
(1972) 09 GUJ CK 0007
In the Gujarat High Court

Babulal Chhanalal Shah and Others

APPELLANT

Vs

Chandulal C. Valand and Another

RESPONDENT

Date of Decision : 19-09-1972

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 392(1)(a), 392(1)(a), 428
Factories Act, 1948 — Section 2(m)

Citation : (1973) CriLJ 1520 : (1973) GLR 675

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Rane, J.—This judgment will govern the disposal of these six revision applications which involve the same questions of law. The revision applications arise out of the orders passed by the learned City Magistrate, 8th Court, Ahmedabad in six criminal cases holding that none of the complaints was barred by limitation. In each case, the complaint was filed on 10-11-1971 on behalf of the Ahmedabad Municipal Corporation in respect of an offence punishable u/s 392 (1) (a) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the Act). The facts of all the complaints are almost similar. According to the complainant, the accused in each case, had started using the premises constructed by him without obtaining the permit from the proper authorities as contemplated by Section 263 of the Act. According to the complainant, the accused had committed the offence as stated above on or about 16-6-1971. During the pendency of the complaints, the accused in each case gave an application that, the complaint was barred by limitation in view of Section 428 of the Act. The learned City Magistrate by his order dated 4-3-1972 negatived the above contention. Being aggrieved by his order, the accused have come in revision to this Court.

2. It is argued by the learned advocate for the applicants that, as the Corporation had given notice to each of the accused in the year 1970 calling upon him to stop using the premises it should be presumed that, the Corporation

had knowledge that the offence in question was committed by the accused on the day on which the notice was served on each of the accused. Now, according to Section 428 of the Act?

No Magistrate shall take cognizance of any offence punishable under this Act, or any rule, regulation or by-law, unless complaint of such offence is made before him?

- (a) within six months next after the date of the commission of such offence; or
- (b) if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence.

As each of the complaints was filed more than six months after the date of the notice, it is argued by him, that it is barred by limitation. Section 263 (1) of the Act relates to the steps to be taken by a person intending to occupy a building after it is completed. Sub-section (2) of that section pro Vides?

No person shall occupy or permit to be occurred any such building, or use or permit to be used the building or part thereof affected by any work, until?

- (a) permission has been received from the Commissioner in this behalf, or
- (b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.

In the present case, according to the com-1973 Cri. L. J.96 X plainant, none of the accused had obtained permission to occupy the premises as contemplated by the above section. According to Section 392 (1) of the Act?

Whoever?

- (a) contravenes any provision of any of the sections, sub-sections or clauses mentioned in the first column of Part I of the table in Appendix II or of any regulation or order made thereunder, or
- (b) fails to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses, shall be punished, for each such offence, with fine which may extend to the amount mentioned in that behalf in the second column of the said Part.

Sub-section (2) of Section 392 of the Act provides?

Whoever, after having been convicted of?

- (a) contravening any provision of any of the sections, sub-sections or clauses mentioned in the first column of Part II of the table in Appendix II or of any regulation or order made thereunder, or
- (b) failing to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses, continues to contravene the said provision or to neglect to comply with the said requisition or fails to remove or

rectify any work or thing done in contravention of the said provision, as the case may be, or fails to vacate any premises shall be punished, for each day that he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the second column of the said Part.

In the present case, as observed above, the accused in each case is alleged to have committed the offence u/s 392 (1) (a) of the Act. According to Part I of the Table in Appendix II of the Act, breach of Section 263 is punishable with a fine extending to Rs. 500/- and breach of Section 263 read with Section 392 (2) is punishable with a fine which may extend to Rs. 100/-. In the present case, however, the complaint relates to the offence u/s 392 (1) (a) of the Act.

3. It is however argued by the learned advocate for the applicants that, even if it is assumed that, an offence under Sub-section (1) of Section 392 of the Act is a continuing offence, the accused cannot be punished for any such offence in view of the fact that, none of them has been first convicted of the offence of occupying the building without obtaining permission of the proper authority. Thus, according to him, each of the accused should have been first convicted of the offence which he committed on the day on which he occupied the building in question. As the prosecution for that offence, is barred by Section 428 of the Act, he argues that, none of the accused can now be punished for contravening any of the provisions of the Act even if, such a contravention constitutes a continuing offence as contemplated by Section 428 (392 (2)?) of the Act. In support of his above arguments, he has relied on the decisions in the cases of *State v. "Sevamal Pevamal 1961) 2 Guj LR 242* and *Bachubhai Bababhai Vs. Ratilal N. Shah and Another, .* The former case related to the prosecution u/s 152 of the Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as the Boroughs Act) and the latter case related to an offence under the Act. In each of these cases however, the accused had already been convicted of a particular offence before the second prosecution was launched against him for the offence under the same section. In the case (1961) 2 Guj LR 242 (supra) the respondent who was twice convicted u/s 152 for projection of a wooden plank in the front portion of his shop was again prosecuted u/s 152 of the Boroughs Act for continuing the encroachment. The Encroachment Inspector went to the place on the 8th July, 1959 and finding the encroachment he filed the complaint. On the above facts it was held that, inasmuch as the encroachment or projection was continued by the respondent on 8th July, 1959 notwithstanding his conviction for the offence of setting up the same, this offence was committed on 8th July, 1959 and that date should be taken as the terminus a quo for the purpose of calculating the period of limitation prescribed by the proviso to Section 200 (1) of the Boroughs Act, the provisions of which are similar to Section 428 of the Act. It has also been pointed out in the above case that?

