
(1983) 09 GUJ CK 0005
In the Gujarat High Court

Prakashbhai Kanjibhat Solanki

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-09-1983

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 18(1), 18(1), 18(2)
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 468, 468, 469, 469, 472

Citation : (1985) 1 GLR 162

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—The petitioner-Original complainant has filed the Special Criminal Application under Article 226 and/or 227 of the Constitution of India wherein he has prayed for quashing and setting aside the judgment and order dated 20th July 1982, passed in Criminal Revision Application No. 264/81 by the Additional City Sessions Judge. Court No. 20. Ahmedabad by which he has confirmed the order dated 30th September 1981 passed by the Metropolitan Magistrate. Court No. 9. Ahmedabad in Criminal Case No. 2284/80.

2. The petitioner is a tenant of one room situated in Bundug Flats in Juna Vadaj, Ahmedabad and he was using the said room as a shop for carrying on his business as a tailor in the name and style of "Love Light Tailors". One Kantilal Ishwarlal was a landlord of the said premises and from him he took the said premises on rent at the rate of Rs. 150/- per month. To the owner he had paid Rs. 11,501/- as deposit. Thereafter respondent No. 2 purchased the said premises from the original owner. At that time, original owner and the respondent No. 2 met him and informed him that respondent No. 2 had purchased the said property and, therefore, he had become the landlord of the said premises. The original owner also informed that he had paid the amount of Rs. 11,501/- which was lying with him as deposit, to respondent No. 2. Respondent No. 2 had accepted the said fact on 1st March 1977.

3. The petitioner thereafter filed the aforesaid criminal case before the Metropolitan Magistrate, Ahmedabad, contending that respondent No. 2 had committed an offence punishable u/s 18(1) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 hereinafter referred to as the "Rent Act" because respondent No. 2 had accepted deposit of Rs. 11,501/- from him on 1st March, 1977 in contravention of the said section. The said complaint was filed on 16-9-80 and the Court had issued summons to the respondent No. 2. The plea of the respondent No. 2 was recorded on 26-2-81 and that he pleaded not guilty.

4. On 5-8-81 respondent No. 2 gave application Ex. 3 wherein he contended that as the alleged offence took place on 1st March, 1977 and as the complaint is filed on 16th September 1980 it was barred by the period of limitation prescribed in Section 468(2)(b) of the Criminal Procedure Code, hence the criminal complaint deserves to be dismissed or the proceedings require to be dropped and he prayed that in any case he may be acquitted. The petitioner replied to the said application filed by respondent No. 2 and contended that the petitioner came to know only for the first time when he filed the complaint that acceptance of deposit by respondent No. 2 landlord is an offence punishable u/s 18(1) of the Rent Act and, therefore, the complaint is not barred by limitation.

5. The Metropolitan Magistrate raised the following two issues for determination:

(1) Whether the complaint was barred under the provisions of Section 468, 469 and 473 of the Criminal Procedure Code?

(2) Whether the accused has accepted his criminal liability for the offence committed by the original owner by way of transfer, and if he had accepted such liability, to what extent the accused would be liable?

6. The learned Magistrate held that the alleged offence took place on 1st March, 1977 and as the complaint was filed on 16th September, 1980, it was filed after a lapse of 3 years-6 months 15 days, while the complaint is required to be filed u/s 468(2)(b) within one year as the maximum punishment prescribed u/s 18(1) of the Rent Act is of six months. He further held that no reasonable and proper explanation was given by the petitioner for the delay in filing complaint, and therefore, Section 473(1) of the Criminal Procedure Code would not be applicable and further he held that looking to the facts and circumstances of the case it is not necessary to take cognizance of an offence after the expiry of the period of limitation in the interest of justice. With regard to the second issue he held that the said issue does not require to be decided, but in the alternative he held that there is no question of transferring criminal liability but the original landlord and the respondent No. 2 would be individually liable for their act. In the result he held that as the Court cannot take cognizance of the offence as it was barred by limitation, he ordered that proceedings may be stopped u/s 258 of the Criminal Procedure Code.

