(1990) 12 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Criminal M. No. 9534-M of 1990

M. Kar, Joint Managing Director, Flovel Limited — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(1), 482
Industrial Disputes Act, 1947 — Section 17A, 29

Citation : (1991) 99 PLR 370

Hon'ble Judges : S.D. Bajaj, J

Bench : Single Bench

Advocate : Abha Rathore, for the Appellant; Madan Jasal, for the Respondent

Final Decision : Allowed

Judgement

S.D. Bajaj, J.—Industrial Tribunal, Faridabad, announced its award in favour of two workers, named Ghanshyam Sharma and Jang Bahadur on 23rd July, 1981 which was published in Haryana Government Gazette on 10th November, 1981. Shri Maharaj Kar, Joint Managing Director of M/s Flovel Ltd., employer concern having not executed the award, the State of Haryana in Labour Court and Employment Department decided to prosecute him u/s 29 of the Industrial Dispute Act, 1947 Complaint dated 20th March, 1985 was filed in the court of learned Chief Judicial Magistrate, Faridabad, for the purpose.

2. Joint Managiog Director Maharaj Kar has filed Criminal Misc. No. 9534-M of 1990 in this Court for quashing complaint aforesaid on the grounds of its being barred by limitation It has also been asserted in the quashing petition that the complaint has been filed by a person not authorised to do so and that the workmen are enforcing the award and getting the desired relief from the Labour Court in terms of Section 33C(2) of the Industrial Disputes Act, 1947 and, therefore, prosecution tinder Section 29 of the Act ibid is not legally permissible.

3. I have heard Mrs. Abha Rathore, Advocate, for the petitioner, Mr. Madan Jasal,

Advocate, for the respondent State and have can fully gone through the relevant documents produced by the parties on record.

4. In the instant case the award was made on 23rd July, 1981. It was published in Haryana Government Gazette on 10th November, 1981. In terms of Section 17A of the Industrial Disputes Act the award aforesaid became enforceable with effect from 10th December, 1981. One year period of limitation ended on 10th December, 1982 and, therefore, the complaint filed on 20th March, 1985 is hopelessly barred by limitation

5. Then again beneficiaries under the award in Ghanshyam Sharma and Jang Bahadur are both getting the award enforced through the Labour Court in terms of Section 33C(2) of the Industrial Disputes Act, 1947. It was thus unkind act of the Labour and Employment Department of Haryana State Government to file the complaint dated 20th March, 1985 against the petitioner in the criminal court of competent jurisdiction at Faridabad, more so when it was hopelessly barred by limitation. Public funds were thus unnecessarily wasted.

6. En almost indentical circumstances Bombay High Court observed in The State of Maharastra v. Ajit Maneklal Choksi 1979 L I. C. 59. as follows :-

"It is well known that any monetary benefits arising of any award or settlement under the Industrial Disputes Act can be obtained under the provisions of Section 33C of the Act. But there is another provision namely Section 29, which lays down that any person who commits a. breach of any term of an award which is binding upon him under the Act shall be punishable with imprisonment for a term which may extend to six months or with fine or both. The prosecution of a party alleged to be guilty u/s 29 of the Act, however, can be lodged only on a complaint made by or under the authority of the appropriate Government. It is so provided u/s 34 of the Act. That explains why the Assistant Commissioner preferred the complaint in the instant case. Prior to the enactment of the Cr. P. C. 1973 there was no period of limitation for prosecutions excepting in the case of prosecution under some statutes. With the coming into force the Cr. P. C. 1973, with effect from 1st April, 1974 Chap XXXVI of the Code has got to be considered in every case of criminal prosecution. That Chapter provides for limitation for taking cognizance of certain offences Section 468(1) lays down that no Court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation. The period of limitation itself has been provided in subsection (2) In the case of offences punishable with fine only, the period of limitation is six months; in the case of offences punishable with imprisonment for a term not exceeding one year, the period of limitation is one year; and in the case of offences punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation prescribe is three years In the case before me since under the prosions of Section 29 of the Industrial Disputes Act the offence is punishable with imprisonment for six months, the period of limitation will be obviously one year as provided in Section 468(2)(b) of the Code. The starting point of the period of limitation, however, is to be considered in the light of the provisions contained in Section 469 of the Code. Toe period of limitation in relation to an offender shall commence says the said section, on the date of the offence. Provisions have also been made for reckoning the day on which the period of limitation shall be deemed to commence in those cases where the commission of the offence is not known or the name of the offender is not known. Here, however, we are not concerned with those cases and must proceed on the basis that the period of limitation shall commence on the date of the offence and that it is one year from that date

An award directing the employer to reinstate a workman who had been earlier dismissed, as any other award, becomes enforceable under the provisions of Sections 17A on the expiry of 30 days from the date of its publication u/s 17. The (sic) of reinstatement is to be made at one time and it is not a liability imposed upon the employer which is to be carred on his shoulder from day-to day. If, for example, a work an who is directed to be reinstated on a particular day and is reinstated on that day and thereafter the workman is again discharged or dismissed, there is no breach of the direction of the reinstate merit because that direction has been complied with The subsequent discharge or dismissal may give rise to a fresh industrial dispute. In other words. the act of reinstatement has to be performed only once and not to be repeated from day-to- day. The question new is when this act of reinstatement is to be performed by the employer.

I have already mentioned above that an award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. In other words, on the 31st day after the publication of the award, the award becomes enforceable. That is the day on which the duty imposed upon the employer has to be performed. In the case of an award directing a reinstatement of a workman the act of reinstatement has to be performed on the 31st day after the publication of the award u/s 17. In the instant case the award was published on 2nd of January, 1975 and it became enforceable on the 1st February 1975 and, therefore, the reinstatement ought to have been made by the employer on that particular day. If in the instant case, such reinstatement was not made by the employer, then the offence must be deemed to have been committed on that particular day. The period of limitation of one year must start running from 1st of February, 1975 and that one year of the period of limitation expires on 1st of November, (sic). The complaint filed here on 26th June, 1976 was, therefore, undoubtedly barred by time and, therefore, was rightly dismissed by the learned Magistrate.

7. Calcutta High Court also endorsed the same view in M/s Swaranjit Singh and Ors. v. Sate and Anr. 1986 L I. C. 1123. The relevant observations read :-

"By implication of the words ''subject to the provisions of this section'' appearing in Section 19(3) of the Industrial Disputes Act, 1947, Sections 19 (4) and (6) becomes inapplicable to awards which decide questions under reference one for all, viz. award for reinstatement and payment of back-wages, as in the present case In such awards, there is no questions of the period of operation, as the question in dispute are decided once for all Section 19(5) makes Section 19(3) of the Act inapplicable to such awards. Section 19(5) r/w Section 19(3) shows that there was continuing obligation on the parties bound by the award. As the award in the present case viz. award for reinstatement and for payment of back-wages, was an award involving no continuous obligation on the parties bound by it, the failure to reinstate an employee or to pay back-wages was not a continuing offence so as to attract the provisions of Section 472 Cr P. C. Therefore, the cognizance of offence u/s 29 r/w Section 32 of the Act would be governed by Section 468(2)(b) and not by Section 472 Cr. P. C. and in the present case it was barred by limitation u/s 468(2)(b) as the case was filed long after one year from the date of enforceability of the award."

8. In result Criminal Misc succeeds and is allowed. Complaint filed by the Labour Inspector against the petitioner on 20th March, 1985 is quashed.