

(1970) 03 GUJ CK 0018
In the Gujarat High Court

Case No : Criminal Revision Application No. 307 of 1968

Bachubhai Bababhai

APPELLANT

Vs

Ratilal N. Shah and Another

RESPONDENT

Date of Decision : 11-03-1970

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 428(b)
Bombay Provincial Municipal Corporations Rules, 1949 — Rule 11(1)

Citation : AIR 1971 Guj 206 : (1971) CriLJ 1320 : (1971) 12 GLR 660

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Advocate : B.U. Advani, for the Appellant; D.C. Trivedi and A.H. Thaker, Asst. Govt. Pleader for State, for the Respondent

Judgement

1. The applicant-accused owns a house S. No. 2123 situated in Astodia. Rangati Bazar, within the limits of the Municipal Corporation of Ahmedabad. Since there was no water closet attached to that house, a notice dated 20-8-66 was issued by the Municipal Corporation requiring him to put up a water closet in his house under Schedule Chapter 9, Rule 11 (1) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter to be referred to as the Act). He failed to carry out the directions given in that notice with the result that he came to be prosecuted for the offence punishable under Schedule Chapter 19, R.2 (b) read with Schedule Chapter 9 rule 11 (1) of the Act. He was convicted of the said offence by the Court of the City Magistrate, Ahmedabad, on 10-8-67 and was sentenced to pay a fine of Rs. 15/- for the same. On 15-2-68 the Sanitary Inspector Shri Shah Ex. 3 visited the place and found that the accused had not yet put up any water closet as required. Since he failed to comply with the said requirement in spite of his being convicted for the offence a complaint was filed against him after obtaining the necessary sanction from the Deputy Health Officer. He was sought to be punished for having continued to commit an offence under Chapter 19, Rule 2 (b) read with Chapter 9, Rule 11 of the Act for a period from 10-8-67 till the date of the complaint. This complaint was filed on 11-3-68.

2. The applicant-accused pleaded not guilty to the accusation against him and in his examination u/s 342 of the Criminal Procedure Code he, however, admitted having not constructed any such water closet as per the notice received by him in spite of his being convicted once for breach thereof.

3. The learned Magistrate after considering the effect of the evidence found the accused guilty and convicted him for the said offence and sentenced him to pay a fine of Requisition 0-50 Paise per day for a period of 189 days. In all he was directed to pay Rs. 94-20 P., or in default, to suffer rigorous imprisonment for fifteen days. Feeling dissatisfied with that order passed on 7-5-68 by Mr. K.H. Damani, City Magistrate, Ahmedabad, the applicant - accused has come in revision before this Court.

4. The contention made out by Mr. Advani, the learned Advocate for the accused-applicant, was that the learned Magistrate committed an error in taking cognizance of the complaint and convicting him inasmuch as the complaint was filed after a period of six months from 10-8-67 the date on which he came to be convicted for non-compliance of the notice given by the Corporation, in view of Section 428 of the Act. That Section 428 runs thus: -

"428. 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."

The complaint was filed on 11-3-68 and that way no doubt after a period of six months from 10-8-67. Now it is common ground that the offence for which he has been dealt with is a continuing one. In respect of any such continuing offence, we have to turn to Schedule Chapter 19 which deals with certain offences. Sub-section (2) thereof would govern the present case and on that there is no dispute. That sub-section (2) is as under:

"2. Whoever, after being convicted of -

(a) xx xx xx

(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 provisions 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, 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 table."

The accused can, therefore, be held liable provided in the first place he has been served with any such notice to comply with certain directions given to him under

any provisions governing the same, and that he had come to be convicted in respect of the breach of any such notice. Then if he is shown to have continued to commit the said offence by not complying with the same, he can be punished for that offence for each day that he continues to so offend. It cannot be said that Section 428 cannot govern any such offence. In fact it is a general provision touching all offences committed under the provisions or regulations etc. under the Act, whether it is a first offence or a continuing one. That is apparent from the section itself. It is true that the starting point for any such continuing offence is the date of his first conviction and that he cannot therefore be convicted for any continuing offences which go beyond six months before the date of complaint. But to say that the entire complaint is barred and the Court cannot take cognizance thereof does not appear to be in any way so correct or proper. What Section 428 of the Act says is that the Court shall not take cognizance of any offence under the Act after the period of six months from the date of that offence. Clause (b) thereof relates to a continuing offence and the complaint has to be filed in that respect within six months next after commission of the offence. Therefore, it can take cognizance of all the continuing offences which come to be covered in the complaint to the extent that it is within six months prior to the filing of the same. It cannot render the entire complaint invalid and ineffective if any part of it relating to such offence is in time. The Court would, therefore, be justified in holding him liable for that continued breach to comply with the requirement of putting up a closet, but only for those days falling within a period of six months before the date of complaint. The complaint is thus not liable to be rejected as time-barred merely because some part of the offence cannot be taken cognizance of by the Court. It is not one offence that he is required to be dealt with. He has to be dealt with for his continuing to offend for each day-till he complies with the requisition - subject to only that much period which is found to be within six months before the date of his complaint.

5. It was, however, urged by Mr. Advani that the evidence of Mr. Shah, the Sanitary Inspector of the Corporation, shows that he visited the site on 15-2-68 and found that the accused had not put up any such water-closet. He can, therefore, be convicted and sentenced for the continuing offences for that much period from 15-2-68 i.e., when he came to know about it till 11-3-68 when the complaint is filed and not for any earlier period. This contention has no force whatever. This contention is inconsistent with the plea that the starting point for any such continuing offence is from the date of his conviction under Schedule Chapter 19 (1) (b) of the Act. That is the date to start with for his continuing to commit the breach, and not when it came to be known that he has yet not carried out the direction. The offence is contained in his not complying with the requirement and not in respect of any positive act i.e. for an act of omission, committed by him amounting to an offence so that it can run from the date it came to the knowledge of the Inspector. It would be upto the accused to show that he has complied with any such requirement at an early date during that period so as to reduce the period for which he can be convicted and sentenced. It

is, therefore, clear that the commission of the offence falling under sub-section (2) of Schedule Chap. 19 starts from the date he came to be convicted and continued to so commit it, but he cannot be convicted for a period of more than six months in view of Section 428(b) of the Act.

6. The learned Magistrate has, however, convicted him for the entire period of 189 days which goes beyond 180 days. The learned Magistrate was, therefore wrong in convicting the accused for nine days more since the Court could not take cognizance of the offence continued to be committed during that period it being beyond six months prior to the date of the complaint.

7. In the result, therefore, the order of conviction and sentence passed by the learned Magistrate in the case would be valid and proper only for a period of 180 days prior to the date of complaint and not for the first 9 days from the date of his conviction. The order shall be so modified as to direct the applicant-accused to pay fine at the rate awarded by the trial Court and the amount that way shall come to Rs. 90/- in default whereof he shall suffer rigorous imprisonment for 15 days.

8. Petition partly allowed.