

(1987) 11 DEL CK 0035

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No's. 1473, 1474, 1475, 1476, 1477 and 1478 of 1986 and 576 and 577 of 1987

Kuldip Singh and Sugga Engg. Works (P) Ltd. and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Companies Act, 1956 — Section 159

Criminal Procedure Code, 1973 (CrPC) — Section 468

Citation : (1988) 34 DLT 11 : (1988) 14 DRJ 97 : (1988) 2 RCR(Criminal) 601

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : M.S. Gandhi, C.L. Behl, S.K. Mishra, S.K. Dubey, Rajiv Nanda and Usha Kumari, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The only question that arises in this petition and other petitions which are being disposed of by this order is if the offences u/s 159 read with Section 162 and Section 220 again read with Section 162 of the Companies Act 1956 (for short "the Act") are continuing offences within the meaning of Section 472 of the Code of Criminal Procedure 1973 (for short "the Code") so as to remove the bar of limitation to take cognizance of the offences as provided by Section 468 of the Code. Under Sub-section (1) of Section 468 of the Code, a court cannot take cognizance of an offence after the expiry of the period of limitation as provided under Sub-section (2) of that section. In the case where the offence is punishable with fine only, the period of limitation prescribed is six months. Section 472 of the Code provides, however, that in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 159 of the Act provides for filing of annual returns by the company and fixes the time by which the annual return is to be filed with the Registrar of Companies. The return is to be in the form prescribed and is to contain various particulars as mentioned in the section. Sub-

section (1) of Section 220 of the Act provides for filing of balance-sheet and the profit and loss account with the Registrar of Companies. These documents are to be filed within thirty days from the date on which the balance-sheet and the profit and loss account were laid at the annual general meeting of the company. Where, however, the annual general meeting of a company for any year has not been held then also copies of the balance-sheet and profit and loss account duly signed as provided are to be filed with the Registrar of Companies within thirty days from the latest day on or before which the annual general meeting should have been held. This latter requirement was added by the Companies (Amendment) Act 1977. Under Sub-section (3) of Section 220 of the Act, so far as is relevant in the present case, if a default is made in complying with the requirements of Sub-section (1) of Section 220, the company and every officer of the company who is in default shall be liable to punishment as provided by Section 162 which is same as for default in complying with the provisions of Section 159 as well. Section 162 of the Act may now be set out as under :-

"162(1) If a company fails to comply with any of the provisions contained in Sections 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues. (2) For the purposes of this section and Sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act." Admittedly, in the present cases, the complaints were filed after a period of six months when time for filing of annual return, balance-sheet and profit and loss account had expired. If it is held that the offences under Sections 159 and 220 of the Act are not continuing offence, the complaints would be barred by limitation. The learned Additional Chief Metropolitan Magistrate held the offences under Sections 159 and 220 of the Act as continuing offences. The plea of the petitioners to the contrary was also negated by the Additional Sessions Judge who heard some of the revisions against the orders of the Additional Chief Metropolitan Magistrate.

(2) It was contended by Mr. C.L. Behl, learned counsel for the petitioners, that offence u/s 162 of the Act for contravening the provisions of Sections 159 and 220 of the Act could not be said to be a continuing offence. He said there were certain sections in the Act which provided for punishment in the case of continuing offences. In this connection, Mr. Behl referred to Sections 168, 234 and 598 of the Act. Section 168 levies penalty for default in holding a meeting of the company in accordance with Section 166 or in complying with any directions of the Central Government under Sub-section (1) of Section 167 of the Act and the company and every officer of the company who is in default is punishable with fine which may extend to Rs. 5000.00 and in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day after the first during which such continues. (Underlined portion inserted by Companies (Amendment) Act 1960). Sub-section (4) of Section 234 of the Act provides for punishment in case of default in complying with the

