

(1999) 02 KAR CK 0011

In the Karnataka High Court

Case No : Criminal Petition No. 1697 of 1997

Management of M/s. Naga Theatre, Bangalore

APPELLANT

Vs

R. Raja

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482
Industrial Disputes Act, 1947 — Section 19 (3), 29, 34

Citation : (1999) ILR (Kar) 2481 : (1999) 5 KarLJ 406

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : Sri V.R. Harish for Sri K. Sriram, for the Appellant; Sri N.G. Phadke, for the Respondent

Judgement

1. This petition u/s 482, Criminal Procedure Code is filed for quashing the proceedings in C.C. No. 22017 of 1996 pending before the Court of X Additional C.M.M., Mayo Hall, Bangalore.

2. The brief facts are as follows:

The respondent filed a complaint u/s 29 read with Section 34 of the Industrial Disputes Act, 1947 (hereinafter referred to as the T.D. Act") alleging that the complainant was in the service of the accused-petitioner herein and his services were terminated on 16-12-1978. The matter was referred to the Labour Court and by the award dated 30-4-1985 in Reference No. 82/80, it was held that the Management was not justified in terminating the services of the complainant and as such further direction was issued to reinstate him in service with full back-wages. This award was published in the Gazette on 15-3-1986. It is alleged in the complaint that even though the award is passed and has become final, the accused-petitioner herein have committed breach of the award by non-implementing it and as such liable for prosecution and punishment u/s 29 of the I.D. Act. After prolonged movement of the case from the Court of Magistrate to the High Court and back in various proceedings, after recording the sworn

statement of the complainant, by the order dated 8-1-1996 held that the complainant has established that there is a prima facie case against the accused for the offence u/s 29 of the I.D. Act and ordered for registration of the case and issue of summons. Hence, this petition.

3. Sri V.R. Harish for Sri K. Sriram, learned Counsel appearing for the petitioner, challenged the proceedings and prayed for quashing of the same mainly on three grounds namely:-

(i) that the complaint is time-barred and in view of the limitation u/s 468, Criminal Procedure Code the learned Magistrate should not have entertained the complaint,

(ii) that taking cognizance after a period of nine years from the date of filing of the complaint is illegal, and

(iii) that in view of the delay and laches on the part of the complainant, the Court should not have initiated the criminal proceedings.

The learned Counsel relied upon the judgment of this Court in the case of President, Cinema Workers Union Vs. Gopal Naidu, , to contend that though this Court has held that the offence u/s 29 of the I.D. Act is a continuous offence in view of the other provisions namely Section 19(3) of the I.D. Act, it is only within one year as prescribed u/s 19(3) complaint if any u/s 29 has to be filed. Adopting the reasoning of the learned Single Judge in the aforesaid case, the learned Counsel for the petitioner contended that u/s 19(3) of the I.D. Act, there is an embargo or restriction placed for the operation of the award which is only for one year and as such after the expiry of such one year, there cannot be any breach of award and hence the present complaint admittedly initiated after the period of one year is barred by limitation.

4. On the other hand, Sri Phadke, learned Counsel for the respondent-complainant relied upon the various judgments of the Hon'ble Supreme Court and other High Courts to contend and support the findings of the Court below to the effect that once it is held that the offence u/s 29 of the I.D. Act is a continuous offence, question of limitation does not at all arise. He further contended that the observation of the learned Judge in the case of President, Cinema Workers Union, supra, is not in conformity with the pronouncement of the Apex Court and other High Courts in this aspect and as such has no application to the present case.

5. In order to appreciate the rival contentions and the various pronouncements, the few undisputed dates would be relevant to note viz.-

(1)

The award of the Labour Court passed on

:

30-4-1985

(2)

Published in the Gazette on

:

15-3-1986

(3)

Sanction for prosecution u/s 34 sought by the complainant on

:

25-6-1986

(4)

The Government gave sanction on

:

19-8-1986

(5)

Complaint filed on

:

1-1-1988

(6)

Cognizance taken on

:

27-2-1988.

It is contended by the learned Counsel for the petitioner that Section 19(3) of the I.D. Act gives one year life to the award passed and as such from the date of publication of the award, the complaint ought to be filed within one year (award u/s 468, Criminal Procedure Code) i.e., 15-4-1987. Whereas the present complaint is filed on 1-1-1988 which is, therefore, clearly barred by limitation. The relevant provisions necessary for consideration are Sections 19 and 29 of the I.D. Act. Section 19 of the I.D. Act reads thus:-

"19. Period of operation of settlements and awards.--(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the

parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period for one year from the date on which the award becomes enforceable u/s 17-A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal for decision whether the period of operation should not, by reason of such change be shortened and the decision of Labour Court or the Tribunal, as the case may be, on such reference shall be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be".