7. Against the said judgment and order, the petitioner preferred the aforesaid revision before the learned City Sessions Judge, Ahmedabad. The matter came

up for hearing before the Additional City Sessions Judge before whom it was contended by the petitioner that the learned Magistrate had committed an error in stopping the proceedings u/s 258 of the Criminal Procedure Code as the criminal complaint instituted by the petitioner was a summons case and Section 258 applies only to those cases which are instituted otherwise than upon complaint. He further submitted that there is no provision of dropping the proceedings once the cognizance of the case has been taken by the trial Court. He further contended that after receipt of the summons, the accused ought to have challenged the issue of process against him by filing revision application and as he has not done so, it was not open to him to raise a plea of limitation at such a late stage during the trial. The learned Additional Sessions Judge held that it was open to the accused to raise a plea of limitation at any stage of the trial. The learned judge further negated the contention of the petitioner that the offence u/s 18(1) of the Rent Act was a continuing offence. He however, modified the order passed by the learned Metropolitan Magistrate by holding that the proceedings initiated against the petitioner should be dropped instead of stopping them u/s 258 of the Criminal Procedure Code. Against the said judgment and order the petitioner has preferred the aforesaid Special Criminal Application.

8. In this petition, the learned advocate Mr. Gupta has contended that (1) once the Court had taken cognizance of the matter upon a complaint filed by the petitioner in which summons is issued to the accused, the Court had no jurisdiction to stop or drop the proceedings, and (2) the offence u/s 18(1) of the Rent Act is a continuing offence and, therefore, the complaint filed by the petitioner was not barred by limitation prescribed u/s 468 of the Criminal Procedure Code.

Re: Ground No. 1:

9. With regard to the first contention of the petitioner that once the Court had issued summons so the petitioner i.e. once it had taken cognizance of the matter, the Court had no jurisdiction to drop the proceedings or to stop the proceedings on the ground that the complaint is barred by limitation prescribed u/s 468 of the Criminal Procedure Code. He contended that once the Court has taken cognizance of the offence, there is no provision in the Criminal Procedure Code which empowers it to stop the proceedings which are initiated upon private complaint. He further submitted that it is a well settled position of law that the Court exercising its power under the Criminal Procedure Code has no jurisdiction to review its own order. In my view, the submission of the learned advocate is without substance. Section 468(1) of the Criminal Procedure Code lays down that no Court shall take cognizance of an offence after the expiry of period of limitation prescribed u/s 468(2) of the Criminal Procedure Code. u/s 468(2) the period of limitation is prescribed for the offences of the categories specified in it. It prescribes that the period of limitation is six months if the offence is punishable with fine only, one year if the offence is punishable with imprisonment

for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. No period of limitation is prescribed for the offences which are punishable with imprisonment for a term exceeding three years. Section 469 prescribes from which date the period of limitation shall commence. Sections 470 and 471 prescribe exclusion of time in certain cases. Section 472 prescribes that in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 473 of the Criminal Procedure Code empowers the Court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained. It further empowers the Court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. Section 468(1) is embargo upon the Court to take cognizance of the offence if it is barred by limitation prescribed u/s 468(2) of the Criminal Procedure Code. It is the prerequisite of taking cognizance of the case. If the Court, has taken cognizance of the case without considering the fact that it is barred by limitation, then the prosecution against the accused would be without jurisdiction, null and void. In the case of State of Punjab Vs. Sarwan Singh, while considering the provisions of Sections 468 and 469 of the Criminal Procedure Code the Supreme Court has held as under:

The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein, is non est.

In that case the respondent was acquitted of the charge u/s 408 but was convicted u/s 406 of the Indian Penal Code and was sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 1000/- by the trial Court. The accused had preferred an appeal to the High Court which was allowed and the High Court had acquitted the respondent mainly on the ground that the prosecution launched against him was barred by limitation under Sections 468 and 469 of the Criminal Procedure Code. Even though the respondent was acquitted, the Court held that proceedings culminating in the conviction of the respondent were non est. This observation of the Supreme Court clearly shows that the Court would not have any jurisdiction to take cognizance of the case if it

is barred by limitation, and if the cognizance of the case is taken even though it is barred by limitation, then the said proceedings would be non est. In my view, therefore, the question whether the prosecution or the complaint filed by the complainant is barred by limitation and that the Court had no jurisdiction to initiate the proceedings can be raised by the accused at any stage of the proceedings. While considering the provisions of Section 197 of the Criminal Procedure Code the Supreme Court in the case of Matajog Dobey Vs. H.C. Bhari,

