
(1985) 08 MP CK 0042

In the Madhya Pradesh High Court

Case No : Criminal Petition No. 72 of 1982

Darshan Kumar Sahni

APPELLANT

Vs

Indian Standard Institute

RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Standard Institution (Certification Marks) Act, 1952 — Section 13, 5, 6

Citation : (1986) JLJ 615 : (1986) MPLJ 240

Hon'ble Judges : K.K. Verma, J

Bench : Single Bench

Advocate : A.S. Jain, for the Appellant; B.G. Apte, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Verma, J.

Applicant Darshan Kumar Sahni is the accused in Criminal Case No. 272 of 1980 on the file of the Chief Judicial Magistrate. It arose, out of a written complaint filed by the non-applicant, the Indian Standard Institute on 26-9-1979. The applicant's contention that the complaint is barred by limitation u/s 468 of Criminal Procedure Code was repelled by the learned Chief Judicial Magistrate by his order dated 1-4-1981, and the order was upheld by the Fourth Additional Sessions Judge. Gwalior on 14-12-1981 in Criminal Revision No. 45 of 1981.

The written complaint dated 26-9-1979 is to the effect that the applicant, who has not been granted any licence to use the I.S.I. Standard Marks on any sports goods. sold "Nivia" brand footballs and Volleyballs to the Jiwaji University, Gwalior on 13th, 25th and 26th September 1978 after placing fake I.S.I. standard Mark on them. It is alleged by the complainant that the applicant has infringed sections 5 and 6 of (The Indian) Standard Institution (Certification Marks). Act, 1952 (Act No. 36 of 1952), and rendered himself punishable u/s 13 of the Act.

The applicant's contention is that the offence is punishable with fine which may extend to ten thousand rupees u/s 13(1), and as such, the offence amounts to offence punishable with fine only. Hence, the provisions of section 468(2)(i) and section 469(1)(a) came into play, making the complaint as one having been filed after the period of limitation namely after six months.

On the other hand, the complainant's learned counsel has urged that section 13(2) provides forfeiture of the property in respect of which the contravention of the provisions of section 5 or 6 is proved, and, as such, the case is taken out of the province of section 468(1) and (2) Criminal Procedure Code, 1973. The provisions of sub-sections (1) and (2) of section 468 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), and section 13 of (The Indian) Standard Institution (Certification Marks), Act, 1952 run as follows:-

S. 468. Bar to taking cognizance after lapse of the period of limitation-(1) Except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

.....

S. 13. Penalty for improper use of Standard Marks, etc.- (1) Any person who contravenes the provisions of section 5 or section 6 shall be punishable with fine which may extend to ten thousand rupees.

(2) Any Court trying a contravention under sub-section (1) may direct that any property in respect of which the contravention has taken place shall be forfeited to the Government.

The applicant's learned counsel urged that forfeiture of property u/s 13(2) is not by way of punishment because it is a mode of disposal of property analogous to section 452(1) of the Code of Criminal Procedure, 1973 and is irrelevant while considering what kind of punishment is provided for an infringement of section 5 or 6 of The Indian Standard Institution (Certification Marks) Act, 1952. The applicant's learned counsel submits that the provisions of section 85 of the Trade and Merchandise Marks Act, 1958 bear him out.

The complainant's learned counsel, however, relies on Aziz Khan Vs. State, wherein it is said in paragraph 4:

...Forfeiture of property is one of the recognised forms of punishments. Section

53 Indian Penal Code enumerates the different kinds of punishments which can be awarded to an accused person and forfeiture of property and fine are mentioned as two distinct kinds of punishments under clauses fifthly and sixthly...

The complainant's learned counsel says that the heading "Penalty for improper use of Standard Marks, etc." of section 13 of The Indian Standard Institution (Certification Marks), Act, 1952 reinforces his arguments.

The applicant's learned counsel says that while on the one hand the provisions of sections 126, 127 and 169 of the Indian Penal Code providing also for forfeiture of property are not contained in two or more sub-sections; on the other hand, section 13(1) of (The Indian) Standard Institution (Certification Marks) Act, 1952 provides for a fine, and section 13(2) provides for forfeiture of property.

