Supreme Court of India
State Of Bihar vs Deokaran Nenshi on 24 August, 1972
Equivalent citations: 1973 AIR 908, 1973 SCR (3)1004
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
DEOKARAN NENSHI

DATE OF JUDGMENT24/08/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1973 AIR 908 1973 SCR (3)1004
1972 SCC (2) 890
CITATOR INFO :
R 1984 SC1688 (10,18)
R 1986 SC 293 (14)

ACT:
Mines Act 1952-S. 66-Failure to furnish returns--If an offence covered by s. 70 or whether a continuing offence-Tests.

HEADNOTE:
The respondents are the owners of a stone quarry in Bombay. Under Regulation 3 of the Indian Metalliferrous Mines Regulations 1926, an owner, agent or manager of a mine is required to forward to the District Magistrate and to the Chief Inspector, annual returns in respect of the preceding year in the forms prescribed on or before the 21st January in each year. Under Section 66 of the Mines Act 1952, a person omitting to furnish the returns is liable to pay a fine which may extend to Rs. 1,000/-.
The respondents failed to furnish to the Chief Inspector the annual returns for the year 1959, by the 21st January, 1960 even after warning from the Chief Inspector. A complaint, was filed in the Court of the Magistrate, Dhanbad, on April 12, 1961. Two questions were agitated before the trial Court, the High Court, and also before this Court. (1) That

Dhanbad Court had no jurisdiction to entertain the complaint and (2) that the complaint was barred by limitation under s. 79 of the Mines Act 1952, which provided that no Court shall take cognizance of ,in offence under the Act unless a complaint was made within six months from the date of the offence. The explanation to the section provided that if the offence in question was a continuing offence, the period of limitation shall be computed with reference to every part of the time during which the said offence continued.

Dismissing the appeal,

HELD : (1) The failure to furnish, the annual returns by January 21, in the succeeding year, is undoubtedly an offence punishable under s. 66 of the Mines Act. A complaint has to be filed under s. 79, within 6 months from the date of the offence; but as regards the question whether the offence was covered by s. 79 or whether it was a continuing offence, covered by the Explanation thereto, it was held that a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it Continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place. when an act or omission is committed once and for all. [1006C-G]

The London County Council v. Worley, [1894] 2 Q.B. 826, Butler and Pitzgbbai, [1932] 2 K.B. 108, Verney v. Mark Fletcher & Sons Ltd [1909] 1 K.B. 444, Rex v. Talor, [1908] 2 K.B. 237 and. Emperor v. Karsandoz, A.I.R. Bom. 326, referred to.

(ii) Regulation 3 read with s. 66 of the Mines Act, makes failure to furnish annual returns for the preceding year by the 21st of January of the succeeding year, an offence. The language of Regulation 3 clearly ,indicates that a mine owner, or his agent, would be liable to penalty, if

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he fails to furnish the returns on or before January 21 of the succeeding year. The infringement, in the present case, therefore, occurs on January 21 of the relevant year and is complete on the owner failing to furnish the annual returns by that day. The Regulation does not lay down that the owner would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continues if the requirement of Regulation 3 is not complied with. In other words, Regulation 3 does not render a continued disobedience or non-compliance of it by itself an offence. Therefore, the complaint was time barred 'as the offence in question fell within the substantive part of s. 79 of the Act and of under the Explanation attached to it and in view of the second question. The first question

regarding jurisdiction required no answers. [1009C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Cr. Appeal No. 208 of 1969.

Appeal under Article 134(1)(c) of the Constitution of India from the judgment and order dated April 17, 1969 of the Patna High Court in Govt. Appeal No. 28 of 1967 under sec. 417(1) Cr. P. C.

S.C. Agarwala, for the appellant.

