

APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Sen.

EMPEROR v. R. J. MISTRY AND ANOTHER (ORIGINAL ACCUSED).*

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August 31.

Indian Factories Act (XXV of 1934), sections 37, 39, 40, 42, 43, 44 and 60—Dyeing, bleaching and printing factory—Exemption from section 37—Notice under section 39 mentioning working hours and period of rest—Hands working contrary to notice—Breach of provisions—Interpretation—Rule 80 of the rules made under the Act.

There is nothing in the Indian Factories Act, 1934, to show that exemption from the provisions of section 37 carried with it an exemption from the provisions of sections 39 and 40.

Accused Nos. 1 and 2 were respectively the occupier and the manager of a dyeing, bleaching and printing factory. On November 12, 1935, a Junior Inspector of Factories visited the factory when he found several men working at 9–30 p.m. which was contrary to the notice put up in the factory under section 39 of the Indian Factories Act, 1934. The accused having been subsequently prosecuted for breach of the provisions of section 42, it was contended for the defence that as the factory, by reason of its being a dyeing, bleaching and printing factory, was exempted from the provisions of section 37, it was also exempted from the provisions of sections 39 and 40 of the Act :—

Held, (1) that the exemption as regards provisions of section 37 could not override the clear provisions of sections 39 and 40 of the Act ;

(2) that the clear provisions of section 42 were infringed and that an offence punishable under section 60 (b) (i) of the Act had been committed.

CRIMINAL APPEAL by the Government of Bombay against an order of acquittal made by I. N. Mehta, Presidency Magistrate, Fourth Court, Bombay.

Prosecution under the Indian Factories Act, 1934.

R. J. Mistry (accused No. 1) and J. R. Chhoi (accused No. 2) were respectively the occupier and manager of a factory known as the Swadeshi Dyeing, Bleaching and Printing Works, Tardeo, Bombay. The working hours in the factory as notified and communicated to the Inspector of Factories were, so far as night-shirts went, from 6 to 9 p.m. and again from 10 p.m. to 4 a.m. with an hour between 9 p.m. and 10 p.m. as the period of rest and the periods were shown in the D. Register kept under the Factories Act (sections 39 and 40).

*Criminal Appeal No. 223 of 1936.

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On November 12, 1935, a Junior Inspector of Factories paid a visit to the factory when he found workers working during the fixed interval of rest. The accused were accordingly prosecuted under section 60 (b) (i) read with section 42 of the Act. The accused contended that the factory was a dyeing, bleaching and printing factory, that the workers were engaged in work which for technical reasons was required to be carried on continuously and that the factory was exempted from the restrictions as to observation of intervals of rest required by section 37.

The Presidency Magistrate accepted the contention and held that the accused were not liable, observing that merely because the notice of periods of work mentioned an interval of rest, the accused were not liable for breach of section 42 as the interval of rest need not have been mentioned, having regard to the exemption in respect of provisions of section 37. He accordingly made an order acquitting the accused and in so doing, he gave his reasons as follows :—

“ It is common ground that the man was working at 9-30 p.m. The only question is whether accused are liable for breach of section 42 and consequently under section 60 (b) (i).

It is contended for the accused that their factory is a dyeing, printing and bleaching factory and under rule 80 of the rules made by local Government under section 43 (clauses 2, 3 and 4) certain adult workers are exempted from certain restrictions on working hours. It is common ground that the work in this factory falls under section 43 (2) (d), i.e. of workers engaged in any work which for technical reasons must be carried on continuously throughout the day from the provisions of sections 34, 35, 36, 37 and 38.

If we refer to Appendix 3, page 83, 43 (2) (d) and columns 2, 3 and 4, it appears that adult workers are exempted from restrictions placed on them under section 37 of the Factories Act, i.e., from observation of intervals of rest. Section 37 relates to work in which intervals for rest are mentioned. If a worker in this factory is, therefore, found working continuously and not observing rest hours, the Proprietor or Manager would not be liable under section 60 (b) (i) for breach of section 37.

The notice of periods for work has to be fixed in accordance with section 39 (1) and (2) and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 34, 35, 36, 37 and 38. But these workers are exempted from operation of section 37, as rest hours are not to be observed. Merely because, the notice for periods of work mentioned rest hour between 9 and 10 p.m. (which need not have been mentioned at all), would the

Manager or Proprietor be liable for breach of section 42? In my opinion he would not unless the Inspector proves that accused have contravened provisions of sections 34, 35 and 36 of the Act from observation of which this factory is not exempt under rule 80.

