

**HIGH COURT OF GUJARAT**

**L N BHAGWATI  
V/S  
PRABHAKAR MADHAVRAV JAMBEKAR**

**Date of Decision:** 12 March 1968

**Citation:** 1968 LawSuit(Guj) 26

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**Hon'ble Judges:** [N G Shelat](#)

**Eq. Citations:** 1969 GLR 84, 1969 (1) LLJ 317

**Case Type:** Criminal Revision Application; Criminal Revision Application

**Case No:** 15 of 1968; 63 and 64 of 1968

**Subject:** Criminal, Labour and Industrial

**Head Note:**

**Preliminary objection regarding maintainability of the complain Under S.101 of the factories Act - whether the stage of the proceedings had gone so as to proceed Under S.244 of the Criminal Procedure Code. - Actual commencement of complaint.**

**There would arise some cases where there would exist a legal bar against the institution or continuance of the criminal proceeding or where the allegations in the First Information Report or the complaint do not make out the offence alleged against them or where the Court has no competence or jurisdiction to try the case or where the question of limitation or maintainability of the complaint arises the Court has to go into those questions for they go to the root of the matter. If those points arise on the facts admitted or on the basis of allegations as they stood in the complaint and no evidence is at all required to be taken for consideration of any such points it is the duty of the Court to hear them at the earliest stage before**

commencing with the trial. Held that in the present case the preliminary point raised by the accused was as to the maintainability of the complaint having regard to the provisions contained in sec. 101 of the Factories Act and that if accepted would go to the root of the matter. It was purely a point of law in as much as certain words used therein require to be interpreted so as to entitle the respondent to invoke jurisdiction of the Court to proceed against the petitioners in this case. Therefore the stage of the proceedings had not gone so as to proceed under sec. 244 of the Criminal Procedure Code. Even if the Magistrate had passed the stage of complying with the provisions contained in secs. 242 and 243 of the Criminal Procedure Code but actually commencing to hear the complainant i. e. by recording his evidence and of his witnesses under sec. 244 of the Criminal Procedure Code if any such points were raised it is desirable and in a way necessary to consider the same provided they go to the root of the matter and no evidence is required to be led by the parties. That stage can be said to be the earliest stage when such objections can be raised and if they are decided at that stage that save the unnecessary waste of time of the Court and the litigant public. (Para 7) In re T. C. Nichodemus referred.

**Acts Referred:**

[Code Of Criminal Procedure, 1898 Sec 242, Sec 244, Sec 243](#)  
[Factories Act, 1948 Sec 101](#)

**Final Decision:** Application allowed

**Advocates:** [D C Trivedi, Girish N Shah, K S Nanavati, K V Parekh, G T Nanavati](#)

**Reference Cases:**

[Cases Cited in \(+\): 1](#)

[Cases Referred in \(+\): 1](#)

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**Judgement Text:-**

Shelat J

[1] The facts giving rise to this petition, broadly stated, are that the petitioner Nos. 1 and 2 are the General Manager and the Service Engineer respectively of the Indequip

Engineering Ltd., Ahmedabad. The Indequip Engineering Ltd. has been manufacturing and supplying machines such as Drying Range Machine to various industrial concerns. One such machine was supplied to the Aruna Mills Ltd. in Ahmedabad. After supplying the same that machine was erected and handed over to the Aruna Mills Ltd. on 2-5-67 as per the specifications and other terms and conditions mentioned in the correspondence exchanged between the two Companies. The respondent No. 1 has been working as the Manager of the Aruna Mills Ltd. and respondent No. 2 was working as a Sales Representative of the Indequip Engineering Ltd.

**[2]** At about 3-55 p. m. on 1st June 1967 an accident took place in the Bleaching Department of the Aruna Mills Ltd. which resulted in injuries to three workers employed in the said Mills. That led Mr. U. A. Pandya, the Inspector of Factories, to visit the Mills on that very day and he made necessary Inquiry about the accident. Then the State of Gujarat, at the instance of the Legal Assistant, Factory Department of the Govt, of Gujarat, Ahmedabad, filed three different complaints Nos. 2136 to 2138 on 23-8-67 in the Court of the City Magistrate, Ahmedabad, against respondent No. 1-the Manager of the Aruna Mills Ltd. inter alia alleging that he had contravened the provisions of sec. 92 of the Factories Act. 1948 read with Rule 61(7) of the Gujarat Factories Rules read with sec. 31 of the Factories Act, 1948. In the meantime, the respondent No. 1 filed three complaints Nos. 2513 to 2515 in the same Court against these petitioners and respondent No. 2 under sec. 101 of the Factories Act, inter alia alleging that they were responsible for the contravention of those provisions in respect of which he had been prosecuted by the State. The process was directed to be issued against them by the learned Magistrate in respect of the said offences.

**[3]** The petitioners appeared before the Court in pursuance of the process issued against them and presented an application before the learned Magistrate inter alia contending that there was no privity of contract and/or any connection or relation between the accused and the complainant and that in no case the provisions of sec. 101 of the Factories Act can be attracted so as to require the Court to proceed against them. The complaint was, thus, said to be not competent under the provisions of the Act. After hearing the learned advocates appearing for the parties, the learned Magistrate rejected the same. In his view, since he had already issued the process against the accused in the complaint to which the summons procedure applied, he had no other alternative but to proceed to hear the complainant and take all such evidence led by him as contemplated in sec. 244(1) of the Criminal Procedure Code and that, therefore, it was not open to him to consider the question as to whether there was a

prima facie case against the accused or not. Feeling dissatisfied with that order passed on 19-12-67 by Mr. N. K. Bharwad, City Magistrate 11th Court, Ahmedabad, the petitioners-original accused Nos. 1 and 3 have come in revision before this Court.