provisions of Sub-sections (2), (3) or (3A) of the section and the company and the officers concerned shall be punishable with fine which may extend to Rs. 500.00 and in the case of a continuing offence, with an additional fine which may extend to Rs. 50.00 for every day after the first during which the offence continues, and the court at the same time is also empowered on the application of the Registrar to give certain directions to the company. u/s 598 of the Act, if a foreign company fails to comply with the provisions of Part Xi of the Act then the company and every officer or agent of the company in default is liable to be punished with fine which may extend to Rs. 1000.00 and in the case of a continuing offence, with an additional fine which may extend to Rs. 100.00 for every day during which the default continues. Thus, according to Mr. Behl, the use of the words "continuing default" and "continuing offence" made all the difference which words were not used in Section 162. Mr. Behl also submitted with reference to Section 614A of the Act that the offence u/s 162 could not be a continuing offence. Under this section a court when trying an offence for a default in compliance with the provisions of the Act, could direct any officer or other employee of the company to file with the Registrar of Companies statements as required by Sections 159 and 220 of the Act. Mr. Behl also said there were other provisions in the Act under which a company could be required to comply with the provisions of Sections 159 and 220 of the Act and in this connection he referred to Sections 614 and 615 of the Act. Mr. Behl also said that whenever the legislature wanted the offence to be continuous it always provided for higher punishment for the subsequent offence. According to Mr. Behl, Therefore, the words continuous offence and subsequent offence were synonymous and there was always a severe punishment for a subsequent offence. In support of his submissions, Mr. Behl relied upon a Bench decision of the Calcutta High Court in *National Cotton Mills v. Assistant Registrar of Companies*, (1984) 56 Comp Cas. 222.

(3) Mr. M.S. Gandhi who also appeared for some of the petitioners supported Mr. Behl in his submissions and submitted that infliction of fine on day-to-day basis did not make the offence continuous.

(4) Mr. S.K. Misra, learned counsel for the respondents, referred to the objects of filing of statements mentioned in Sections 159 and 220 of the Act with the Registrar of Companies. He also referred to Section 610 of the Act which provides for inspection of any document of a company kept by the Registrar of Companies by any person. Company is the creation of statute. It acts through its general body of shareholders and the Board of Directors. A person dealing with the company may have to find out its registered office, its members, debenture holders, shares, its indebtedness, its directors etc., past and present. Shareholders and creditors of the company and even third persons may like to find out as to the affairs of the company and its financial condition. They can know all these particulars only after inspection of the documents required to be filed under Sections 159 and 220 of the Act. There was earlier a view, particularly with reference to Section 220 of the Act, that if no annual general

meeting had been held there could be no question of the balance-sheet and the profit and loss account having been laid before a company at its annual general meeting and there could thus be no further question of filing these documents with the Registrar. Section 220 was subsequently amended and the following para from the Objects and Reasons for the amendment is appropriate :-

"PERSONS in charge of the management of some of the companies some times omit to convene the annual general meeting of the company and by such omission keep the shareholders as well as the creditors of the company in the dark about the affairs of the company and its financial condition. Further, by such omission, they also evade the necessity of filing the balance-sheet and the profit and loss account with the Registrar of Companies. When a document is filed with the Registrar of Companies, it is open to any share-holder or creditor to inspect such document and to obtain a copy thereof. In the circumstances, it is absolutely essential that even where the annual general meeting of the company has not been held, the balance-sheet and profit and loss account should be filed with the Registrar of Companies to enable the shareholders and other persons to find out, from inspection of the said documents, the affairs of the company and its financial condition."

It will be seen that a certain purpose is sought to be achieved by requiring the company to file various statements mentioned in Sections 159 and 220 of the Act. The purpose is quite apparently to have important particulars of a company made available for inspection by the creditors, shareholders of the company and by the public having dealing or intending to have dealings with the company.

(5) The Supreme Court had occasion to deal with the question as to whether a particular offence is a continuing offence. This question was considered in *State of Bihar Vs. Deokaran Nenshi and Another*, ; *Bhagirath Kanoria and Others Vs. State of M. P.*, ; and *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, , this latter decision overruling an earlier decision in *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, . Before I discuss these judgments, I may note that in *Ajit Kumar Sarkar v. Assistant Registrar of Companies* (1979) 49 Comp. Cas. 909, a single judge of the Calcutta High Court held that failure to file annual return u/s 159 of the Act was a continuing offence u/s 162 of the Act. This decision was, however, overruled in *National Cotton Mills (supra)*, relied upon by Mr. Behl. In this Division Bench case, it was held that when Section 162 of the Act prescribed the penalty of fine "which may extend to fifty rupees for every day during which the default continues", it merely prescribed the measure of penalty-such a prescription being made with the object of enforcing strict compliance with the requirement of Section 159 under the threat of enhanced penalty and getting relief from such penalty on enhancing scale by early submission of returns even after the default. But that did not render the initial default a continuous one. The court observed that it could not be said that the offence was repeated or committed from day to day after the initial default and that it was only where the offence was committed from day to day or repeated