C. L. Sanghi, D. N. Mishra and M/s J. B. Dadachanji & Co., for the respondent.

The Judgment of the Court was delivered by Shelat, J. Sec. 66 of the Mines Act, 1952 provides that any person omitting inter alia to furnish any return, notice etc. in the prescribed form or manner or at or within the prescribed time required by or under the Act to be made or furnish shall be punishable with fine which may extend to Rs. 1,000/-. See,. 79 however lay-, down that no court shall take cognizance of any offence under this Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the section provides that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. Under Regulation 3 of the India Metalliferrous Mines Regulations, 1926, an owner, agent or manager of every mine is required to forward to the District Magistrate and to the Chief Inspector annual returns in respect of the preceding year in the forms prescribed therein and on or before the 21st of January in each year. The respondents are the owners of a stone quarry situate in Chandiwali in Greater Bombay. They failed to furnish to the Chief Inspector the annual returns for the year 1959 by the 21st of January, 1960. On March 28, 1960, the Chief Inspector drew their attention to the said failure and warned the respondents that if they failed to furnish the returns within two weeks from the date of the said letter, that is, by April 11, 1960, proceedings would be instituted against them under the Act. On their failure to do so despite the said warning, a complaint was filed in the Court of the Magistrate, Dhanbad on April 12, 1961.

Two questions were agitated in the Trial Court in the High Court and also before us. One was regarding the jurisdiction of ,the Court at Dhanbad, and the other was whether the complaint was barred by limitation, it having been filed more than a year after the default, which occurred on January 21, 1960. Both the ,questions go to the root of the matter, but in the view we take of the second question, it would not be necessary' for us to go into the first question.

The failure to furnish the annual returns either in the prescribed forms or within the time prescribed for it, that is, by January 21, in the succeeding year, is undoubtedly an offence punishable under S. 66 of the Act. A complaint in respect of such an offence has. under s. 79, to be filed within six

months from the date of ,such default, in the present case January 21, 1960. The question then is whether the offence in question is covered by the substantive part of S. 79, or whether it is covered by the Explanation thereto. If the offence is of the former kind, the complaint in regard to it would be clearly time barred. It would not be so if ,the offence is of the kind, often called a continuing offence, in which event the Explanation to S. 79 would operate.

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance, occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore. constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

A few illustrative cases would help to bring out the distinction between the two types of offences. In England the Trade Union Act, 1871 by S. 12 provided that if any officer. member or other person being or representing himself to be a member of a trade union, by false representation or imposition obtained possession of any moneys books etc. of such trade union, or, having the same in his possession wilfully withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was' held to be a continuing offence, presumably because every day that the moneys were wilfully withheld an offence within the meaning of s. 12 was committed. (Best v. Butler and Fitzgibbon(1)]. In Verney v. Mark Fletcher & Sons Ltd. (2) , the question again was whether the offence for which the information was lodged therein was a continuing offence. Sec. 10(1) of the Factory and Workshop Act, 1901 inter alia provided that every fly- wheel directly connected with steam, water or other mechanical power must be securely fenced. Its sub-s. (2) provided that a factory in which there was contravention of the section would be deemed not to be kept in conformity with the Act. Sec. 135 provided penalty for an occupier of a factory or workshop if he, failed to keep the factory or workshop in conformity with the Act. Sec. 146 provided that information for the offence under s. 135 shall be laid within three months after the date at which the offence came to the knowledge of the Inspector for the district within which the offence was charged to have been committed. The contention was that in May 1905 and again in March 1908 the fly-wheel was kept unfenced to the knowledge of the Inspector and yet the information was not laid until July 22, 1908. The information, however, stated that the fly- wheel was unfenced on July 5, 1908, and that was the offence charged. It was held that the breach of s. 10 was a continuing breach on July 10, 1908, and therefore, the information was in time. The offence under s. 135 read with s. 10 consisted in failing to keep the factory in conformity with the Act. Every day that the fly-wheel remained unfenced, the factory was kept not in conformity with the Act, and therefore. the failure continued to be an offence. Hence the offence defined in s. 10 was a continuing offence. [See also Rex v. Yalore(3)] Sec. 85 of the Metropolis Management Amendment Act, 1852 prohibited the erection of a building on the side of a new street of less than, fifty feet in width, which shall exceed in height the

distance from the front of the building on the opposite side of the street without the consent of the London County Council and imposed, penalties for offences against the Act and a further penalty for every day during which such offence should continue after notice from the County Council. The Court construed s. 85 to have laid down two offences; (1) building to a prohibited height and (2) continuing such a structure already built after receiving a notice from the County Council. The latter offence (1) [1932] 2 K.B. 108.