It is to be noted that under clause (3) of Section 19 is to the effect that the award shall remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A. u/s 17-A an award becomes enforceable on the expiry of thirty days from the date of publication. Thus in the normal course the award will be in operation for a period of one year and 30 days from the date of its publication. It is also relevant to note that under sub-

section (5) of the Section 19 the operation period of the award as prescribed u/s 19(3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award. It is also relevant to note sub-section (6) of Section 19 reads that "notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award".

6. Thus by reading the provisions of Section 19(3), 19(5) and 19(6), it is clear that the operation of the award mainly depends upon the nature, terms and circumstances and the continuing obligation if any on the parties to the award. Vide Section 19(6) it is also to be noted that in spite of expiry of the limitation of the operation of award, the award continues to be binding on the parties unless and until a notice of two months is given by either of the parties showing the intention to terminate such award.

7. u/s 29 which is a penal provision any person who commits breach of any terms of the award or settlement which is binding on him under the Act shall be punishable with imprisonment or fine or both. As such, it is the binding nature of the award and not the period of operation which is relevant for launching the prosecution.

8. In the case of South Indian Bank Ltd. Vs. A.R. Chacko, , the Hon"ble Supreme Court considering the provisions of Section 19(3) and 19(6) regarding the operation period of limitation has observed thus:

"There is difference between an award being in operation and an award being binding on the parties. The different provisions made by the Legislature in Section 19(3) and Section 19(6) illustrate this distinction. u/s 19(3) the award remains in operation for a period of one year. (The words "from the date on which the award becomes enforceable u/s 17-A" were inserted after the words "period of one year" by the Amending Act of 1956). Section 19(6) is in these words.-

"Notwithstanding the expiry of the period of operation under subsection (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award".

This makes it clear that after the period of operation of an award has expired, the award does not cease to be effective. For, it continues to be binding thereafter on the parties until notice has been given by one of the parties of the intention to terminate it and two months have elapsed from the date of such notice".

The Apex Court further observed that:

"It appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of Section 19(6) it will continue to have its effect as a contract between the parties that has been made by industrial adjudication".

"Again, so long as the award is binding on a party, breach of any of its terms will make the party liable to penalty u/s 29 of the Act, to imprisonment which may extend to six months or with fine or with both. After the period of its operation and also period for which the award is binding have elapsed Section 23 and Section 29 can have no operation. We can however see nothing in the scheme of the Industrial Disputes Act to justify a conclusion that merely because these special provisions as regards prohibition of strikes and lockouts and of penalties for breach of award cease to be effective the new contract as embodied in the award should also cease to be effective. On the contrary, the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties may elapse-in respect of which special provisions have been made under Sections 23 and 29 respectively-may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract. The objection that no such benefit as claimed could accrue to the respondent after March 31, 1959 must therefore be rejected".

In a later decision in the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , the Hon"ble Supreme Court reiterating the principles laid down in Chacko"s case, supra, and also considering the pronouncement in Md. Qasim Larry, Factory Manager, Sasamusa Sugar Works Vs. Muhammad Samsuddin and Another, , observed "that the binding nature of the award does not cease the moment the period of operation is over unless and until the award or the settlement is replaced by another award or contract or the intention of the termination by notice is shown by either of the parties".

9. In the case of M/s. Guha and Company v R.N. Misra and Another², the Calcutta High Court has observed thus.-

"3. Section 19(3) has to be read with Section 19(6) of the Act and once so read, there cannot be any manner of doubt that the obligation of the petitioners to implement the award continues so long as the award is not terminated in accordance with Section 19(6) of the Act; and in the complaint it has been specifically stated that the award has not been terminated. It necessarily follows that so long as the award remains valid and operative the petitioners are bound to implement it and their liability for prosecution u/s 29 of the Act for non-implementation continues. The learned Magistrate was therefore fully justified in rejecting the application of the petitioners".

In the case of Subrato Roy and Another v State of Rajasthan and Another, the

Rajasthan High Court in almost similar circumstances as in the present case considering the observation of the Apex Court in the case of Bhagirath Kanoria and Others Vs. State of M. P., , as to the continuing nature of offence held that in the case of offence u/s 29 of the I.D. Act, as the offence is continuing offence, there is no bar u/s 468(2)(b) for taking cognizance after the alleged bar of limitation. At this stage, it is also relevant to note the pronouncement of the Apex Court in the case of Bhagirath Kanoria, supra, that while considering as to whether the offence is continuous one or not, the Apex Court has observed thus:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule on its requirement and which involves a penalty, the liability for which continues until the rule of its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all".

and further it has observed thus:

"19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the 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 employer's 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. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid his contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply".

