

(1990) 12 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 49 of 1990

Administrator, Municipal Board

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 21-12-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 463, 468, 472
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (1990) WLN 260

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora

1. This revision petition is directed against the order dated August 19, 1989, passed by the Munsif and Judicial Magistrate, First Class, Sujangarh, by which the learned Magistrate refused to take cognizance against the non-petitioner.

2. Administrator, Municipal Board, Sujangarh, lodged a First Information Report at Police Station, Sujangarh, against Purshottam Khetan, Proprietor of M/s Public Medical Store, Sujangarh, u/s 420, I.P.C. mentioning therein that the accused fraudulently brought medicines in the municipal area without paying the proper octroi and fabricating the false documents with the bank. It was alleged in the application that the petitioner brought these medicines in the municipal area without paying the proper octroi between the period from December 3, 1985 to March 3, 1986. The police, after necessary investigation, submitted the Final Report so far as the offence u/s 420, I.P.C. was concerned and opined that only an offence u/s 132 of the Rajasthan Municipalities Act has been made-out, which is a non-cognizable offence and the Municipal Board itself is competent to take action against the accused. After the submission of the final report by the police, a notice was given by the learned Munsif and Judicial Magistrate, Sujangarh to the complainant in the case and after hearing the complainant, the learned

Magistrate by his order dated February 24, 1988, took the cognizance against the non petitioner u/s 132 of the Rajasthan Municipalities Act and issued process. The learned Assistant Public Prosecutor moved an application on December 19, 1988, requesting the Court to take cognizance against the non-petitioner Under Sections 467, 468 and 420, I.P.C. etc. After the service of the summons on the accused, the accused appeared before the learned Magistrate and filed an application on April 29, 1989. It was mentioned in the application that according to the allegations made against the non-petitioner by the complainant, the offence is alleged to have been committed by him on March 17, 1986, while the cognizance has been taken by the Magistrate on January 30, 1989. As the offence u/s 132 of the Rajasthan Municipalities Act is punishable with fine only, therefore, as per Section 463(1) Cr. P.C, the limit for taking the cognizance is only of six months. As the cognizance has been taken by the Court after the expiry of the period of limitation, the proceedings, therefore, deserve to be quashed. A reply to this application was filed and his stand was contested by the Public Prosecutor. The learned Magistrate, after considering the application of the petitioner, came to the conclusion that the cognizance was taken by the Court after the expiry of the period of limitation and, therefore, he dismissed the application filed by the Public Prosecutor and dropped the proceedings. The learned Magistrate, also, came to the conclusion that no offence Under Sections 420, 467, 468 or 471, I.P.C. is made-out. Aggrieved with this order, passed by the learned Magistrate, the Municipal Board has filed this revision petition.

3. I have heard the learned Counsel for the Municipal Board as well as the counsel for the accused.

4. It is contended by the learned Counsel for the petitioner that the offence u/s 132, of the Municipalities Act is a continuing wrong and, therefore, it is covered by Section 472, Cr. P.C. and not by Section 468 Cr. P.C. In support of his case, the learned Counsel for the petitioner has placed reliance over the judgment of the Supreme Court, I reported in State of Bihar Vs. Deokaran Nenshi and Another, The learned Counsel for the respondent No. 2, on the other hand, has support the order passed by the learned lower I Court.

5. I have considered the rival submissions made by the counsel for the parties.

6. Section 132 of the Rajasthan Municipalities Act provide a penalty for evasion of octroi duty. According to Section 132 of the Rajasthan Municipalities Act, bringing of the goods within the municipal limit and leaving Octroi Naka without paying the octroi duty is an offence. Section 132 of the Rajasthan Municipalities Act reads as Under:

Section 132-Penalty for evasion of octroi duties--If goods passing into a municipality are liable to the payment of octroi, every person who with intention I to defraud the board causes or abets the introduction of or himself introduces I or attempts to introduce within the octroi limits of the said municipality, any such goods for which the octroi due on such introduction has neither been paid nor

tendered shall an conviction before a Magistrate, be punishable with fine which may extend to ten times the value of such octroi or to fifty rupees whichever may be greater.

7. From a bare reading of Section 132 of the Rajasthan Municipalities Act, it is clear that as soon as any paying the octroi, the offence is committed. It cannot be said to be a continuing offence/wrong because after the introduction of the goods in the municipal limit, the offence is complete. When goods are brought in the municipal limit by evading the liability to pay the octroi, evasion of octroi takes place at that very time and it is in respect of this evasion the penalty is provided u/s 132 of the Rajasthan Municipalities Act.

8. In *State of Bihar Vs. Deokaran Nenshi and Another*, "continuing offence" has been defined by the Hon'ble Supreme Court and it reads as under:

5 -- 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 involved 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 is absent in the case of an offence which takes place when an act or omission is committed once and for all.

9. As per the case of the *State of Bihar v. Deo Karan Nensi*, a continuing wrong is one which arises out of the failure to obey or comply with the rule or its requirement and which involves a penalty, the liability of which continues under the rule or its requirement to obey or comply with. The Hon'ble Supreme Court was considering the case under the Mines Act where the owners of the stone quarry were required to file Annual Return before the Chief Inspector by 21st January, in the succeeding year. These returns were not filed and after considering the law on the point, the Hon'ble Supreme Court came to the conclusion that as the accused were required to file annual return by January 21 of each succeeding year and till those returns are filed, the limitation for prosecution does not start. That offence of non-filing the return, which was the statutory duty of the accused, was considered by the Supreme Court as a continuing wrong. But in the present case, the offence u/s 132 of the Rajasthan Municipalities Act is committed as soon as the goods entered in the municipal area without paying the octroi duty and it is not a continuing offence. In this view of the matter, the provisions of Section 468, Cr. P.C. are attracted in the case and not the provisions of Section 472, Cr. P.C.

10 Now, the offence in the present case has been committed between the period from December 3, 1985 to March 31, 1986, and the cognizance was taken by the learned Magistrate on February 24, 1988. The limitation provided in this case, u/s 468(1) Cr.P.C., is of six months, while the cognizance was taken after about two years. The cognizance was taken by the learned lower Court after the expiry of the period of limitation and, therefore, the learned Magistrate was justified in passing the order dated August 19, 1989 was rejecting the application filed by the Assistant Public Prosecutor. The learned Magistrate refused to take cognizance against the petitioner Under Sections 467, 468 and 420, I.P.C. In my view, looking to the facts and circumstances of the case and the evidence on record, the ingredients of these sections are, also, wanted and the facts emerging from the complaint and the record, prima facie, do not constitute any offence under these sections and the learned Magistrate was justified in not taking the cognizance against the accused under these sections.

11. In the result, this miscellaneous petition has no force and the same is hereby dismissed.