[4] The contention of Mr. Trivedi, the learned Advocate for the petitioners, was that there is no provision which debars the Magistrate from hearing any preliminary points raised in the case, though no doubt, provided they were the points of law and that they arose on the basis of the allegations contained in the complaint. In the present case, according to him, the trial had not proceeded and as soon as the process in the case was served on them, they appeared before the learned Magistrate and raised the point that the complaint against them was not competent in the sense that it was not open to invoke the jurisdiction of the Court by reason of the provisions contained in sec. 101 of the Factories Act, 1948. According to him, 'any other person' contemplated under sec. 101 would be a person who has had something to do actually with the working of that machinery or the like so as to enable the employer or manager to point him out as a person to be really proceeded against for the alleged breach of the provisions under the Factories Act, instead of himself, and, in any event, it cannot include any person such as the vendor or the supplier of any such machinery to the complainant. He further urged that the present complaint against them has been by reason of applicability of sec. 101 of the Factories Act and if he were able to show that this provision of law cannot govern persons such as the accused in the circumstances of the case, such a point must be considered at the outset before actually any trial commences.

[5] Ordinarily speaking, the trial of any summons case before the Magistrate commences with sec. 242 of the Criminal Procedure Code. That takes place with the accused appearing before the Court in pursuance of any summons issued to him. In the present case, except that the accused appeared before the Court in pursuance of any such summons issued against them, nothing further had taken place as contemplated under sec. 242 of the Criminal Procedure Code. In other words, the particulars of the offence of which they were accused were not stated to them and no plea had come to be recorded thereunder. Thus, the proceeding cannot be said to have so started as to require him necessarily to start with hearing the complainant and take all such evidence as may be produced by him as required under sec. 244 of the Criminal Procedure Code. The material question before the learned Magistrate, therefore, was as to whether he should have heard the accused appearing before him in pursuance of the summons issued against them on the point such as the one raised by them, which, if accepted, goes no doubt to the root of the matter. If the interpretation in reference to words "any

other person" used in sec. 101 of the Factories Act were not to cover any such suppliers or vendors of machinery, the complaint becomes meaningless so far as the accused are concerned and the Court would have no jurisdiction or justification to proceed to hear any evidence in that regard against the accused in the case.

**[6]** Now there would arise some cases where there exists a legal bar against the institution or continuance of the criminal proceeding, or where the allegations in the First Information Report or the complaint do not make out the offence alleged against them, or where the Court has no competence or jurisdiction to try the same, or where the question of limitation or maintainability of the complaint arises, the Court has to go into those questions, for they go to the root of the matter and the time otherwise spent in hearing the whole matter may be found ultimately wasted. But those points must arise on the facts admitted or on the basis of allegations as they stood in the complaint and no evidence is at all required to be taken for consideration of any such points. In those circumstances, It is the duty of the Court to hear them at the earliest stage before commencing with the trial. In this connection, a reference was invited by Mr. Trivedi to the observations made in a case *In re T. O. Nichodemus*, AIR 1955 Madras 561. They run thus :-

"An accused person has a right to raise a preliminary objection to the maintainability of the complaint either on the ground of limitation or of jurisdiction or any other analogous ground and to have it decided so that he may not be put to the necessity of undergoing a trial in case he succeeds on the preliminary objection. There may be cases in which preliminary points should not be allowed to be raised. But there are cases where the objection goes to the very root of the maintainability of the complaint and in such cases it is not only permissible but desirable that such objections should be raised at the earliest possible opportunity and decided so that unnecessary waste of time of the Court and of the litigant public might be avoided."

As I said above, the preliminary point raised by the accused in the case was as to the maintainability of the complaint having regard to the provisions contained in sec. 101 of the Factories Act and that, if accepted, would go to the root of the matter. It is purely a point of law inasmuch as certain words used therein require to be interpreted so as to entitle the respondent No. 1 to invoke jurisdiction of the Court to proceed against the petitioners in those cases. The question is about their criminal liability for the accident committed

in Aruna Mills Ltd. arising as a result of sec. 101 of the Act. No evidence is required to be led as the facts as they stand in the complaint have to be taken as the basis for deciding that point.

**[7]** Now the stage of the proceedings had not gone so as to proceed under sec. 244 of the Criminal Procedure Code as thought by the learned Magistrate. The application by the accused was in fact given before he could even act under sec. 242 of the Criminal Procedure Code. Not only that, but in my view even if the learned Magistrate had passed the stage of complying with the provisions contained in Secs. 242 and 243 of the Criminal Procedure Code, but before actually commencing to hear the complainant i. e. by recording his evidence and of his witnesses under sec. 244 of the Criminal Procedure Code, if any such points were raised, it is desirable and in a way necessary to consider the same, provided, as I said above, they go to the root of the matter, and no evidence is required to be led by the parties. That stage can be said to be the earliest stage when such objections can be raised, and if they are decided at that stage, they save unnecessary waste of time of the Court and the litigant public. The learned Magistrate was, therefore, wrong in rejecting that application.

**[8]** In the result, therefore, the order passed by the learned Magistrate is set aside and the case shall go back to him with a direction that he shall hear the preliminary point of law raised by the accused in the case with regard to the applicability of sec. 101 of the Factories Act, 1948 and then proceed further according to law.

Application allowed.

Levons Technologies Pvt. Ltd.