Though this decision is in respect of an offence under the Provident Fund and Family Pension Fund Act, 1952, the principles laid down for deciding as to whether the offence is a continuing one or not, is in my opinion, squarely

applicable to the present offence alleged u/s 29 of the I.D. Act. But the High Court of Madras in the case of Sankara Doss v State by Labour Inspector, Thiruvannamalai, almost in similar situation as in the present case considering the principles enunciated by the Apex Court in the case of Bhagirath Kanoria, supra and State of Bihar Vs. Deokaran Nenshi and Another, , held as follows:

"Offence u/s 29 of non-implementation of award by not reinstating workman is continuous offence".

In a recent judgment of this Court in the case of N.K. Shah Vs. M/s Engineering General Workers Union, Bangalore, , it is held that non-implementation of the settlement or award is a continuous offence and is not controlled by Section 468, Criminal Procedure Code.

10. Thus on going through the various pronouncements referred to above of the Apex Court as well as the High Courts of Madras, Rajas-than, Calcutta and also the latest pronouncement of this Court in the case of N.K. Shah, supra, and the undisputed fact in the case on hand that though by the award reinstatement was ordered and as long as the reinstatement award was not complied with or implemented, it would be, in my opinion a continuing offence. Merely because the period of operation has expired, it does not mean that the character of the offence as continuous offence "does not seize to operate". As stated earlier it is binding nature of the award and non-implementation of the same is punishable u/s 29 of the I.D. Act and it does not depend on the period of operation of one year as contemplated u/s 19(3) if the said provision is read with sub-sections (5) and (6) of Section 19 of the I.D. Act.

11. In view of these clear pronouncements of the various High Courts and the Apex Court as well as the latest decision of this Court, in my opinion, the restriction of one year imposed by the learned Single Judge of this Court in the case of President, Cinema Workers Union, supra, even after holding that it is a continuing offence may not be proper proposition of law to hold, on one hand that the offence is a continuing offence and to restrict the same for one year would be against the norms and principles especially when the Industrial Disputes Act is a social beneficial legislation enacted for the benefit of the workmen. As observed by the Apex Court in the case of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , "the labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour law" and violation of principles of labour law cannot be permitted to claim immunity on technical plea of limitation, delay and laches. When in fact it has to be now held that the offence is a continuing offence.

12. In view of the aforesaid finding, I am of the clear view and opinion that in view of the fact that the offence u/s 29, I.D. Act is a continuing offence, the embargo placed u/s 468, Criminal Procedure Code of limitation is not applicable to the case of present nature. Even otherwise in the case of social beneficial

legislation and of offence arising under the same, the Court can and should take note of provisions of Section 473, Criminal Procedure Code which empowers the Court to extend the period of limitation in certain circumstances. This provision u/s 473, Criminal Procedure Code is based on principles of natural justice.

13. This takes me to the next two questions raised by the learned Counsel for the petitioner that there is a delay and laches on the part of the complainant in approaching the Court and also the delay of the Court in recording the sworn statement and issuing process by eight years. No doubt delayed approach to the Court complaining of any offence is one of the grounds to doubt the correctness and otherwise of the complaint and in many cases, this delay is held against the complainant. But in a given case, if there is believable or sufficient reason for the delay, it cannot stop the Court from considering the case. In my opinion, especially when the offence is under social beneficial legislation like Industrial Disputes Act mere delay in approaching for grievance or the allegations of non-compliance should not come in the way of the complainant. It is also to be noted that though the competent Court has passed the award in the year 1985, the petitioner-employer has instead of implementing the same has been taking around the complainant to various proceedings including the challenge to the award, challenge to the initiation of proceedings, etc., and as such as it is the petitioner who has contributed to the delay, I do not think the contentions raised by the learned Counsel requires any attention or merit.

14. In view of the aforesaid consideration, I am of the view that the petition is devoid of merits and is liable to be rejected. Accordingly, the same is rejected.

15. Before parting with the-case, it is to be noted that this is a pathetic case where an employee has been ordered to be reinstated as long back as in the year 1985 who is unable to get the fruits of the award. Whether he is entitled for reinstatement or not need not be gone into this case as this Court is not concerned with the same. But even the criminal proceedings are since pending from 1988 for the last eleven years, the learned Magistrate is directed to complete and dispose of the proceedings within six months from the date of receipt of this order.

Office is directed to despatch the records forthwith along with the order passed by this Court.