CRIMINAL APPELLATE.

Before Mr. Justice Shah and Mr. Justice Hayward.

1919.

June 26.

EMPEROR *v.* J. B. H. JOHNSON.*

Indian Factories Act (XII of 1911), sections 29 (1) and 41 (a) †*—Manager of a textile factory—Employment of labour after prohibited hours—Liability of the manager to be punished separately for each workman so employed.*

The accused, who was the manager of a textile mill, employed 18 workmen to work at his mill after 7 p.m. in violation of the provisions of section 29 (1) of the Indian Factories Act, 1911. Eighteen prosecutions were started against the accused; and the accused was convicted and sentenced separately in each case. On appeal the Sessions Judge was of opinion that the employment of labour was a single offence under section 41 (*a*) read with section 29 (1) of the Indian Factories Act, 1911; he, therefore, confirmed the conviction and sentence passed on the accused only in one case and acquitted him in the remaining cases. The Government of Bombay having appealed against the orders of acquittal :—

Held, setting aside the orders of acquittal, that the accused was liable to be convicted and sentenced separately in each of the eighteen cases, for, section 41 (*a*) of the Indian Factories Act, 1911, indicated that what was prohibited was the employment of any person or allowing any person to work contrary to the provisions of the Act.

THESE were appeals by the Government of Bombay from orders of acquittal passed by B. C. Kennedy, Sessions Judge at Ahmedabad, on appeal from convictions and sentences passed by R. G. Gordon, Sub-divisional Magistrate at Ahmedabad.

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*Criminal Appeals Nos. 119 to 135 of 1919.

†The sections run as follows :—

29 (1). No person shall be employed in any textile factory before half-past five o'clock in the morning or after seven o'clock in the evening.

41. If in any factory—

(*a*) any person is employed or allowed to work contrary to the provisions of this Act ;

* * * * *

the occupier and manager shall be jointly and severally liable to a fine which may extend to two hundred rupees.

The accused was the manager of a textile factory, known as the Calico Mills at Ahmedabad.

On the 4th September 1918, the accused employed eighteen workmen to work at his mill after 7 p.m.

For this act, eighteen prosecutions were started against the accused, under section 41 (*a*) read with section 29 (1) of the Indian Factories Act, 1911. He was convicted on his plea of guilty in each case; and sentenced in each case to pay a fine of Rs. 100.

The accused appealed to the Sessions Judge at Ahmedabad. The learned Judge confirmed the conviction and sentence passed on the accused in one case only, and acquitted him in the remaining seventeen cases on the following grounds:—

As I read the Act the employment of labour at unlawful hours is the offence and not the employment of each individual workman.

The prohibitive clause is 29.

No person shall be employed in a textile factory after half-past seven in the evening.

The penal clause is—

If in any factory any person is employed or allowed to work contrary to any of the provisions of this Act the occupier and manager shall be liable to a fine which may extend to Rs. 200. Section 41 mentions several offences of conduct of a mill, none of which with the possible exception of the acts now under consideration could possibly be made the ground of separate charges, e.g., failure to provide latrine accommodation and failure to supply water.

In the English Act apparently it is provided that there should be a fine of £5 for each operative employed contrary to the provisions of the Act. I have not the wording of that Act before me, but I rather think the amount of penalty is significant.

It would be unusual in view of the value of money that employment of an individual workman in England contrary to law should be punishable with a fine of Rs. 75 whereas out here it should be punishable with a fine of Rs. 200.

In previous Legislation Act XI of 1891, section 15, the manager was made liable distinctly for each person improperly employed, vide proviso 2.

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That proviso has no place in the present Act. But a new provision is introduced, section 45, which as I interpret it, means that a Court can fine a manager for continuing to employ labour unlawfully for one or more days. The wording of the section is obscure, for, I do not understand why it was necessary to refer to two or more persons in proviso (*b*) unless the meaning was as to employment on the same day, but the main part of the section is quite clear, namely, that it refers to offences not committed on the same day, but from day to day. Section 45, therefore, does not in my opinion render it possible to fine for employment of labour on the same day to any greater extent than is provided for in the main section 41.

I have already said that in my opinion, under section 41, it is the conducting of the factory by employing unlawful labour which is punished and not the act of employing each individual labourer. I am of the opinion, therefore, that as the law at present stands it is not open to the prosecution to institute separate prosecutions against the factory manager in respect of each labourer employed.

The Government of Bombay appealed to the High Court of Bombay against the orders of acquittal.

S. S. Patkar, Government Pleader, for the Crown.

Sir Chimanlal Setalvad, instructed by *Bhaishankar Kanga* and *Girdharlal*, for the accused.

SHAH, J. :—The facts which have given rise to these appeals are few and undisputed.