The Inspector does not allege that the Manager or proprietor has violated provisions of other sections 34 to 36 and no proof has been brought to show that. In my opinion each accused is found 'not guilty' and ordered to be acquitted."

The Government of Bombay appealed.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown (The Government of Bombay).

Pardiwala, with *Y. V. Bhandarkar*, for the accused.

SEN J. This is an appeal by Government against the acquittal of the two accused persons who were charged under section 60 (b) (i) read with section 42 of Act XXV of 1934. Accused No. 1 is one of the proprietors, and accused No. 2 the manager, of the Swadeshi Dyeing, Bleaching and Printing Works.

On November 12, 1935, Inspector Kagal visited this factory and found several men working therein at 9-30 p.m. The notice of the periods of work maintained for this factory under section 39 of the Act showed that the working hours for the night-shift were from 6 to 9 p.m. and again from 10 p.m. to 4 a. m. with an hour between 9 p.m. and 10 p.m. as the period of rest. The accused were accordingly prosecuted for breach of the provisions of section 42 of the Act, which lays down that no adult worker shall be allowed to work otherwise than in accordance with the notice of periods for work for adults displayed under sub-section (1) of section 39 and the entries made beforehand against his name in the Register of Adult Workers maintained under section 41. The part of section 60 under which the accused were prosecuted runs as follows :—

"If in any factory— . . .

(b) any person is allowed to work in contravention—

(i) of any of the provisions of sections 34 to 38 inclusive, 42, 45 and 48, . . . the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees :

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Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount."

The term "occupier" has been defined in section 2 of the Act as the person who has ultimate control over the affairs of the factory. The proprietor, accused No. 1, will under this definition be an occupier of the factory. The accused were acquitted by the Presidency Magistrate, Fourth Court, on the ground that this factory, being a dyeing, bleaching, and printing factory, came under the exemption provided by rule 80 made under section 43 (2) (d) of the Act. Under that rule adult workers engaged in cloth printing, bleaching and dyeing factories or departments are exempted from the provisions of section 37 of the Act. The learned Magistrate held that as the workers in this factory were exempted from the operation of section 37, which provides for the fixation of intervals for rest, no rest hours were to be observed and that merely because the notice for periods of work mentioned a rest hour between 9 and 10 p.m. neither the manager nor the proprietor could be held liable for breach of section 42. In his opinion, they would be liable for such breach only if it could be shown that they had contravened any of the provisions of sections 34, 35 and 36 of the Act. Those sections provide for the maximum weekly and daily hours for which workers in a factory can be allowed to work as well as for a weekly holiday. The learned counsel for the accused has argued before us that as the factory was exempted from the provisions of section 37 of the Act, it should be held that it was also exempted from the provisions of sections 39 and 40 of the Act, which require that a notice for the periods of work should be displayed and maintained, being fixed beforehand in accordance with the provisions of sections 34 to 38 and that any proposed change in such period shall be notified to the Inspector in duplicate before the change is made. It is argued that none of the sections providing for the

periods of rest and relating to notices of periods of work showing such periods of rest apply to the present factory owing to the exemption enjoyed by the factory as regards the fixing of the intervals of rest under section 37.

It seems to us that the learned Magistrate has wrongly applied the provisions relating to exemption under rules made under section 43 of the Act. The relevant parts of this section are as follows :—

“(2) The Local Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day—from the provisions of sections 34, 35, 36, 37 and 38;”

There is no question that the present factory is covered by the exemption relating to cloth printing, bleaching, and dyeing, factories or departments; but it will be observed that the exemption provided under rule 80 referred to above is with respect to section 37 alone. Sub-section (3) of section 43 states that :—

“Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 39 and 40 which the Local Government may deem to be expedient, subject to such conditions as it may impose.”

In the present case no consequential exemptions from the provisions of sections 39 and 40 have been made. Again, section 44 (1) is as follows :—

“Where the Local Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of sections 39 and 40 in respect of such workers to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.”

