

(1984) 06 CAL CK 0015

In the Calcutta High Court

Case No : Criminal Revision No. 131A of 1980

Oriental Enterprise and Another

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 28-06-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300

Citation : 88 CWN 1037

Hon'ble Judges : Sankari Prasad Das Ghosh, J

Bench : Single Bench

Advocate : Biswanath Sanyal, for the Appellant; Sekhar Bose for the Corporation of Calcutta, Priyanath Ghosh for the State, for the Respondent

Judgement

Sankari Prasad Das Ghosh, J.—The revisional application is directed against an order passed by Shri S.K. Kar learned 4th Municipal Magistrate, Calcutta, in Case No, 259B of 1977 under S, 537/537(2)(b) of the Calcutta Municipal Act, 1951 (hereinafter referred to as the Act for the sake of convenience).

2. The opposity party no 1, the Corporation of Calcutta, filed a complaint against the accused petitioners, Oriental Enterprise and Shri G.L. Singhania, in the Court of the Municipal Magistrate Calcutta, under S. 436(1) read with S. 537 of the Act on the allegation of establishment of a workshop run by electricity by the accused petitioners in premises No. 18-B Ripon Street, Calcutta, without the previous written permission of the Commissioner of the Corporation of Calcutta. This complaint, registered as Case No. 3911B of 1975, ended in conviction of the accused-petitioner on the basis of their plea of guilt. By an order passed on 17.2.1976, the accused-petitioner on the basis of their plea of guilt. By an order passed on 17.2.1976, the accused-petitioners were sentenced in that Case No. 3911B of 1975 to pay a fine of Rs, 700/-. Subsequently, on 27.5.1977, another petition of complaint was filed in the court of the Municipal Magistrate, Calcutta, against the accused petitioners on the allegation of continuing to commit the same offence of establishing an Engineering Workshop run by electric motor at

he aforesaid premises without the written permission of the Commissioner, though prosecuted and convicted under S 436(1) of the Act on 17.2.1976 with a fine of Rs. 700/- in Case No. 3911B of 1975. The period of offence was mentioned in this second complaint as from 18.32.1976 to 17.2.1976, i.e., a period of 304 days. This second complaint was registered as Case No. 259B of 1977. The accused no 2, G L Singhanian, entered appearance in the case and filed a petition on 12.9.1979 for discharge of the accused-petitioners. This petition was disposed of by learned Municipal Magistrate by the impugned order dated 5.12.1979. The contentions of the accused-petitioners before the learned Municipal Magistrate were that the case (Case No. 259B of 1977) was barred by limitation on the basis of the provision in S. 582 of the Act and that the case also fell within the mischief of S. 300(1) Cr. P.C. The learned Magistrate negated both these contentions of the accused petitioners. Being aggrieved by the impugned order dated 5.12.1979, the present revisional application has been filed.

3. Mr. Sanyal, appearing for the accused-petitioners, has argued that as there is no obligation on the part of an accused charged under S. 436(1) of the Act to take out a license, the period of limitation enjoined by S. 582(1) of the Act will apply in this case and as such, the second complaint filed on 27.5.1977 is barred by limitation. He has further argued that the proceeding in case No. 259B of 1977 is against the principle of "autrefois convict" as mentioned in S. 300(1) Cr. P.C. On these grounds, Mr. Sanyal prays for quashing the proceedings in Case No 259B of 1977.

4. Mr. Bose, appearing for the complainant-opposite party no. 1 has argued that there is no difference between the words, "permission" used in S 436 of the Act and the word, "License" used in S 437 of the Act. As the word, "permission" or the word, "license" has not been defined in the Act; it has been argued that the plain dictionary meaning of license, being equivalent to permission or authorization, is to be applied in construing the word, "permission" in S. 436 of the Act. The contention runs that when there is no difference between the word, "permission" and the word, "license" used in S 437 of the Act, the learned Magistrate acted rightly in holding that the offence admitted by the accused petitioners was a continuing offence, in view of the provisions in S 537(2)(b) of the Act. It has been argued by Mr. Bose that as the previous case ended in conviction on 17.2.1976, the present proceeding (Case No 259B of 1977) is not barred by limitation for being filed on 27.5.1977 after the starting point of limitation for the purpose of this case on and from 18.2.1976, as the accused-petitioners were convicted in the previous case on 17.2.1976.

5. The learned Advocate, appearing for the State, has agreed with the submissions made by Mr. Bose on the question of limitation as well as the maintainability of the case no. 259B of 1977.

