
(1978) 10 BOM CK 0010
In the Bombay High Court

John Joseph Kummel

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-10-1978

Acts Referred:

Bombay Rent Act, 1947 — Section 18(1)

Citation : (1979) CriLJ 1150

Hon'ble Judges : Sawant, J

Bench : Single Bench

Judgement

Sawant J.

1. The point that falls for consideration in this appeal is within a narrow compass, The Petitioner had filed a complaint against one Patil Bama Mhatre, who is the landlord of the premises, of which the Petitioner is a tenant, for the offence u/s 18(1) of the Bombay Rent Act, 1947 (hereinafter referred to as the said Act). The allegation of the Petitioner was that by a written agreement dated the 10th of Aug. 1971, the Accused Patil Bama had granted him a lease in respect of the premises by accepting from him a sum of Rs. 3,000/- as premium. Since the receipt of the premium or any consideration, for grant of lease was barred by the provisions of Sub-section (1) of Section 18 of the said Act and was made a cognizable offence, the Accused was guilty of the same.

2. The learned Magistrate on the evidence led before him, convicted the Accused for the said offence and sentenced him to simple imprisonment for one day and to pay a fine of Rs. 2,500/- and in default to simple imprisonment for three months. The Accused appealed against the said order of conviction and sentence. While the appeal was pending, the Accused died and that is how Respondents Nos. 2 to 6, who are his heirs and legal representatives came on record and prosecuted the appeal. The learned Appellate Judge allowed the appeal on the ground that the prosecution was launched beyond the period of limitation as prescribed in Section 468 read with Section 469 of the Cr. P.C. 1973, i. e. the new Code. In the view that he took, the learned Sessions Judge quashed the

conviction and sentence. It is this order of the learned Sessions Judge, which is appealed against in the present appeal.

3. Mr. Chitnis, learned Counsel appearing for the complainant-appellant raised three contentions. His first contention was that the period of limitation prescribed in Section 468 read with Section 469 of the New Code should be counted from the date when the new Code came into force, i. e. from the 1st of April 1974. Under the old Code there was no limitation prescribed and therefore the period of one year prescribed by Sub-clause (b) of Sub-section (2) of Section 468 which is the period of limitation in the present case would be over only on the 31st of March 1975. The present prosecution was launched on the 9th of July 1974 and therefore the prosecution was in time and was not barred by limitation. His second contention was that in any case the acceptance of Rs. 3,000/- by the Accused for grant of lease was continuing offence and therefore the prosecution, as launched could not be said to be without limitation. Lastly, he contended that the benefit of Section 473 of the new Code could not be denied to the complainant and the Court had discretion to entertain a complaint even after the expiry of the period of limitation.

4. As regards the first contention viz. that the period of limitation should be counted from the date the new Code came into force; it must be remembered that under sub-el, (a) Sub-section (1) of Section 469 of the New Code, the date from which the period of limitation is to be counted has been specifically mentioned and that date is the date of offence. It is not disputed before me that Cls, (b) and (c) of Sub-section (1) of Section 469 will not be applicable to the present case. Hence, it is no longer open to contend that the date from which the period of limitation should be counted is the date on which the new Code came into force. It is true that under the old Code there was no period of limitation prescribed for prosecution of any offence. However, if the Legislature wanted that on account of the absence of the period of limitation under the old Code, the aggrieved persons should not be prejudiced by prescription of the period of limitation for the first time in Section 468, the Legislature would certainly have made a provision in that behalf. Chap. XXXIV of the New Code, which is devoted to prescribing limitation for taking cognizance of certain offences takes account of certain situations and makes suitable provisions to meet them. It, however, does not make limitation operative from the date on which the new Code came into force. The reason is obvious, namely that the Legislature felt that the right to prosecute for offences which were not so grave as others should not remain alive indefinitely. The private complainant or the State, as the case may be, should be diligent in bringing the offender to book in such cases. Neither the interest of society nor the tenets of justice require that the sword of prosecution should remain hanging over the offender of such offences for an indefinite period. It was, therefore, necessary to define in specific terms the right to prosecute for such offences. That is why we find that although Sections 470, 471 and 473 make provision for exclusion of time in certain cases and for extension of period of limitation in certain other cases there is no

provision made for saving limitation on the ground that the period of limitation is prescribed for the first time under the new Code. On the other hand, the provisions of Section 469 make it abundantly clear that the Legislature did not want any date other than the dates mentioned in Clauses (a), (b) and (c) of Sub-section (1) of the said Section 469 to be the dates from which the period of limitation should run or commence. In fact, the said point is no longer in dispute in view of the decision of the Supreme Court reported in *Surinder Mohan Vikal Vs. Ascharaj Lal Chopra*, *Surinder Mohan Vikal v. Ascharaj Lal Chopra*. Although the point was not raised there in the manner in which it has been raised before me by Mr. Chitnis, the Court while answering a question with regard to the period of limitation has taken a view that the date of commencement of the period of limitation will be the date of the offence. It is for this reason that the Court in that case held that the offence of defamation complained of commenced on the date the complaint containing the defamatory remarks was filed. The complaint in that case was filed on the 10th of March 1972. u/s 469(1)(a), the period of limitation for the said offence was three years and therefore the complaint of defamation filed on Feb. 11, 1977 was held to be barred by limitation. I am, therefore, of the view that the contention raised by Mr. Chitnis that the period of limitation should be counted from the date the new Code came into force has no merit.

5. As regards the second contention viz., that the offence in the present case is a continuing offence, the contention is only to be stated to be rejected. u/s 18(1) of the Bombay Rent Act, what is made an offence is the receipt of a fine, premium or other like sum or deposit or any consideration and not retention of the same once received. Admittedly the premium was received by the landlord on the 10th of Aug. 1971, as mentioned in the written agreement of the same date. The offence of receipt of the premium was, therefore, complete on the 10th of Aug. 1971. The amount received on the 10th of Aug. 1971, cannot be said to be a recurring offence on account of its retention by the landlord. This is, therefore, certainly not a case of a continuing offence as sought to be contended by Mr. Chitnis.

6. The third and the last contention is similarly devoid of any substance. There is no doubt that the provisions of Section 473 do give a discretion to the Court to take cognizance of an offence after the expiry of the period of limitation. However, the section lays down certain conditions for taking cognizance of the offence beyond the period of limitation and the conditions are that the Court must be satisfied on the facts and the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. Admittedly, there is no explanation whatsoever given by the complainant for initiating the present prosecution on the 9th of July 1974, when the offence was complete on the 10th of Aug. 1971. Mr. Chitnis could not also satisfy me that it was necessary to take cognizance of this complaint beyond time in the interest of justice. On the other hand, the odds are against the complainant, for the provisions of Sub-section (2) of Section 18 of the Rent Act make it abundantly

clear that a person who has paid such fine, premium or consideration is entitled to recover the same from his landlord and also to adjust it against the rent payable by him to the landlord. In the circumstances, I am unable to appreciate that the interests of justice require that the cognizance of the present complaint should be taken beyond the period of limitation.

7. In the result, I find that the view taken by the learned Sessions Judge, is correct and needs no interference from this Court. The order of acquittal passed by the learned Sessions Judge is, therefore, confirmed and the appeal is dismissed.

8. Fine, if any, paid by the Accused, to be refunded to the Respondents' heirs.