Is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained? At first sight, it seems as though there is some support for this view in - "Hari Ram"s case and also in AIR 1946 25 (Federal Court) Culaiman, J. says that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution. Varadachamar, J. also states that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings. But a careful perusal of the later parts of their judgments shows that they did not intend to lay down any such proposition. Sulaiman, J. refers (at page 52) to the prosecution case as disclosed by the complaint or the "police report" and he winds up the discussion in these words:

Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.

The other learned Judge also states at p. 55, "At this stage we have only to see whether the case alleged against the appellant or "sought to be proved" against him relates to acts done or purporting to be done by him in the execution of his duty."

It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituted the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal, itself in the course of the progress of the case.

The Court has therefore, held that it is not always necessary that the need for sanction u/s 197 is to be considered as soon as the complaint is lodged and on the allegations therein contained and the question may arise for determination at any stage of the proceedings. In that case after two prosecution witnesses were examined in chief and the case was adjourned, one accused raised an objection that for want of sanction u/s 197 of the Criminal Procedure Code, the prosecution was not maintainable. The said objection was upheld and all the accused were discharged. A revision application against the said order was also rejected by the High Court. Thereafter in Matajog Dobey"s complaint, after the termination of the inquiry, process was issued only against Bhari under Sections 323 and 342 of

the Indian Penal Code. Before the Magistrate the same contention was raised which was overruled by the Magistrate. Against the said order revision application was filed and the said revision application was allowed. From this decision, therefore, it would be clear that if the Court has taken cognizance of the case inspite of Section 197 of the Criminal Procedure Code without obtaining the necessary sanction, the proceedings can be dropped at any stage. In my view, the same principles would apply if the complaint is filed after a period of limitation prescribed u/s 468(2) of the Criminal Procedure Code.

10. In the case of B. Saha and Others Vs. M.S. Kochar, the Court has again reiterated that the question of sanction u/s 197 of the Criminal Procedure Code can be raised and considered at any stage of the proceedings. In that case also a complaint, by one M.S. Kochar, the respondent therein, was filed in the Court of the Sub-Divisional Magistrate, Delhi, alleging that the appellants therein, who were officers of the Customs Department, had committed offences under Sections 120-B, 166, 409 of the Indian Penal Code. The Sub-Divisional Magistrate before whom the complaint was filed examined the complainant u/s 200 and further held a preliminary enquiry u/s 202 of the Criminal Procedure Code. After considering the statements recorded in the preliminary enquiry, and the documents produced by the complainant, the Magistrate found a prima facie case under Sections 120-B, 409 of the Indian Penal Code against the appellants. The learned Magistrate had, therefore, directed that the accused be summoned. On receiving the summonses the appellants filed an application praying for their immediate discharge, inter alia, on the ground that the Magistrate had no jurisdiction to take cognizance of the complaint in the absence of sanction u/s 197 of the Criminal Procedure Code and u/s 155 of the Customs Act. The Magistrate accepted the said objection and held that he had no jurisdiction to take cognizance of the complaint, and in that set of circumstances the Court had held that the question of sanction u/s 197 of the Criminal Procedure Code can be raised and considered at any stage of the proceedings which would mean that if the Court comes to the conclusion that there was no valid sanction before instituting the prosecution, the Court would be required to drop the proceedings.

11. It is, therefore well established that if the prosecution is launched or a complaint is filed without obtaining necessary sanction or on defective and invalied sanction, then the Court would not have jurisdiction to try the case and the whole trial, if any, would be null and void. In my view the same would be the position u/s 468 of the Criminal Procedure Code which bars the jurisdiction of the Court to take cognizance of the offence after expiry of the period of limitation. The Court can consider the question of limitation at any stage of the proceedings and if it arrives at the conclusion that it is barred by limitation, the Court would be required to drop the said proceedings. If the proceedings are barred by limitation, the Court has no jurisdiction to try the case and as soon as it arrives at the conclusion that it is barred by limitation, Court is required to drop it.

