
(1985) 12 CAL CK 0006
In the Calcutta High Court
Case No : Cr App. No. 26 of 1976

Municipal Commr. of Howrah

APPELLANT

Vs

Industrial Agricultural Co.

RESPONDENT

Date of Decision : 12-12-1985

Acts Referred:

Calcutta Municipal Act, 1923 — Section 386(1), 534

Citation : 90 CWN 383

Hon'ble Judges : A.C. Sengupta, J

Bench : Single Bench

Advocate : S.C. Pyne, for the Appellant; S.K. Deb, for the Respondent

Final Decision : Allowed

Judgement

A.C. Sengupta, J.—This appeal is directed against the order of the learned Sessions Judge, Howrah, allowing the present respondent's appeal by setting aside the order of conviction and sentence passed by the learned Magistrate. The respondent was prosecuted by the appellant-Municipality (Howrah Municipality) u/s 386(1) of the Calcutta Municipal Act 1923, as extended to Howrah (hereinafter referred to as the Act) for using a particular premises for storing iron goods for wholesale business without taking a license u/s 386(1) of the Act for the year 1967 to 1968, that is for the period from 1.4.67 to 31.3.68. The learned Magistrate after considering the materials on record convicted and sentenced the respondent to pay a fine of Rs. 250/- in default two months" S. I. The Company was represented by its agent Sri V. S. Ramchandra who pleaded not guilty to the charge. It is undisputed that no license fee u/s 386(1) of the Calcutta Municipal Act was paid for the period in question, that is, for 1967-68. It was held by both the Courts viz. the learned Magistrate and the learned Sessions Judge that the premises in question was used as a godown in connection with the wholesale business of the respondent-firm.

2. The learned Sessions Judge allowed the appeal on the only ground that the prosecution case filed on 30.6.68 was barred by limitation. His observations with

regard to the question of limitation are quoted below:

Lastly it was argued that this prosecution is being beyond prescribed time is bad in the eye of law. It was argued that u/s 534 of the Calcutta Municipal Act as in force in the Municipality of Howrah, no person shall be liable to punishment for any offence against the Act unless complaint for such offence is made before a Magistrate within 3 months next after the date of the commission of such offence and when such date is not known or when the offence is continuous in nature, within 3 months from the date on which the commission or existence of such offence was first brought to the notice of the Commissioners or the Chairman. In the instant case as it is argued, the Inspector himself stated that he visited the go down in question 8 or 10 times during the year 1967-68. He, of course, did not give any date of any of these visits. But that would give the accused an opportunity to argue that the first visit was made during the earlier part of the year 1967-68. That being so this prosecution which was filed on 24.6.68 is hopelessly beyond time. On the other hand it was argued by the learned Advocate for the respondent Municipality that under sub-section (2) of Section, 534 the offence of failure to take out a licence shall be deemed for the purpose of sub-section (1) to be a continuance offence until the expiry of the period for which the licence is required to be taken out. When the offence is alleged to be not taking of licence for the year 1967-68 the said offence continued till 31st March, 1968 and the prosecution having been started within three months from that date is well within time. Giving my careful consideration to this point raised I am however, unable to uphold the contention of the learned Advocate for the respondent. Sub-section (2) no doubt makes the offence of failure to take out licence a continuing offence to continue till the expiry of the Last day of the year for which the licence was to be taken. But Clause (b) of Sub-section (1) of section 534 specially says that in case of such a continuance offence the date on which the commission or existence of the offence was first brought to the notice of the Commissioners or Chairman shall be the date within 3 months from which the prosecution has got to be started. In a case of continuing offence when the date is not known to the Municipality then, of course, Municipality gets the benefit of the period as laid down in Sub-section (2) but when the Municipality comes to know the date of the commission of the offence or of the fact of the commission of offence or existence of the offence that should be the starting date for the period of limitation under clause (b) of the Sub-section (1) of Section 534. In the instant case the Inspector has stated that he visited 8 or 10 times this godown and saw that the same was being used as godown in the year 1967-68. As he did not and could not specify the dates of his visit, the appellant can very well and did rightly argue that he is entitled to the presumption that those visits were beyond three months before 30.6.68 on which date this petition of complaint was actually filed in Court. To be more clear, if the Inspector visited the godown first on any day prior to 30.3.68 then this prosecution will be beyond time. It cannot be imagined even that the Inspector visited the godown 8/10 times on 30th or 31st of March, 1968. That not being so, the appellant is

entitled to the presumption that this visit or at least the first of these visits was before 30th of March, 1968 and that is the date on which he came to know of the existence of the offence as alleged. I find no escape, therefore, from the conclusion that this petition of complaint has been filed beyond the period of 3 months from the date of the first knowledge as prescribed under clause (b) of Sub-section (1) of Section 534. This point does not appear to have been raised before the learned Magistrate and as such, he had no occasion to deal with the same.

3. The learned Advocate for the appellant Municipality has challenged before me the findings of the learned Sessions Judge with regard to the question of limitation. The learned Advocate for the accused-Respondent supported the same and pointed out before me that in an identical case with regard to a previous period this Hon''ble Court held on similar ground that the said case was barred by limitaion. Exhibit B is the said judgment of the Hon''ble Court in that case to which my attention was drawn by the learned Advocate for the respondent.

