

**REVISIONAL CRIMINAL.**

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*Before Mr. Justice Addison and Mr. Justice Skemp.*

**PRAG NARAIN—Petitioner**

*versus*

**THE CROWN—Respondent.**

**Criminal Revision No. 1807 of 1926.**

*Indian Factories Act, XII of 1911, section 2 (2), (3)—“ Factory ” and “ employed ”—meaning of—Sections 33 and 41 (j)—Notice—persons employed merely in selling the manufactured article—whether to be included—if employed on the premises.*

*Held*, that for the purposes of the Indian Factories Act the words used in the definition contained in section 2 (3) (a) of that Act shew that by a factory is meant premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or is in a suitable condition to be put on the market.

*Held further*, therefore, that for the purpose of giving notice to the Inspector of Factories under section 33 of the Act, it is not necessary to include persons engaged merely in selling the manufactured article, even though such persons happen to occupy a room in the same building as the factory, as it cannot be said that they are employed in the factory within the meaning of section 2 (2) of the Act.

*Spacey v. Doulais Gas and Coke Company, Ltd.* (1), relied on.

*Application for revision of the order of S. L. Sale, Esquire, Sessions Judge, Delhi, dated the 7th September 1926, affirming that of Chaudhri Surat Singh, Magistrate, 1st class, Delhi, dated the 28th July 1926, convicting the petitioner.*

**KISHEN DAYAL, for Petitioner.**

**MACKAY, for GOVERNMENT ADVOCATE, for Respondent.**

## JUDGMENT.

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ADDISON J.—Prag Narain, occupier of the Prag Distilled Water Ice Factory, Delhi, was convicted by a Magistrate with first class powers under section 41 (j) of the Indian Factories Act for failing to furnish notice of occupation as required by section 33 of the Act. He was sentenced to pay a fine of Rs. 100. His appeal in the Sessions Court was dismissed, and he has now moved this Court to set aside his conviction and sentence.

The facts are not in dispute. The additional Inspector of Factories found on the 16th of April 1925 that eighteen persons were being employed in the manufacturing department, while six persons including the manager were being employed in the sales department. If 20 persons are employed in a factory of this kind it becomes a factory within the meaning of the Act, and it is the duty of the occupier under section 33 to give notice to the Inspector. This was not done in the present case, as it was contended that only 18 persons were employed in the factory and that the six persons, who were in the sales department, were not employed in the factory. The only point to be decided is whether 20 persons were employed in the factory.

“Factory” is defined in section 2 (3) (a) of the Act “as any premises wherein, and within the precincts of which, on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or chemical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article<sup>2</sup>”. The

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words used show that by a factory is meant premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or is in a suitable condition to be put on the market.

Further, the word "employed" is defined in section 2 (2) of the Act as follows:—

"A person who works in a factory, whether for wages or not,

(a) in a manufacturing process or handicraft,  
 or

(b) in cleaning any part of the factory used for any manufacturing process or handicraft,  
 or

(c) in cleaning or oiling any part of the machinery or

(d) in any other kind of work whatsoever, incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein,

shall be deemed to be employed therein".

Clearly persons employed merely for selling the manufactured articles do not come within the above definition, for they have nothing to do with work incidental to, or connected with, the manufacturing process, unless it can be said that they are engaged in some kind of work "connected with the article made". It was argued on behalf of the Crown that the selling of the article was work connected with the article made. This contention in my judgment cannot be accepted. A factory means premises where

articles are manufactured and a person who does anything directly or indirectly towards the making thereof up to the stage that they are ready to be delivered and put on the market is employed in the factory. A person, who sells the manufactured article, though he happens to occupy a room at the factory, cannot be said to be doing any kind of work incidental to or connected with the manufacturing process or "connected with the article made". That would put too wide a construction upon the last words which obviously mean "connected with the article in the process of being made". That is, any kind of work upon the article up to the stage where the article is packed and ready for delivery in the market is what is intended. In my judgment that is the only possible meaning the words can bear when the definition of the term "factory" is considered.

In England by "factory" is intended a place where an article is produced while its supply to customers is an operation distinct from its manufacture, though both operations may be undertaken by the producer. This was held in *Spacey v. Dowlais Gas and Coke Company Limited* (1). In the English Act (64 Vic. Ch. 22, 1901), "factory" and "employment and working for hire" are defined in sections 149 and 152 respectively and there is little difference between the definitions in the English and Indian Acts. In the English Act, however, section 149 (4) runs as follows:—

"Where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the manufacturing process carried on in the factory, that place shall not be deem-

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(1) (1905) 2 K. B. D. 879.

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ed to form part of the factory, for the purposes of this Act ”.

It follows that in England the room in which salesmen sit would not form part of the factory. There is nothing corresponding to this sub-section in the Indian Act, but in my opinion the same result follows from the definition of the term “factory”. In the present case it was more convenient for the occupier to have his salesmen in a room in the same building as the factory, but it cannot be said that by having them there they are employed in the factory. They might be in an office, a mile away. Could it be said in that case that they were employed in the factory? It was admitted by the learned counsel who appeared for the Crown that it could not. It follows that the mere fact that for convenience these salesmen occupy a room in the factory building does not make them persons employed in the factory. They still remain persons engaged in the sale of the manufactured article. On the date in question, therefore, only 18 persons were employed in the factory or perhaps 19, as the manager, who is in charge both of the factory and the sales department, might possibly be held to be employed in the factory. Even in that case the number of persons employed in the factory was only 19, so that the provisions of the Act did not apply. There was, therefore, no offence committed by the occupier.

I would accept the petition and setting aside the conviction and sentence would acquit the petitioner. The fine, if paid, will be refunded.

SKEMP J.

SKEMP J.—I concur.

N. F. E.

*Revision accepted.*