12. This Court in its decision in the case of Sureshbhai K. Desai v. State reported

in 24 (1) G.L.R. 364 has observed as under:

At the time when the cognizance is taken, the accused is nowhere in the scene and, therefore, that the bar is with regard to taking cognizance of offences and not of the offender. It is only after cognizance of offence is taken, the Magistrate is required to proceed in accordance with the provisions of Sections 202 to 204 of the Code for the purpose of either dismissing the petition of complainant or for issue of processes against an offender. Therefore, at the time the Magistrate takes cognizance of the offence the accused cannot be heard nor can he raise any grievance of his not being given an opportunity of being heard at that time. After the process is issued and the accused appears before the Magistrate, it is open to him to raise the question regarding the bar of limitation and it is for the learned Magistrate to consider at the proper stage of the proceeding whether the accused can avail of the bar of limitation as imposed upon the Court. Therefore, the Calcutta High Court stated that no principles of natural justice were denied by not giving an opportunity to the accused of being heard at the time the learned Chief Metropolitan Magistrate was considering the application for condonation of delay filed by the Registrar of Companies. Therefore, so far as this aspect is concerned. I fully concur with the observations of the Calcutta High Court, and in view of that, the ground advanced by Mr. Mehta that the accused should have been heard, even before taking cognizance of the case wherein period of limitation is applicable, has no basis.

Proceeding further, the Court has also held as under:

This would mean that if after cognizance is taken by the Court on a charge-sheet which is beyond the period of limitation, it is open for the accused or the prosecution to move the Court. The prosecution would move the Court to exercise power u/s 473 of the Code or the accused would move the Court to dismiss the complaint as barred by limitation. Even on the request of the accused the Court may consider whether provisions of Section 473 of the Code would be applicable or not.

In view of the above discussion it is clear that the contention of the learned advocate for the petitioner that the Court had no jurisdiction to drop or stop the proceedings after issuance of summons, is without any substance and deserves to be rejected.

Re: Second ground:

13. The learned advocate for the petitioner had contended that u/s 18(1) of the Rent Act as the offence is a continuing offence, u/s 472 of the Criminal Procedure Code there is no question of any delay in filing the complaint. This contention of the learned advocate is also without any substance. Section 18(1) of the Rent Act inter alia lays down that if any landlord receives any fine, premium or other like sum or deposit or any consideration other than the standard rent or the permitted increases, in respect of the grant, renewal or continuance of a lease of any premises, such landlord shall, on conviction, be punished with imprisonment

for a term which may extend to six months and shall also be punished with fine. Sub-section (2) Section 18 inter alia provides that where any fine, premium or other like sum or deposit or any consideration referred to in Sub-section (1) is paid by any person, the amount or value thereof shall be recoverable by him from the landlord to whom it was paid or on whose behalf it was received or from his legal representative at any time within a period of six months from the date of payment. Reading Section 18(1) it cannot be said that the offence prescribed under the said section is a continuing offence. The offence is complete as soon as the landlord receives fine, premium or other like sum or deposit or any consideration other than the standard rent or permitted increases. The language of Section 18(2) on the contrary clearly shows that within six months from the date of the payment the tenant is entitled to recover back the said amount. So Section 18(2) lays down the period of limitation of six months for recovering back the said amount. In the case of State of Bihar Vs. Deokaran Nenshi and Another, the Supreme Court has considered what is continuing offence and which offence can be said to be complete as soon as it is committed. It has held as under:

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 or its requirement and which involves a penalty, the liability for which continues until the rule or 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.

14. Thereafter the Supreme Court has considered numerous illustrative cases and there they have relied upon the case in Emperor Vs. Karsandas Govindji Ved, , wherein the Court has held that though the expression "continuing offence" was not a very happy expression, it was very often used. The distinction between the two kinds of offences lay between an act which constituted an offence once and for all and an act which continued, and therefore, constituted a fresh offence every time on which it continued. In the present case also when the landlord accepts the deposit or premium or fine the offence would be complete once and for all and hence it cannot be said that offence u/s 18(1) of the Rent Act is a continuing offence.

15. For the foregoing reasons, both the contentions of the petitioner fail and hence the petition is rejected. Rule discharged.