from day to day that it could be called a continuing offence. In *Sudarsan Chits (India) Ltd. v. Registrar of Companies* ((1986) 59 Comp.Cas. 261), a single judge of the Kerala High Court, however, took the view that failure to file the balance-sheet and profit and loss account of a company u/s 220 of the Act was a continuing offence u/s 162 of the Act. It was submitted at the Bar that a SLP against this judgment of the Kerala High Court was dismissed by the Supreme Court while that against the Division Bench decision of the Calcutta High Court in *National Cotton Mills*" case (supra) was admitted and was pending decision.

(6) Section 276 of the Income Tax Act 1961 was deleted by Taxation Laws (Amendment) Act, 1975 and Section 276B introduced providing for stringent punishment. Earlier Section 276 provided for punishment in case of failure to deliver returns of income or to deduct and pay tax as required. So far as it is relevant for the present case, this section provided that if a person failed without reasonable cause or excuse to deduct and pay tax as required, he shall be punishable with fine which may extend to ten rupees for every day during which the default continues". This provision as would be seen is similar to Sections 159 and 220 read with Section 162 of the Act. The provisions of Section 276 of the Income Tax Act 1961 were subject-matter of decision by this court in *D.C. Gael v. B.L. Verma* 1973 Tax. L.R 912. The following para from the judgment would be quite apt :-

"AS soon as an omission to deposit the tax deducted at the source out of the salary of a particular employee occurred on account of the default in complying with the requirements of Section 200 of the Act read with Rule 30 the offence took place. The duration of the omission could be terminated only by making the deposit. Wherever the omission was subsisting after the 1st of April 1968, it became an offence u/s 276-B of the Act. This view finds support from the terms employed at the end of Section 276-B of the Act which is clear that the period as from the date on which such tax was actually paid, was to be the basis for calculating the fine which was to be imperatively imposed. The offence was, Therefore, to continue till the actual payment of the particular deduction to the credit of the Central Government. If the default was still there, when Section 276-B became applicable, it became punishable there under."

In *Bhagirath Kanoria*'s case (supra), the Supreme Court was considering the provisions of Section 14(2A) of the Employees' Provident Fund and Family Pension Fund Act, 1952. The question which arose was as to whether failure to pay the employer's contribution to the provident fund was a continuing offence. In that case, complaints for non-payment of the employer's contribution to the provident fund were filed u/s 14(2A) of that Act which provided for punishment with imprisonment extending to 3 months or with fine which might extend to Rs. 1000.00 or with both. The Supreme Court distinguished its earlier decision in *Deokaran Nenshi*'s case (supra) and held that the decision in that case to the effect that failure to furnish returns before the due date was not a continuing offence must be confined to cases of failure to furnish returns and it could not be

extended to "cases like those before us in which, the contravention is not of a procedural or formal nature and goes against the very grain of the statute under consideration". In Deokaran Nenshi's case, the respondents were owners of a stone quarry and were required to forward certain annual returns in respect of the preceding year, on or before January 21 in each year, and failure to forward the return as required was punishable with fine u/s 66 of the Mines Act 1952. The respondents failed to furnish the returns by the due date and they were prosecuted for an offence u/s 66 of the Mines Act 1952. Section 79 of that Act provided that no court could take cognizance of an offence under that Act unless the complaint was filed within six months of the date of the offence. There was an Explanation to this section which provided that if the offence in question was a continuing offence, the period of limitation would be computed with reference to every part of the time during which the said offence continued. The Supreme Court held that the infringement which occurred on January 21 of the relevant year was complete when the owner failed to furnish annual returns on that date and since the regulation did not lay down that the owner would be guilty of an offence if he continued to work the mine without furnishing the returns, the offence was non-continuing and, Therefore, the complaint was time-barred. The Supreme Court in Bhagirath Kanoria's case (supra) observed that the question whether a particular offence was a continuing offence must necessarily depend upon (1) the language of the statute which created that offence, (2) the nature of the offence, and above all (3) the purpose which was intended to be achieved by Constituting the particular act as an offence. Applying these principles there could be no doubt that offences for contravening the provisions of Sections 159 and 220 of the Act are continuing offences. As observed by the Supreme Court, the concept of continuing offence does not wipe out the original guilt. It keeps the contravention alive day by day.