The act which constituted the offence was the act of continuing the encroachment or projection after the date of conviction of the respondent for the offence of setting up the same under the first part of Section 152 and since that

act continued from day to day, a fresh offence was committed on every day on which the act continued.

In the above case, as the accused had already been convicted twice of the offence under the first part of Section 152 of the Boroughs Act, he was tried for the offence which was a continuing offence under the second part of Section 152 of the Boroughs Act. There is however nothing in the above case which lays down that unless the accused is first convicted of an offence the cognizance of which has been taken by the Magistrate within six months next after the date of the commission of such offence or if such date is not known within six months after the discovery of such offence, he cannot be punished for the continued breach of the provisions of the Act, even though, it constitutes a continuing offence as in these applications before me. There is nothing even, in the decision in the case of Bachubhai (AIR 1971 Guj 206) which supports the above submission of the learned advocate for the applicants.

4. Section 392 (1) of the Act relates not only to the first offence but also to what are called continuing offences; whereas Section 392 (2) relates to punishment for continuing the contravention of the provisions of the Act for the breach of which the accused has already been convicted under Sub-section (1) of Section 392. This shows that, the question of previous conviction arises only in the case of offences falling under Sub-section (2) of Section 392 of the Act and that for the purpose of prosecution for an offence u/s 392 (1) of the Act, all that is necessary to be seen is whether, complaint of such offence is made within the period prescribed by Section 428 of the Act. According to the prosecution, each of the accused has continued to occupy or use the premises in question without obtaining permission from the concerned authority as contemplated by Section 263 of the Act. Now the wording of Sub-section (2) of Section 263, which has been reproduced above, shows that to continue to occupy or use the building in question without obtaining the permission of the Commissioner is a continuing offence. According to the complainant, each of the accused was found occupying or using the premises in question without obtaining permit on or about 16-6-1971. As each of the complaints has been made within six months from that date, it is obvious that, it is within the period of limitation as contemplated by Section 428 of the Act

5. The above view is supported by the decision in the case of State Vs. A.H. Bhiwandiwalla, . The head note of the above report which is relevant for our purpose reads as under:

The accused, who was the occupier of a factory as defined u/s 2 (m) of the Factories Act, 1948, was charged u/s 92 of the Act, for having failed to submit to the Chief Inspector of Factories, Bombay State, a written notice of occupation in Form No. 8 as required u/s 7 (1) of the Act and the rules made thereunder. The accused was also charged u/s 92 of the Act for having failed to submit to the Chief Inspector of Factories an application in form No. 2 for registration of the factory and grant of licence as required u/s 6 of the Act read with Rule 4 of the

Bombay Factories Rules 1953. In the complaint filed on July 13, 1953, by the Inspector of Factories, it was alleged that the Inspector had visited the factory on March 10, 1952, and on March 14, 1952, the accused was called upon to comply with the requirements of the Act in respect of the factory. The accused took no steps to comply with the requisition, and on May 23, 1953, when the Inspector visited the factory again, he found that the factory was working without complying with the requisition which had already been served upon the accused. The accused contended that his prosecution was barred u/s 106 of the Factories Act.

Held, that the charge against the accused that he had failed to submit to the Chief Inspector a written notice of occupation in Form No. 3 as required u/s 7 (1) of the Act and the rules made thereunder, was barred by limitation u/s 106 of the Act.

that the charge against the accused that he had failed to apply for registration of the factory was also barred by limitation, but that the conduct of the accused in using the premises from day to day without obtaining a licence was a continuing offence, and as the offence was committed on May 23, 1953, and the complaint was filed on July 13, 1954, the charge under this head was not barred by limitation.

The expression "continuing offence" has acquired a well-recognized meaning in criminal law. If an act committed by an accused person constituted an offence and if that continues from day to day, then from day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only once. But we may have offences which can be committed from day to day and it is offences falling in this latter category that are described as continuing offences.

For the reasons stated above, I agree with the view of the learned City Magistrate that, none of the complaints was barred by limitation. That being so, the applications are liable to fail and they are dismissed.