6. After hearing the submissions of the learned Advocate for the accused petitioners, the learned advocate for the complainant-opposite party no. 1 and

learned Advocate for the state, I am unable to accept the proposition that the present proceeding (Case No. 259B of 1977) is not barred by limitation, as argued by the learned Advocate for the complainant-opposite party no 1 and the learned Advocate for the State. It is, no doubt, true that the word, "permission" or the word, "licence" has not been defined anywhere in the Act. It is also no doubt true that the dictionary meaning of permission is authorization and that the dictionary meaning of license is also grant of permission or authorization. Even then, I am not prepared to accept the contention of Mr. Bose that as there is no difference in the dictionary meaning of the word, "permission" and the word, "license", a person committing an offence under 436(1), punishable under S. 537(1) of the Act, continues to commit the offence subsequently, if no license is taken in the meantime, so as to attract liability under S. 537(2)(b) of the Act on the basis of the principle of "continuing offence" enshrined in S. 582(2) of the Act, continues to commit the offence subsequently, if no license is taken in the meantime, so as to attract liability under S. 537(2)(b) of the Act on the basis of the principle of "continuing offence" enshrined in S. 582(2) of the Act. In spite of his best attempts, Mr. Bose could not enlighten the Court as to for what purposes the workshop was being run by electricity at premises no. 18B Ripon Street, Calcutta. Section 436(1) of the Act prohibits establishment or material alteration, enlargement or extension of the factory, workshop or work place in which it is intended to employ steam, electricity, water or other mechanical power without the written permission, of the Commissioner. The present case does not relate to any material alteration, enlargement or extension of any factory or workshop or work place. The allegation in the previous case no 3911B of 1975 as well as in the present proceeding is for establishing a workshop run by electricity without permission. Nobody will establish a workshop run by electricity without any purpose. Under S. 437 of the Act, licence is required, if a workshop run by electricity is established for any of the purposes mentioned in clauses (a), (b), (c), and (d) of S 437(1) of the Act. The purposes mentioned in Schedule XVIII of the Act fall within S. 437(1)(a) of the Act. In spite of his best attempts, Mr. Bose could not enlighten whether for any of these purposes, specified in Schedule XVIII of the Act, the workshop has been established in the premises no 18B Ripon Street, Calcutta. If the workshop at premises no. 18B Ripon Street, Calcutta, had been established for any of the purposes specified in S. 437(1) of the Act. There was no bar on the part of the Corporation of Calcutta to file a separate case against the accused petitioners for contravention of S. 437(1) of the Act for not taking any licence mentioned in that sub-s. (1) of S. 437 of the Act. Instead of resorting to the provisions for filing a case under S. 437(1) read with S 537 of the Act, the Corporation of Calcutta has chosen to file the second proceeding (Case No 259B of 1977) alleging that the continuation of the offence under S. 436(1) of the Act was punishable under S. 537(2)(b) of the Act. It is, no doubt, true that S 537(2)(b) of the Act is a penal provision for continuation to commit an offence for which a person has already been convicted on the basis of the provisions in clauses (a), (b) or (c) of sub-s (1) of S 537 of the Act. The fact, however, remains that this provision in S.537 (2)(b) of the Act is subject to the

special provision for limitation engrafted in S. 582 of the Act. For continuing to commit an offence already ending in conviction under S.436(1) read with S. 537(1) of the Act, one cannot be stated to be committing a "continuing offence" mentioned in S. 582(2) of the Act, as it are specifically stated in S. 582(2) of the Act that failure to take out a licence under Act shall be deemed, for the purposes of S. 582(1) of the Act, to be a continuing offence. It is not stated in S. 582(2) of the Act that failure to take written permission of the Commissioner under S. 436(1) of the Act shall also be deemed, for the purpose of S. 582(1) of the Act, to be a continuing offence. As this is not mentioned in S. 582(2) of the Act and as one is to make a harmonious construction of a statute, S. 582(1) of the Act will apply, so far as filing of the second proceeding (Case No 259B of 1977) is concerned. In other words, S. 582 of the Act will control S. 537(2)(b) of the Act, so far as the Case No. 259B of 1977 is concerned. Under S. 582(1) of the Act, the limitation is six months from the date of commission or date of knowledge of the offence. As the previous case no 3911B of 1975 ended in conviction of he accused petitioners on 17.2.1976, it must have been filed prior to 17.2.1976. The present proceeding, filed on 27.5.1977, is, thus, barred by limitation for being filed after six months of the date on which the commission or the existence of the offence was first brought to the notice of the Corporation, as a result of which the previous case no. 3911B of 1975 was filed. In other words, the proceeding is barred by limitation under S. 582(1)(b) of the Act.

7. The doctrine of "autrefois convict" in S. 300(1) Cr.P.C. Does not apply in the present case. The present proceeding in case no. 259B of 1977 is for an alleged offence during eh period from 18.2.1976 to 17.12.1976, which was not comprehended within the period for which conviction ensued in the previous case no. 3911B of 1975. The result is that the learned Magistrate was not right in holding that the proceeding was not barred by limitation. As the proceeding in Case No. 259B of 1977 is barred by limitation on the basis of the provisions in S 582(1) of the Act; the proceedings are to be quashed.

8. The Rule is, accordingly, made absolute. The order of ad-interim stay, as passed on 5-2-1980, is vacated. The proceedings in Case No. 259B of 1977 in the Court of Shri S.K. Kar learned 4th Municipal Magistrate, Calcutta, are quashed.