In our opinion the fact that no relaxation or modification of the provisions of sections 39 and 40 has been made either under section 44 or under section 43 (3) shows that it is not intended that the exemption as regards the provisions

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of section 37 should override the clear provisions of sections 39 and 40. The scheme of the first part of Chapter IV of the Act which relates to "restrictions on working hours of adults" seems to be that factories are to provide weekly and daily hours of work as provided in sections 34 and 36, a weekly holiday under section 35, and intervals for rest under section 37, and that they are required to display and correctly maintain a notice of the periods of work showing clearly the periods within which adult workers may be required to work. This notice of periods must remain operative until any change that may be felt necessary has been notified to the Inspector and thereafter the change made accordingly; and while such notice remains operative, all adult workers are to work in accordance with the periods for work stated therein. In certain cases, under rules made by the Local Government under section 43, there may be exemptions as to special classes of persons or workers; but where such exemptions exist they have to be specific, and the sections from the provisions of which exemption is given have to be clearly specified in such rules. It does not seem intended that exemptions can be deduced inferentially from other specified exemptions or that a particular exemption should be allowed to override the provisions of a section not specifically included in such exemption. The accused certainly could have taken advantage of the exemption as regards section 37 and either dispense with periods of rest (if sections 34 and 36 were not infringed thereby) or provide intervals of rest at variance with the requirements of that section. It does not seem to be their case that the intervals for rest were dispensed with. The case as stated in their written statements is that as an experimental measure it was decided that the workmen working in the night-shift should be allowed to leave the factory at 3 a.m. and that for the said concession the workmen undertook to take the benefit of the rest period in batches, viz., that all of them undertook to do

the work between 9 and 10 p.m., it being arranged that they were to have their recess interval from 10 p.m. or at about that time in batches. Such an arrangement was clearly not in accordance with the periods of work and rest shown in the notice of periods maintained under section 39. In our opinion, if the factory was to work under such an arrangement as stated above, it was the duty of the accused to get the notice of periods of work amended in the manner provided by section 40 and then to bring such change into operation. The manner in which section 43 (3) and section 44 (1) are worded clearly shows that if it was intended to give factories of this description exemption as regards the requirements of sections 39 and 40, that would have been specifically shown by a rule or an order to that effect. It is, in our opinion, clearly impossible to infer, as the learned Magistrate appears to have done, that because the factory enjoyed an exemption as regards section 37, it must be presumed that it was not required to observe the provisions of sections 39 and 40, and that therefore there has been no infringement of section 42 in this case. It is not denied that work was actually going on in a period shown as the period of rest in the notice of periods for work. That being so, there is no doubt, in our opinion, that the clear provisions of section 42 were infringed and that an offence punishable under section 60 (b) (1) of the Act was committed.

The appeal must, accordingly, be allowed and each of the accused convicted.

As regards the sentence, this appears to be the first case of its kind that has come to the notice of this Court, and the accused themselves might have been under some misapprehension, it seems to us, as to the interpretation of the different sections discussed above. We think that the ends of justice will be met by the infliction of a nominal sentence, and we accordingly sentence each of the accused to a fine of Rs. 15.

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BROOMFIELD J. I agree. That there has been a breach of the terms of section 42 seems to me to be beyond dispute. That section says that no adult workers shall be allowed to work otherwise than in accordance with the notice of periods for work for adults displayed under sub-section (1) of section 39. The notice displayed under that section showed the period 9 p.m. to 10 p.m. as a period of rest. When the Inspector went there at 9-30 p.m. he found several of the hands working. The defence substantially comes to this that because this is a bleaching and dyeing factory and therefore exempt from the provisions of section 37 of the Act under the rules made under section 43 (2) (d), therefore it is also exempt from the provisions of sections 39 and 40. That is to say, the contention is that sections 39 and 40 only apply when section 37 applies, but that is not so. There is nothing in the Act to show that exemption from the provisions of section 37 carries with it an exemption from the provisions of sections 39 and 40. On the other hand sub-section (3) of section 43 and section 44 indicate that exemption from the provisions of section 37 does not connote exemption from those other sections, since if that were so, section 43 (3) and section 44 would be superfluous. It is necessary that the provisions of the Act in this respect should be complied with, because if the working in the factory is not in accordance with the notified periods of work, Inspecting Officers would find it difficult to check the employment of the factory hands and ensure that they are not employed beyond their maximum period.

Appeal allowed.

Y. V. D.