On the 4th of September last at about 11-30 p. m., eighteen persons were found working in the Calico Mills, which is a textile factory, subject to the provisions of the Indian Factories Act XII of 1911. Eighteen complaints were lodged in respect of the employment of these eighteen persons against the manager of the said factory. The accused pleaded guilty, and he was convicted in all these eighteen cases and sentenced to pay a fine of Rs. 100 in each case. On appeals to the Sessions Court the learned Sessions Judge upheld the conviction in the first of these cases and set aside the convictions and sentences in the remaining seventeen cases. He was of opinion that the offence was one of employment of

labour collectively and that it was not a separate offence to employ each person contrary to the provisions of the Act.

It is in these seventeen cases in which the accused has been acquitted by the Sessions Court, that the present appeals are preferred by the Government of Bombay. The question of law that arises is whether under section 41 (*a*) of the Act the offence consists of the employment of labour apart from the number of men employed or whether the offence is complete and separate in respect of each person employed or allowed to work contrary to any of the provisions of the Act.

It has been argued on behalf of the Crown that under section 29 of the Act no person can be employed in any textile factory after seven o'clock in the evening, that under section 41 (*a*) if in any factory any person is employed or allowed to work contrary to the provisions of the Act, the manager is liable to fine which may extend to Rs. 200, and that the offence is distinct in respect of every person employed or allowed to work contrary to the provisions of the Act. It is further contended that neither the terms of section 45 of the Act nor the corresponding provisions of the English Statute (1 Edward VII, Chapter 22, section 135) support the conclusion at which the lower appellate Court has arrived.

On behalf of the accused it has been urged that the general scheme of the Act including the provisions relating to the textile factories, indicates that the prohibition is not in respect of any individual but in respect of the labour collectively, and that therefore an offence under section 41, clause (*a*) is not the offence of employing each individual but the offence of employing one or more workmen at a time. It is also

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urged that section 45 of the Act lends support to that view. It is further argued that in any case the provisions of section 71 of the Indian Penal Code are applicable to this case and that there should be only one punishment in respect of all these offences even if the act of employing each of these persons is treated as a separate act.

After a consideration of these arguments I am clearly of opinion that the contention urged on behalf of the Crown must be allowed. The words of section 41 (*a*) are clear and indicate, in my opinion, that what is prohibited is the employment of any person or allowing any person to work contrary to any of the provisions of the Act. That would mean that it is an offence under section 41 (*a*) to employ any person or to allow him to work contrary to the provisions of the Act. In the present case there is no doubt that all these eighteen persons were employed contrary to the provisions of section 29, sub-section 1. It is not suggested that any of the exceptions contained in sub-section (2) of section 29 or in section 30 of the Act are applicable to the facts of the present case. The accused has pleaded guilty to the charges and there is no doubt that the employment of each one of these seventeen persons was contrary to the provisions of section 29, sub-section 1. The employment of each person must be treated as a distinct act, and the fact that eighteen persons were employed at one time cannot make the employment of these persons one act of employment. The argument based on the scheme of the Act seems to me to be open to the objection that it ignores the clear phraseology of sections 29 and 41, clause (*a*), and that it involves the assumption that the object of the Act is to regulate the working of the mills and the employment of labour collectively and not necessarily to secure protection for the workmen employed in the

factory individually. There is no justification for such an assumption. On the other hand it is a fair view to take that these provisions are intended, among other things, to protect the persons employed in the factory and that the result can be effectively secured if they are read as applying individually and not collectively. As regards section 45 of the Act, I think that it has no application to the present case, and that it throws no light on the point under consideration. It applies in terms to a repetition of the same kind of offence from day to day and not to offences of the same description on the same day. The words of clause (*b*) of section 45 must be read with reference to the purpose of the section, and cannot be allowed to control the plain meaning of section 41, clause (*a*). It is significant that in clause (*b*) in the corresponding section 143 of the English Statute the same phraseology is used, even though under section 137 of that Act the penalty is provided for each person employed.

The provisions of section 71 of the Indian Penal Code, in my opinion, have no application to this case. If the offence consists of employing the labour collectively of the prescribed hour no resort to section 71 is necessary. If it is an offence to employ each workman, section 71 cannot apply. The first paragraph of the section applies to a case where a repetition of the same offence constitutes in the result the same offence. This is indicated by Illustration (*a*). In the present case the offence, if it consists of employing each workman, is distinct and separate and there is no one offence collectively merely by the fact of a number of these offences having been committed at the same time.

