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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.38 OF 1999

The State of Maharashtra

(Through Shri V.M. Yadav, Assistant Director,
Industrial Safety & Health, Pune (Inspector
of Factories under section 8 of Factories Act,
1948)

..Appellant.

V/s.

A.K. Mitra, Occupier / Manager,
M/s. Surendra Enterprisess, J-342, M.I.D.C.,
Bhosari, Pune - 26.

..Respondent.

Mrs.M.M. Deshmukh, APP for the appellant.

None for the respondent-State.

CORAM : A.M.BADAR, J.

DATED : 25TH APRIL, 2016

ORAL JUDGMENT

1. By this appeal, the appellant-State is challenging the Judgment and order passed by the learned Chief Judicial Magistrate, Pune in Summary Case No.6/1997 thereby acquitting the respondent / accused for the offence

punishable under section 92 of the Factories Act, 1948.

2. Facts in nutshell, leading to the institution of the present appeal are thus :-

(a) On the basis of a complaint filed by the present appellant, summary triable case bearing No.6/1997 came to be registered. According to the complainant, the respondent / accused is occupier / Manager of M/s. Surendra Enterprises which is a factory within the meaning of the term assigned by section 2(m) (i) of the Factories Act, 1948. According to the the complainant, on 18th October, 1996, the said factory was visited and inspected. In all four persons were working in the said factory and when the respondent / accused was asked to produce the register of adult workers required to be statutorily maintained under the provisions of Section 62(1) of the Factories Act, 1948, the respondent / accused failed to produce the said register and as such, according to the complainant, the respondent / accused has committed an offence punishable under section 92 of the Factories Act, 1948.

(b) After recording the plea of the respondent / accused, the learned Chief Judicial Magistrate was pleased to record the notes of evidence of complainant Vijay Yadav, the Assistant Director of Industry Safety, Pune. The prosecution has not adduced any other evidence. Hence at the conclusion of trial and upon hearing, the learned Chief Judicial Magistrate, by the impugned judgment and order dated 27th July, 1998 was pleased to acquit the respondent / accused of the offence punishable under section 62(1) punishable under section 92 of the Factories Act, 1948. Being aggrieved by such judgment and order of acquittal, this appeal against the acquittal is filed by the complainant.

3. Heard learned Additional Public Prosecutor appearing for the appellant-State. Perused the record and proceedings of the Summary Case No.6/1997. According to the learned Additional Public Prosecutor, evidence of the complainant Vijay Yadav is sufficient to establish the guilt of the accused in not maintaining the register of the adult worker required to be maintained in the prescribed form under the provisions of section 62 of the Factories Act, 1948. As such, according to the learned Additional Public Prosecutor, the

impugned judgment and order of acquittal is liable to be quashed and set aside.

4. It is seen that the prosecution has examined only the complainant. His evidence shows that because of some accident, he visited the factory premises of the respondent / accused and found that the accused had failed to maintain the register of workers employed in the said factory as required under the provisions of section 62 of the Factories Act. Evidence of the complainant further shows that he recorded statements of workers of the said factory. Cross-examination of the complainant shows that in fact register was maintained by the respondent / accused in different form. The complainant denies the suggestion that workers whose names are recorded by the complainant were not the workers of the factory but they were workers on trial basis. In other words, it was tried to be suggested that the names of the persons recorded by the complainant as workers were in fact apprentice in the factory.

5. The term '*worker*' is described in section 2(l) of the Factories Act, 1948. As per the provision of section 62 of the

Factories Act, 1948, Manager of the every factory is required to maintain register of adult worker disclosing the name, nature of work, group, shifts and other particulars in respect of which the worker is employed in the factory. Section 92 of the Factories Act, 1948 provides for general penalty for any offence and breach of provisions of section 62 is covered by section 92 of the Factories Act, 1948.

6. The only question before this Court is whether it is established by the prosecution that the respondent / accused failed to maintain the register of adult workers working in the factory as per the provisions of section 62 of the Factories Act, 1948. The prosecution has not examined any worker much less the workers whose names are recorded by the complainant as persons working in the factory. The defence of the respondent / accused is that the persons whose names are noted by the complainant were trial workers i.e. apprentice. It is well settled that apprentice cannot be workmen. The learned trial Court considered the prosecution evidence carefully and gave the benefit of doubt to the respondent / accused by holding that the prosecution has failed to prove that the persons found present in the factory premises were

in fact workers as defined by section 2(l) of the Factories Act, thereby requiring their employer to enter their names in the register to be maintained under section 62 of the Factories Act, 1948. View so taken by the learned trial Court cannot be said to be a perverse view and, therefore, the appeal is devoid of any merits and hence the order.

(i) The appeal is dismissed.

(A.M.BADAR, J.)