The illustration to section 556 of the Criminal Procedure Code is as follows :—

*A*, as Collector, upon consideration of information furnished to him, directs the prosecution of *B*, for a breach of the Excise Laws. *A* is disqualified from trying this case as a Magistrate.

In *Queen Empress v. Chenchi Reddi* (1), a distinction was drawn between a case where a Magistrate directed the prosecution and where he simply authorised the prosecution. It was held that section 556 did not cover the case of a Magistrate who merely authorised the prosecution and that he was not thereby disqualified from trying the case. The facts of that case are, in our opinion, distinguishable. In the present cases the District Magistrate as Inspector of Factories ordered an enquiry to be made and in the same capacity sanctioned the prosecutions. To all intents and purposes he directed the prosecutions. In our opinion the illustration to section 556 clearly applies to the present cases. We are fortified in our view by a case of this Court *Mangal v. Emperor* (2), wherein it was held that a trial of an offence under section 48 of the Indian Excise Act was liable to be set aside under section 556 of the Criminal Procedure Code where the Magistrate himself in the capacity of Tahsildar had ordered to prosecute and search the house of the accused on the report of an opium contractor who was neither a Collector nor an Excise Officer. We think there can be no doubt that the District Magistrate in the capacity of Inspector of Factories was personally interested in these cases and therefore disqualified from trying them.

We accordingly allow the revision and, setting aside the convictions and sentences in all the cases, direct that the petitioner be re-tried by some other Magistrate. The fines, if paid, will be refunded.

*Revision allowed.*

(1) (1900) I. L. R. 24 Mad. 236.

(2) 5 P. W. R. 1912.