

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 866 OF 2015  
WITH  
CRIMINAL WRIT PETITION No. 867 OF 2015**

Rustom G. Joshi ... Petitioner  
vs.  
The State of Maharashtra & Anr. ... Respondents

**A/W.  
CRIMINAL APPLICATION No. 456 OF 2015 IN W.P NO. 866 OF 2015  
WITH  
CRIMINAL APPLICATION No. 257 OF 2016 IN W.P NO. 867 OF 2015**

V.V. F. Limited Employees Union ... Applicant  
**in the matter between**  
Rustom G. Joshi ... Petitioner  
vs.  
The State of Maharashtra & Anr. ... Respondents

Mr. K.M. Naik, Senior Advocate a/w. Mr. Sujeet P. Salkar, Janki Kadam, Advocate for the petitioner in both the Petitions.  
Mr. Sanjay Singhvi, Senior Advocate i/b. Vijay Hiremath, Advocate for the applicant/intervenor..  
Ms. Veera Shinde, APP for the respondent No. 1/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: 10<sup>th</sup> December, 2018**

**P.C. :**

1. Rule. Rule made returnable forthwith. By consent, both the Writ Petitions are heard finally and decided at the stage of admission, as the short issue is involved.

2. In these Writ Petitions, the order dated 6<sup>th</sup> February, 2014 passed by the learned Metropolitan Magistrate, 29<sup>th</sup> Court, Dadar, Mumbai in C.C. No. 190/SF/2014 and C.C. No. 189/SF/2014 issuing summons under the Factories Act, 1948 and the order dated 5<sup>th</sup> November, 2014 passed by the learned Additional Sessions Court in Criminal Revision Application No. 564 of 2014 and Criminal Revision Application No. 563 of 2014 thereby confirming the order of the Metropolitan Magistrate is challenged. Pursuant to the order of Metropolitan Magistrate, summons was issued under section 59(1) r/w. Section 92 of the Factories Act. The said order was challenged.

3. In these Petitions, non-payment of overtime with all allowances is the issue.

4. The learned senior counsel for the petitioner has submitted that the learned trial Judge has committed error in law in issuing the process under the Factories Act. The petitioner is admittedly an occupier, as defined under the Factories Act, 1948, who has filled in the contents of the notice under section 7 of the Factories Act. The learned counsel has relied on Section 7A of the Factories

Act, 1948 wherein the general rules of the occupier are mentioned. After reading over those duties, he pointed out that the duties assigned to occupier do not contemplate the duty of the overtime or the allowance. He submitted that it is the responsibility of the Manager to make the payments of all the wages. Overtime is a part of wages and therefore, under section 3 of the Payment of Wages Act, 1936, Manager is held responsible to pay all the wages. Thus, the process should have been issued only against the Manager and not against the occupier. He points out that under Rule 96 of the Maharashtra Factories Rules, 1963, the overtime slips are signed by the Manager or any person duly authorized by him. Therefore, issuance of process against the occupier/petitioner is an erroneous order. By this, the innocent person, who is an occupier, is illegally roped into this criminal proceedings.

5. Learned APP, while opposing these Petitions, has supported the order passed by the learned Magistrate so also the order passed by the Additional Sessions Judge, Greater Mumbai dismissing the Criminal Application No. 564 of 2014 and Criminal Application No. 563 of 2014.

6. In these matters, Intervention Applications are filed by the workers. Though objection to the locus of these workers of filing of such Intervention Applications are taken by the learned counsel for the petitioner, I am of the view that the workers are the sufferers due to non-payment of the allowances, which are covered under the overtime. Hence, the Intervention Applications are allowed.

7. The learned senior counsel Mr. Singhvi for the applicant/intervenor, has pointed out that section 59(1) of the Act states about the extra wages for overtime and if at all such payment is not made, then the occupier is guilty of such offence and can be penalized under section 92 of the Factories Act, 1948. He submitted that the order of issuance of process under the said section by the Magistrate is legal.

8. Perused the impugned orders and considered the relevant provisions. Non-payment of overtime or wages is the offence under the Factories Act, 1948 and also under the payment of Wages Act, 1936. If the prosecution is taken under the Factories Act, then Section 59(1) is attracted. Section 59(1) states as follows:

“59. Extra wages for overtime.—

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

9. Chapter X of the Act is on Penalties and Provisions laid down under the Factories Act, 1948 and Section 92 is a penal section, which states that -

“If there is any contravention of any of the provision of the Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence.”

Thus, the offence under the Factories Act are not specifically carved out but by virtue of Section 92, any act which in contravention of the provisions of the Act and the rule and the order made thereunder, is an offence. The Section 92 covers wider area. Section 59(1) states about the payment of overtime and thus, if there is non-payment, it undoubtedly amounts to contravention of the Section and is taken within the sweep of Section 92 of the Act.

10. The status of the petitioner that he is the occupier is not disputed by the petitioner. It is admitted fact that he has given notice as contemplated under section 7 of the Act. Section 7A speaks about the general duties of the occupier. Under Section 3 of the Payment of Wages Act, to pay overtime overtime is the duty of the manager. Unlike Section 3 of the Payment of Wages Act, in Section 7A, there is no specific mention as to who is responsible to pay overtime or the wages. However, as defined under section 2- Interpretation clause of Factories Act, wherein under sub-section (n), the occupier is defined "occupier of factory", means "the person who has ultimate control over the affairs of the factory". Moreover, section 92 is very clear which states that "Both the occupier and manager of the factory shall each be guilty of an offence. Thus, section 92 itself covers both the persons, i.e. occupier and manager. The complainant chose to initiate the proceedings under the Factories Act because the complaint is filed by the Deputy Director, Industrial Safety and Health, Mumbai and it is not filed under the Payment of Wages Act. Hence, the order is legal and nothing can be faulted with. No interference is required in both the orders. Hence, Writ Petitions are dismissed.

11. Criminal Applications are also disposed of accordingly.

12. The learned counsel for the petitioner submitted that the question of law is involved and therefore, this order be stayed for four weeks.

13. The complaint is filed in the year 2014 and the proceedings are stayed. I am of the view that no point of law as such is involved, hence, I am not inclined to stay this order.

**(MRIDULA BHATKAR, J.)**