(2) [1909] 1 K.B. 444.

(3) [1908] 2 K.B.237.

was a continuing offence, applying to any one who was guilty of continuing the building at the prohibited height after notice from the County Council. [The London County Council v. Worley(1)] In Emperor v. Karandas, (2) the question was as to the pro- per construction of S. 390, sub-s. (1) of the Bombay City Municipal Act, 1888. That subsection provided that no person shall newly establish in any premises any factory in which it was intended that steam, water or other mechanical power should be employed without the previous permission of the Commissioner nor shall any person work or allow to be worked tiny factory without such permission. The subsection thus laid down two distinct offences; (1)establishing a new factory in which mechanical power was intended to be used without the permission, and (2) working such a factory in which mechanical power was intended to be used without permission. The High Court held that the first offence will be completed when a now factory was established without permission, an offence completed one and for all. while the other offence would be committed whenever such a factory without the permission was worked that is on every day that it was worked without the permission. The High Court ob- served that though the expression 'continuing offence' was not a very' happy expression, it was very often used. A may not continuously work such a factory. He might work- it one day and not work- it the next day, and then resume its working once again. Therefore, the proper meaning to be attached to such an offence was that whenever he worked such a factory he committed an offence. The distinction between the two kinds of offences It\ between an act which constituted an offence once and for all and an act which continued, and therefore, constituted a fresh offence every time on which it continued. Similarly, in States v. Bhiwandiwala,(3) three offences were charged against the respondent, (1) failure to submit a written notice of occupation of his factory as required by S. 7(1) of the Factories Act, 1948, (2) failure to submit an application for registration and grant of licence as required by s. 6 of the Act read with rule 4 of the Bombay Factories Rules, 1950, and (3) for using the premises as a factory without a licence. The High Court held that the held that the first two offences were offences completed on failure to submit the notice and the application for registration and licence and a complaint in respect of them would be barred if it was lodged beyond the period of three months from the date of the offence under s. 106 of the Act. But a prosecution in respect of the third offence would not be so barred as that offence was a continuing offence in the sense that using the premises as a factory without registration and licence was an offence committed every time that the premises were used as a factory. Likewise, in Bihar (1) [1894] 2 QB 826 (2) A.I.R. 1942 Bom. 326.

(3) I.L.R. [1955] Bom. 192.

v. J. P. Singh, (1) the High Court of Patna held that conducting a restaurant without having it registered and without maintaining registers required by the Bihar Shops and Establishments Act, VIII of 1954 and the Rules framed thereunder were continuing offences as every time a restaurant was run without its being, registered and without maintaining the requisite registers was an offence, and therefore, the period of limitation under s. 36 of the Act would begin to run from the date of the occurrence of each of the defaults. (see) also State v. Laxmi Narain(2) Reg. 3 read with s. 66 of the Mines Act makes failure to furnish annual returns for the preceding year by the 31st of January of the succeeding year an offence. The language of Reg. 3 clearly indicates that an owner, manager etc. of a mine would be liable to the penalty if he were to commit an infringement of the Regulation and that infringement consists in the failure to furnish returns on or before January 21 of the succeeding year. The infringement therefore, occurs on January 21 of the relevant year and is complete on the owner failing to furnish the annual returns by that day. The Regulation does not lay down that the owner manager etc. of the mine concerned would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continues until the requirement of Reg. 3 is complied with. In other words, Reg. 3 does not render a continued disobedience or non-compliance of it an offence. As in the case of a construction of a wall in violation of a rule or a bye-law of a local body, the offence would be complete once and for all as soon as such construction is made, a default occurs in furnishing, the returns by the prescribed date. There is nothing in Reg. 3 or in any other provision in the Act or the Regulation which renders the continued non-compliance an offence until its requirement is carried out. The High Court, in our view, was right in holding that the complaint was time barred as the offence in question fell within the substantive part of s. 79 of the Act and not under the 'Explanation attached to it. The appeals, therefore, must fail and is dismissed.

S.C. Appeal dismissed.
(1) 1963 Bihar Law Journal Reports, 782.
(2) A.I.R. 1957 All. 343.
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