(7) The decision in Maya Rani Punj's case (supra) was rendered on the interpretation of Section 271(I)(a) of the Income Tax Act 1961. One of the questions before the Supreme Court was as to whether the default of non-filing of the return within the time stipulated by law was not a continuing offence. Somewhat similar provision under the Wealth Tax Act was subject matter of decision by the Supreme Court in Suresh Seth's case (supra), where the court took the view that the provision of imposition of penalty with reference to every month during which the default continued indicated the legislative intention that a multiplier had to be adopted for determining the quantum of penalty and did not have the effect of making the default a continuing one. This view was not accepted by the Supreme Court in Maya Rani Punj's case (supra). As would be seen that the view taken by the Calcutta High Court in National Cotton Mills' case (supra) was the same as in Suresh Seth's case (supra). In Maya Rani Punj's case (supra), the Supreme Court further observed as under:-

"THE imposition of penalty not confined to the first default but with reference to the continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued.

Without sanction of law, no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that as long as the assessed does not comply with the requirements of law, he continues to be guilty of the infraction and exposes himself to the penalty provided by law."

It further observed that there were several statutory provisions where such default was stipulated to be visited with daily penalty. In that connection, the Supreme Court referred to various decisions of the High Courts including that of Calcutta High Court in Ajit Kumar Sarkar's case which, as noted above, was overruled subsequently in National Cotton Mills" case (supra).

(8) Thus, in my view, the submissions of Mr. Behl and Mr. Gandhi are of no avail. Reference to Sections 168, 234, 598, 614A or even Sections 614 and 615 of the Act is of no help while interpreting the provisions of Sections 159 and 220 read with Section 162 of the Act.

(9) In Suresh Seth's case, the Supreme Court observed as under :-

"A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly, when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act of omission which is also a wrong in the eye of law. Ordinarily, a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or of omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising there from gets fastened as soon as the act of commission or of omission is completed."

These observations were approved in Maya Rani 's case. In Maya Rani Punj's case the Supreme Court held that if a duty continued from day to day, the non-performance of that duty from day to day was a continuing wrong. The legislative scheme u/s 162 read with Sections 159 and 220 of the Act in making provision for a fine coterminous with the default provided for a situation of continuing offence. Section 14(2A) of the Employees Provident Fund and Family Pension Fund Act did not prescribe for payment of fine for every day or every month for which the default in paying the employer's contribution to the fund continued. Yet the Supreme Court in Bhagirath Kanoria's case held that the offence of which the appellants were charged, namely, non-payment of the employer's contribution to the provident fund before the due date, was a continuing offence, considering the object and purpose of that Act.

(10) It is not necessary to use the words "repetitive", "subsequent" or

"recurring" while determining the question if the offence is a continuing offence. As noted above, the concept of continuing offence does not wipe out the original guilt. Rather it keeps the contravention alive day by day. This concept of continuing offence is somewhat akin to continuing cause of action as used in the civil law (see Section 22 of the Limitation Act 1963, which says that in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues). I have already referred to the objects under lying Sections 159 and 220 of the Act which require filing of annual return, balance-sheet and profit and loss account of the company with the Registrar of Companies within a particular period. By these requirements the company as well as the officers of the company are compelled to make public the information relating to their financial positions. The public can have access to these informations on inspection of the records of the Registrar of Companies on payment of requisite fee.

(11) Considering, Therefore, the objects of the provisions of Sections 159 and 220 read with Section 162 of the Act and the language used therein, I am of the opinion that the offences of which the petitioners are charged, namely, non-filing of annual returns and balance-sheet and profit and loss account within the period prescribed, are continuing offences and Therefore the period of limitation prescribed by Section 468 of the Code cannot have any application. The offences which are alleged against the petitioners will be governed by Section 472 of the Code according to which, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

(12) All these petitions are, therefore) dismissed.