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(1988) 02 CAL CK 0031

In the Calcutta High Court

Case No : Criminal Revision No. 1325 of 1988

M/s. Eastern Paper Mills Ltd. — APPELLANT

Vs

The State — RESPONDENT

Date of Decision : 20-02-1988

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 473
Industrial Disputes Act, 1947 — Section 25Q

Citation : (1989) 2 CALLT 38

Hon'ble Judges : A.K. Chatterjee, J

Bench : Single Bench

Advocate : Milon Mukherjee, for the Appellant;Alokananda Bhose, for the Respondent

Final Decision : Allowed

Judgement

A.K. Chatterjee, J.—This revisional application seeking to quash a proceeding pending against the petitioners u/s 25Q of the Industrial Disputes Act, for laying off the workmen of Messrs. Eastern Papers Mills Ltd. on 3.2.86 without previous permission of the specified Authority, punishable with imprisonment upto one month and/or one upto Rs. 1000, on the ground that the cognizance was taken on 20.4.88 after the expiry of the period of limitation of one year as prescribed by Section 468, Cr. P.C. is resisted by the State mainly on the ground that the offence alleged being a continuing one, no question of limitation does arise, looking to the provision of Section 472 Cr. P.C. and as such the Learned Magistrate committed no illegality in taking cognizance on the date stated above.

2. It appears that in the complaint the date on which the workmen were laid off has not been mentioned but there was no controversy that the lay off took place on 3.2.86 as stated in the revisional application duly supported by an Affidavit. Thus it has to be decided whether the cognizance taken by the Learned Magistrate on 20th April 1988 for the alleged lay off of workman on 3.2.86 was barred by limitation. Now if the alleged offence is a continuing one then the

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cognizance taken by the Learned Magistrate on 20.4.88 would not be hit by Section 468, Cr. P.C. The Learned Advocate for the State has tried to derive support to her contention from the decision of the Supreme Court in Bhagirath Kanoria and Others Vs. State of M. P., . In this case it was held by Their Lordships that the offence of non-payment of contribution by employer to Provident Fund was a continuing offence and as such the bar of Section 468 Cr. P.C. did not apply. This cannot be regarded as an Authority for the proposition that an offence punishable u/s 25Q of the Industrial Disputes Act is a continuing one but several observations made by Their Lordships throw considerable light in the matter. Apart from quoting earlier decision of the same Court to the effect that a continuing offence was one which was susceptible of continuance and a non-continuing offence was one which was committed once and for all, the Learned Judges observed that the question whether a particular offence was a continuing one or not must necessarily depend upon the language of the statute creating the 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. In the instant case the offence consists of laying off workman without previous permission of.the Specified Authority and thus it is composed of two ingredients, i.e., lack of previous permission of the Specified Authority and laying off the workman. Even if it is possible to conceive of the lay off as a continuous action or inaction, it cannot be said by any stretch of imagination that the lack of previous permission of the Specified Authority was continuous in nature. Thus it is found that at least one of the two ingredients of the offence in question is not continuous and in such situation the offence cannot be held to be a continuing one as urged on behalf of the State. There is also nothing in the language of the statute which creates this offence to suggest, that the legislature intended it to be a continuing offence.

3. The purpose intended to be achieved by prohibiting lay off without previous permission of the Specified Authority was to prevent avoidable hardship to the employees and to maintain higher production and productivity as disclosed in the statement of object and reasons of the Amendment Act 22 of 1976 which introduced Chapter VB containing Section 25Q among others in the Industrial Disputes Act. It cannot be said that this purpose would be defeated unless the offence punishable u/s 25Q of the Act is held to be a continuing one.

4. Thus by applying the test laid down by the Supreme Court in Bhagirath Kanoria''s case (supra) it must be held that the alleged offence is not a continuing one.

5. The Learned Advocate for the State has argued in the alternative that even if the offence was not a continuing one still the Learned Magistrate had enough power to extend the period of limitation u/s 473 Cr. P.C. There is no merit in this contention because the period of limitation can be extended u/s 473 Cr. P.C. only if the Court taking cognizance is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it was necessary so to do

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in the interest of justice. In the instant case no explanation was at all offered for the delay nor the Learned Magistrate has recorded his satisfaction that it was necessary to extend the period of limitation in the interest of justice. In fact there was no occasion for the Learned Magistrate to record such satisfaction as the date of offence was not at all disclosed in the complaint.

6. On the above premises the revisional application succeeds and the proceeding in question is quashed.

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