The ground upon which the learned Sessions Judge has based his conclusion is that under the repealed

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Indian Factories Act of 1881, there was an express provision that the offence would be in respect of each individual employed. That no doubt was expressly provided as an exception to a proviso which existed in the Act of 1881 and also in the amended section in the Act of 1891. But in the new Act the proviso including the exception is omitted. I do not think that the omission suggests the inference which the lower appellate Court has drawn. It was apparently to modify the plain meaning of the words of the principal part of the section that the proviso was inserted and even then an exception was made as regards the offence of employing each person. In my opinion the omission to re-enact the proviso rendered the exception unnecessary. Thus the omission has the effect of leaving the words used in the section to indicate their plain and natural meaning that it would be an offence to employ any person contrary to the provisions of the Act. I cannot agree with the learned Sessions Judge in his suggestion that all the offences indicated in other clauses of section 41 are single offences. I am unable to read all the other clauses of the section in that sense. For instance it is difficult to accept, as has been suggested in the course of the argument before us, that under clause (*e*) of section 41, which makes it an offence to construct any door in contravention of section 15, it would be only one offence whether one door is constructed in contravention of section 15 or several doors are so constructed. I do not however desire to pursue this line of argument, nor to express any definite opinion as to the interpretation of any other clause of section 41 as that is not strictly necessary for the purpose of this case. I am content to take the words used in clause (*a*) with which we are concerned in this case and to interpret them in their natural and plain sense.

I have no doubt, therefore, that the convictions in these seventeen cases recorded by the trial Magistrate were right and that the acquittals are wrong.

The result is that the orders of the lower appellate Court in these seventeen appeals are set aside and the convictions recorded by the trial Magistrate restored.

As regards the sentences, while it is right that the total fine in respect of these several offences should be substantial, it should not be excessive. The record does not disclose all the circumstances connected with the employment of eighteen persons on this particular occasion. On the whole we think that the sentence of Rs. 50 in each of these seventeen cases would be sufficient to meet the ends of justice. We accordingly order that the accused be sentenced to pay a fine of Rs. 50 in each of these seventeen cases and in default of payment to undergo simple imprisonment for fifteen days.

HAYWARD, J. :—These appeals raise the question whether the manager of a factory commits one or several offences by employing several persons illegally under section 41 (*a*) of the Factory Act, XII of 1911.

It seems to me that he commits several offences according to the plain meaning of the words used. But it has been argued that a different meaning ought to be implied and that regard ought to be had not to the number of persons employed, but only generally to the employment. The argument is based on reasoning put forward not without hesitation by the learned Sessions Judge, who relied upon the provisions of section 15 of the old Act of 1881 as amended by Act XI of 1891 and upon the provisions of section 45 of the present Act, XI of 1911.

It seems to me, however, that the commission of several offences by the employment of several persons

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was also the plain meaning of the similar words used in the old Act of 1881 as amended by the Act of 1891. There was no necessity otherwise for the proviso restricting the plain meaning except in the particular instance of the employment of two or more persons to several offences committed on different days. The effect of the exception was merely to limit the proviso and therefore could not be affected by the repeal of the proviso. The necessity of the exception ceased with the repeal of the proviso. *It could not, therefore,* be implied that the plain meaning of the words was not intended by reason of the omission of the proviso of the old Act from section 41 of the present Act of 1911.

It seems to me again that the commission of several offences on a particular day would none the less render the offender liable to separate punishments because a repetition of those offences on succeeding days has specially been stated to involve liability for further punishments by the subsequent section 45 of the present Act of 1911. It is no doubt difficult to explain why this particular provision was limited to the employment of two or more persons. *But whether* this was merely a slip in drafting, as would appear to *me probable, or whether it was intentional,* would make no difference, because the repetition of offences on subsequent days has alone been in view in section 45 of the present Act of 1911.

It was also argued that more than one punishment could not be inflicted for the several offences by reason of the provisions of section 71 of the Indian Penal Code. But it seems to me that that argument merely begged the question. Those provisions could only apply if there were not several offences in the employment of several persons, but merely the general offence of employment. They would not restrict the infliction

of punishment in respect of the employment of several persons if this involved several independent offences, but would only restrict the punishment if they involved merely the general offence of employment. It seems to me that recourse could not be had to section 71 of the Indian Penal Code.

It seems to me lastly that substantial punishments were necessary in view of what has been stated both by the Magistrate and the learned Sessions Judge. The punishment proposed which would approximate an aggregate fine of Rs. 1,000 should be a sufficient punishment for infliction by this Court.

Orders set aside.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

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July 14.

GANPATRÀO SULTANRAO MAHURKAR (ORIGINAL APPLICANT), APPELLANT *v.* ANANDRAO JAGADEORAO MAHURKAR (ORIGINAL OPPONENT) RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 47—Decree—Execution—Money recovered in excess in execution—Application to recover back the excess money—Separate suit not competent—Time taken up in such separate suit can be deducted from the period of limitation—Indian Limitation Act (IX of 1908), section 14.

The opponent obtained against the applicant a decree for partition in the Zansi Court, which decree was transferred to the First Class Subordinate Judge's Court at Ahmednagar for execution. In execution, the opponent recovered a sum in excess from the applicant. The applicant filed a suit against the opponent on the 14th November 1913 in the Shevgaon Court to recover back the excess amount; but the Court dismissed the suit on 31st March

*First Appeal No. 305 of 1916.