4. To deal with the question of limitation it is desirable to note here the provisions of sub-sections (1) and (2) of section 534.

(1) No person shall be liable to punishment for any offence against the Calcutta Municipal Act, 1923, as in force in the Municipality of. Howrah or against any rule or by-law made thereunder, unless complaint of such offence is made before a Magistrate within three months, or, if the offence be against the provisions of section 136, within six months, next after (a) the date of the commission of such offence, or (b) if such date is not known or the offence is continuous in its nature the date on which the commission or existence of such offence was first brought to the notice of the Commissioners or the Chairman. (2) Failure to take out a licence under the Calcutta.Municipal Act, 1923, as in force in the Municipality of Howrah shall be deemed, for the purpose of sub-section (1), to be a continuing offence until the expiration of the period for which the licence is required to be taken out.

5. Briefly speaking the contention of the learned Advocate for the appellant is that the offence in question being a continuing offence, the petition filed on 30.6.63 was filed within time. The contention of the learned Advocate for the accused-respondent was that the benefit of the provisions regarding continuing offence would not be available to the Municipality in this case because the Municipality was aware of the commission of the offence long before the period prior to three months before the filing of the complaint. The learned Sessions Judge on the basis of the evidence of P.W.1 the Inspector of the Municipality who visited the place 8/10 times in 1967 and 1968, concluded the Municipality''s knowledge as would appear from the observations in his judgment I have already quoted above The presumption made by the learned Sessions Judge with regard to the date of knowledge cannot be made. So, his finding with regard to the question of limitation being based on conjecture cannot be supported.

6. The learned Advocate for the appellant cited before me the decisions reported in Bhagirath Kanoria and Others Vs. State of M. P., and AIR 1955 Bom. 161 referred to in the Bhagirath Kanoria and Others Vs. State of M. P., to make his submissions with regard to what a continuing offence means. From the said decisions it appears that a continuing offence constitutes a fresh offence every time ON the days it continues. In the section 534 already quoted by me the offence u/s 386(1) of the Act as in this case has been stated to be continuing offence. Thus, in view of the provisions of sub-section (2) of section 534 the offence in question was a continuing offence for the period from 1st April, 1967 to 31st. March, 1968, that is to say, on each day of the said period it gave rise to a fresh offence. Sub-section (2) of section 534 is applicable to both the clauses (a) and (b) of sub-section (1) in view of the words "for the purpose of sub-section (1)", that is, the entire sub-section as stated in sub-section (2). In view of the provisions of sub-section (1)(b) the period of limitation prescribed is 3 months next after the date on which the commission or existence of such offence was first brought to the notice of the Commissioners or the Chairman. So, if the Commissioners or the Chairman were or was aware of the date prior to the period beyond 3 months of- the filing of the present petition it would be barred by limitation. The Inspector is not referred to in sub-section (1). So his knowledge is not at all relevant and from the knowledge of the Inspector the knowledge of the Commissioners or Chairman cannot be presumed. Thus, as there is nothing to show that the Commissioners or Chairman was aware of the commission of the offence at any time prior to 3 months preceding the institution of this case the date of knowledge is of no relevance to this particular case. It has already been noted that sub-section (2) governs both the clauses (a) and (b) of Sub-section (1) of section 534 and it has also been stated what a continuing offence as explained by the Hon"ble Supreme Court is and what is the incidence thereof. As already noted, sub-section (1) of section 534 of the said Act prescribes that the complaint in respect of such offence is to be filed (a) within 3 months from the date of commission of the offence, or (b) if the date of commission is not known or the offence is continuous, then within 3 months from the date of which the commission or existence of such of fence, was first brought to the notice of the Commissioners or the Chairman. Now in this case there is nothing to show that either the Commissioners or the Chairman were or was aware of the date of commission of the offence at any time within 3 months preceding the institution of the complaint on 30.6.68. But as already noted, sub-section (2) of section 534 governs both the. clauses (a) and (b) of sub-section (1) read with sub-section (2) shows that the complaint can be validly filed within 3 months from the date of commission of the offence. And this offence being a continuing offence, the meaning, whereof, as explained by the Hon"ble Supreme Court, has" already been noted above, the complaint was clearly filed within time i.e. within 3 months from the date of commission of offence. As already stated, in the case of this continuing offence a fresh offence occurs on each day till the expiry of the period in question i.e. on each of the days during the period from 1st April 1967 to 31st March 1968 an offence u/s 386(1) of the Act was

committed. Therefore, this application having been filed on 30.6.68 i.e. within 3 months from 31.3.68 is not barred by limitation.

7. Before concluding, some observation may be made with regard to the submission of the learned Advocate for the respondent that this case should be decided on the basis of the judgment of this Court between the same parties which has been marked as Exhibit B. In that case, the complaint in respect of the commission of the offence u/s 386(1) of the Act for not taking Licence for the year 1965-66 was filed on 29.6.66. In that case the complaint was held to be barred by limitation as the implication of what a continuing offence is, as explained by the Hon''ble Supreme Court, already referred to above, was not taken into consideration. Therefore, I respectfully differ with the views expressed in the previous judgment of this Court which has been marked Exhibit B in this case. On the grounds already stated the appeal is allowed and the order of the learned Sessions Judge of Howrah is set aside. Let the records be sent down as early as possible.