In *State of West Bengal vs. Union of India* (AIR 1968 S.C. 1241), at page 1265, their Lordships said:-

In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clauses to be interpreted occurs...

It will be, therefore, necessary to read the provisions of sub-section (1) and sub-section (2) of section 13 of the Standard Institution Act, but also other provisions of the aforementioned enactment and the object of the enactment.

The preamble of the Standard Institution Act is that this enactment was meant to provide for the standardization and marking of goods".

On the authority of *Bhinka and Others Vs. Charan Singh*, , the heading to sections of an enactment may be called in aid for interpretation of words used in the statute.

Now, if the legislature intended to treat the provisions of sub-section (1) of section 13, which provides for payment of a fine only, as the only punishment for contravention of the provisions of section 5 or section 6 of the Act, there was no point in enacting the provisions of sub-section (2) of section 13 - and that too - as the sub-section in the wake of the provisions enacted in sub-section (1) of section 13 and - on top of it - giving a heading "Penalty" for improper use of Standard Marks, etc., to section 13. The existence of the intention of the legislature to treat the provisions of sub-section (2) of section 13 as a penal clause for contravention of the provisions of section 5 or section 6 of the Act is predicated or indicated by the heading and the provisions and the non-use of sub-sections in enacting the provisions of section 14 of the Standard Institution Act, which runs as follows:-

S. 14. Penalty for other offences - Whoever contravenes any of the provisions of this Act or of any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one thousand rupees.

It will be seen that though the legislature uses the word "Penalty" in the headings of sections 13 and 14, it included a provision for forfeiture to the Government of property only in the cases of contravention of the provisions of section 5 or section 6 of the Standard Institution Act (and made punishable u/s 13), but not for the contraventions of other sections, i.e., sections other than section 5 or section 6 of the Standard Institution Act (and made punishable u/s 14). In the above context, it is evident that the provisions of sub-section (2) of section 13 of the Standard Institution Act, take their hue and colour of a penal provision of law not only from the penal provisions of a fine, set out in sub-section (1) of section 13 of the Standard Institution Act, but also from the heading to section 13 of the Standard Institution Act. In *State of West Bengal Vs. S.K. Ghosh*, , in paragraph 15 it was said in effect that the expression "forfeiture" in section 53 of the Indian Penal Code is a "Penalty", Hence, the expression "Penalty" which compendiously describes the provisions of not only of sub-section (1) of section 13 of the Standard Institution Act, but, also sub-section (2) of section 13 of the Standard Institution Act can also be read as a synonym for "punishment".

I am, therefore, of the view that the legislature intended to treat the provisions of forfeiture of property occurring in sub-section (2) of section 13 of the Standard Institution Act as punishment.

Since the import of the nature of the provisions contained in sub-section (2) of section 13 of the Standard Institution Act becomes clear with reference to the provisions of the said enactment, it is not at all necessary for this Court to make forays into Chapter XXXIV of the Code of Criminal Procedure, 1973 or section 85 of the Trade and Merchandise Marks Act, 1958, or the Customs Act, 1962 or for that matter to any other enactment containing provisions for forfeiture of property to the Government.

Accordingly, I hold that sub-section (2) of section 13 of (The Indian) Standard Institution (Certification Marks) Act, 1952 (Act No. 36 of 1952) also constitutes a punishment for contravention of section 5 or section 6 of the said Act. The result is that initiation of a prosecution u/s 5 or u/s 6 read with section 13 of the said enactment does not amount to a prosecution for an offence punishable with a fine only. Hence, the non-applicant's complaint against the application does not come within the purview of Chapter XXXVI of the Code of Criminal Procedure, 1973. I, therefore, see no reason whatsoever to interfere with the findings of the Courts below.

In the result I dismiss the petition dated 27-5-1982 of the applicant. The parties are directed through their counsel here to appear in the Court of the Chief

Judicial Magistrate, Gwalior on 20-9-1985.