(2001) 08 MAD CK 0010

In the Madras High Court

Case No : Criminal App. No''s. 100 to 119 of 1996

Executive Officer, Athanoor Town Panchayat — APPELLANT

Vs

Kandasamy and 19 others — RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Citation : (2001) 2 LW(Cri) 953

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : G. Karthikeyan, for the Appellant; Rathina Asokan, Advocate in C.A. Nos. 100, 104, 105, 108, 109, 110, 112, 113, 115, 117, 118 and 119/96 and Mr. C.R. Malavanan, Amicus Curiae in C.A. Nos. 101, 102, 103, 106, 107, 111, 114 and 116/1996, for the Respondent

Judgement

A. Packiaraj, J.—All the above said appeals raise one and the same question, though on facts, the deviations from one to other is very

insignificant and hence a common judgment is pronounced.

2. Out of the said appeals, C.A. No. 100/96, 104/96, 105/96, 108/96, 109/96, 110/96, 112/96, 113/96, 115/96, 117/96, 118/96 and 119/96,

the Respondents are being represented by a counsel Mr. Rathina Asokan, but in so far as the other appeals are concerned, though the record

reveal that notice has been served on the Respondents, there is no representation by the Respondents either in person or through an advocate.

Hence, this Court appointed a counsel as Amicus Curiae and accordingly Mr. C.R. Malarvanan had been appointed as Amicus Curiae who

readily accepted the same and appeared before this Court.

3. The brief facts of the prosecution case in all these appeals are that the respective building in each of the cases were situate in Athanoor

Panchayat of Salem District and assessments in respect of those buildings were made and taxes have to be paid by the owners thereof. However,

they have not paid the respective taxes and hence notice was issued on the Respondents by the complainant herein who is the Executive Officer,

Athanoor Town Panchayat as contemplated u/s 178(2)(XXII) of Tamil Nadu Panchayat Act requiring them to pay the arrears of tax within seven

days from the receipt of the said notice. It appears that even after the receipt of the said notice, the payments were not forthcoming. Hence, the

complaint has been filed against each of the building owners. The complaints were filed after three months in all the cases. It may not be necessary

for me to state the relevant date, but the admitted fact remains that the complaint had been filed only after the lapse of three months from the date

of receipt of the said notice by the Respondents herein.

4. An objection was taken by the Respondents who are the accused before the Court below that the prosecution was barred by limitation, since

Section 166 of the Tamilnadu Panchayat Act stipulates that the prosecution shall be made within three months from the date of commission of the

offence and hence the prosecution in all these cases are barred by limitation. The learned Magistrate accepted the said contention and acquitted the

accused/Respondents solely on this ground. Against the said judgment, appeals have been preferred by the Executive Officer, Athanoor Town

Panchayat, after obtaining leave from this Court.

5. On going through the records, I find that the complaint has been filed three months after the commission of the offence and on going through the

relevant section viz., Section 166 of the Tamil Nadu Panchayat Act, I also find that the complaint has to be filed within three months from the date

of the commission of the Offence. However, the learned Magistrate has overlooked that the provisions of Code of Criminal Procedure is made

applicable to the prosecution under the said Act. Then the question that arises for consideration is whether the offence alleged to have been

committed by the Respondents herein once and for all terminates on the seventh day after receiving the notice or whether the offence continues to

exist, even after the seventh day lapses. In other words, whether the above said violation amounts to be continuous offence or not. If the Court

comes to the conclusion that it is a continuous offence, then there is no limitation. But, if the court comes to the conclusion that the Commission of

offence is terminated on the seventh day, it may be said that the complaint should be filed within three months.

6. Mr. C.R. Malarvannan, Amicus Curiae appearing for the Respondents in some of the cases would strenuously argue that the letter of law should

be strictly followed. According to him, Section 166 of the Tamilnadu Panchayat Act, specifically states that the complaint has to be filed within

three months from the date of commission of offence. In the instant case, the commission of offence is said to have taken place on the expiry of the

seventh day after the Respondent had received the notice from the Executive Officer, directing him to pay the tax. Therefore, the offence is

completed on the seventh day and the complaint had to be filed within three months from the said date. Therefore, he would submit that the learned

Magistrate was perfectly justified in holding that the prosecution is barred by limitation. At the same time, Mr. C.R. Malar-vanann being appointed

as an Amicus Curiae true to his stature of Amicus, appraised this Court with the decision of the Supreme Court in Bhagirath Kanoria v. State of

M.P. (1984 SCC (Cri) 591), which relates to the offence under the Employees Provident Funds and Miscellaneous Provisions Act. The said Act

contemplates that the monthly collections of the Provident Funds of workers, should pay to the employees contribution within fifteen days of the

close of each month. It was argued in the said case by the counsel appearing for the accused that the non payment of the contribution on the

fifteenth day of every month, has to be reckoned as to the date of commission of offence and the offence is said to have been completed on that

date and consequently, the prosecution must have been launched within the period of limitation satisfied in the said act, namely six months.

However, the Supreme Court in unequivocal terms held that the arguments put forward by the counsel is impossible to be accepted. Their

Lordships in the above decision have relied on a number of decisions and have come to the conclusion that the offence is continuous in nature and

finally they held that late payment would not absolve them of their original guilt, but that would snap the recurrence of the offence. The exact

language used by the Supreme Court in the above said decision is as follows:

The question whether a particular offence is continuing offence must necessarily depend upon the language of the statute which creates that offence,

the nature of offence, and above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the

matters before us, the offence of which the Appellants are charged is the failure to pay the employers contribution before the due date. Considering

the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a

continuing nature. The Appellants were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within

their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt

but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the Fund, they

committed a fresh offence.

7. The question is more or less identical with the present case. The time limit of seven days has been given by the concerned authority to enable the

Respondents to pay the tax. They have not paid it and that does not absolve them from not paying the amount subsequently, in view of the lapse of

time. But, their obligation to pay the tax continues for ever till it is being snapped .Therefore, it is crystal clear that the offence in question has to be

classified as continuous offence.

8. This Court comes to the conclusion that the said offence is a continuous offence and in terms of Section 472 of Code of Criminal Procedure

which reads as follows:

In the case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues is

applicable to the Panchayat Act and consequently, I hold that the learned Magistrate has erred in holding that the prosecution is barred by

limitation.

9.In view of the foregoing discussions, I hold that the prosecution is maintainable, since the offence discloses in all these cases are continuous

offence.

10. However, the learned Counsel appearing for the Respondents argued that in all the cases, including in those cases where Amicus Curiae have

appeared, several other contentions have been raised, which have not been considered by the learned Magistrate and liberty may be given to them

to agitate those grievances before the Court below.

11. I feel that ends of justice would be met by setting aside the orders of the learned Magistrate in STC. Nos. 363, 364, 364, 365, 366, 367, 368,

369, 370, 372, 372, 374, 375, 376, 378, 379, 380, 381 and 382 of 1993, respectively and remand back the matters to the learned Judicial

Magistrate, Rasipuram to consider the other points raised by the counsel on the evidence already recorded.

12. I will be failing in my duty, if I do not place on record my sincere appreciation of the able assistance and fair arguments advanced by Mr. C.R.

Malarvanan, counsel for the Respondents appointed as Amicus Curiae by this Court.

13. With this Observation, the appeals are ordered accordingly.

