

(1984) 02 MAD CK 0024

In the Madras High Court

Case No : Crl R.C.276 of 1981 and (Crl. R.P.270 of 1981)

In Re: Subbiah Nadar

Date of Decision : 10-02-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300
Tamil Nadu District Municipalities Act, 1920 — Section 216(3), 317

Citation : (1984) LW(Cri) 248

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : K. Govindarajan, for the Appellant; K. Jayakumar, for Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—This revision is directed against the order of dismissal passed by the learned Judicial Second Class Magistrate No. 1, Tirunelveli, in Crl. M.P. 248 of 1981, on his file, holding that the prosecution was not barred by limitation.

2. The Petitioner herein was prosecuted for the offence under Sections 216(3) and 317 of the Tamil Nadu District Municipalities Act, in S.T.C. 5563 of 1980, for putting up construction unauthorisedly without obtaining valid licence on a complaint filed by the Respondent Municipality. The Petitioner raised a preliminary objection with regard to the maintainability of the complaint on the ground that the construction was put up about 3 years back and that he was given provisional order on 5th June, 1976, granting 5 days time to demolish the construction and again on 10th June, 1976 and 5th August, 1977 and hence the complaint filed after a lapse of three years is barred by limitation. The contention of the Respondent Municipality was that since the offence committed by the Petitioner is a continuing offence, the prosecution case was not barred by limitation. The learned Magistrate held that the offence complained of is a continuing offence and hence the prosecution case was not barred by limitation.

3. At the time when the revision was taken up for hearing, the learned Counsel for the Petitioner submitted that for the same offence, the Petitioner was prosecuted u/s 216(3) read with Section 317 of the Tamil Nadu District

Municipalities Act, in S.T.C. 456 of 1978 and the Petitioner had been acquitted u/s 256(1), Code of Criminal Procedure, and as such the second prosecution is barred u/s 300, (Old Section 403), Code of Criminal Procedure. The learned Public Prosecutor also conceded and submitted that the revision may be allowed on this sole ground without going into the question whether the alleged offence is a continuing one or not.

4. In view of the admitted fact that the Petitioner was already prosecuted and he was acquitted for the same offence in S.T.C. 456 of 1978 on the file of the Court below. I hold that the prosecution in S.T.C. 5563 of 1980 is barred u/s 300, Code of Criminal Procedure. Since the entire prosecution itself is held to be barred, I do not propose to embark upon the question whether it is a continuing offence or not.

5. In the result, the order passed by the Court below is set aside and the revision will stand allowed.