

(1995) 06 KL CK 0035

In the High Court Of Kerala

Case No : Criminal M.C. No"s. 1034, 1041, 1043 and 1044 of 1992

Rani Joseph

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 02-06-1995

Acts Referred:

Companies Act, 1956 — Section 159, 162, 220

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472

Citation : (2001) 103 CompCas 928 : (1995) CriLJ 3832 : (1995) 3 ILR (Ker) 396

Hon'ble Judges : P.V. Narayanan Nambiar, J;B.M. Thulasidas, J

Bench : Division Bench

Advocate : Dinesh Mathew J. Murikan, for the Appellant; George C.P. Thakaran, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Narayanan Nambiar, J.—These cases were referred by Chettur Sankaran Nair J. to be heard by a Division Bench for an authoritative pronouncement as the correctness of the decision in Sudarsan Chits (India) Ltd. and Others Vs. Registrar of Companies, was doubted.

2. The petitioner and the respondent in all the four cases are one and the same. The respondent, Registrar of Companies, Kerala, filed complaints u/s 162 of the Companies Act, 1956 (for short "the Act"), for violation of certain provisions of the Act. These complaints are sought to be quashed by filing the Crl. M. Cs. ST 323 of 1992 of the court of the Additional Chief Judicial Magistrate (Economic Offences). Ernakulam, and ST 326 of 1992 of the same court, which were filed for violation of Section 159 of the Act, are sought to be challenged in Crl. M. Cs. Nos. 1041 of 1992 and 1044 of 1992, respectively. In the other two cases, Crl. M. Cs. Nos. 1034 of 1992 and 1043 of 1992, proceedings in ST 324 of 1992 and ST 325 of 1992 of the same court, relating to violation of the provisions of Section 220(1) and (2) of the Act are challenged. All the cases were taken

cognisance of by the learned magistrate and process was issued to the petitioner, who is alleged to be the managing director of Geo Ceramics Private Limited.

3. Though several grounds were urged in the Crl. M. Cs. the only point which was pressed and argued before us is that the complaints are barred by the law of limitation and those should not have been taken cognisance of the learned magistrate.

4. Section 159 of the Act makes it obligatory on the part of the company to prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V regarding the various items enumerated thereunder. Section 162 of the Act deals with penalty and interpretation. Going by Section 162(1) of the Act, if a company fails to comply with any of the provisions contained in Sections 159 160 or 161 the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues. Section 220(1) of the Act mandates that after the balance-sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance-sheet and the profit and loss account were so laid or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act: (a) three copies of the balance-sheet and the profit and loss account, signed by the managing director, manager or secretary of the company, or if there be none of these, by a director of the company, together with three copies of all documents which are required by the Act to be annexed or attached to such balance-sheet or profit and loss account. Section 220(3) of the Act says that if default is made in complying with the requirements of Sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.

5. Annexure A-1 in Crl. M. C. No. 1041 of 1992 is a copy of the complaint in ST 323 of 1992. It shows that the annual return as provided u/s 159 of the Act in respect of an annual general meeting was not filed and so the default commenced on March 2, 1989. The complaint is seen filed on June 30, 1992, after a period of more than three years. In ST 326 of 1992, the allegation is that the returns were not submitted in respect of the annual general meeting held in 1989. That complaint was also filed on June 30, 1992. In the other two cases, which deal with violation of Section 220 of the Act, the allegation is that copies of the balance-sheet and the profit and loss account for the period ending with June 30, 1988, and June 30, 1989, were not filed. These complaints were, also filed on June 30, 1992.

6. The argument of counsel appearing for the petitioner is that as the offences alleged are liable to be punished with fine only, the trial court was not justified in

taking cognisance of the offences beyond the period of six months from the date of commission of the offence as it is barred by limitation. The provisions of Section 468 of the Code of Criminal Procedure, which deal with limitation regarding cognisance of the offence, are pressed into service to advance the argument. On the other hand, counsel for the respondent contended that the offences which gave rise to the complaints are "continuing offences" and so when the provisions of the section are not complied with, the offences must be held to be continuing and, therefore, Section 468 of the Code of Criminal Procedure is not at all applicable to the facts of the present cases and Section 472 of the Code will be applicable.

7. So, we are called upon to decide the question whether the offences are continuing or not. If the offences are not continuing offences, all the complaints are barred by limitation and on the other hand, if we take the decision that the offences are continuing, there is no difficulty in arriving at the conclusion that the complaints are not barred by limitation and cognisance was rightly taken by the trial court.

8. The expression "continuing offence" is not defined in the Code. That is because the expressions which do not have a fixed connotation or a static import are very difficult to be defined. The expression "continuing offence" cannot be put in a straitjacket. The Supreme Court, after considering the various judicial pronouncements including that of the Privy Council, tried to summarise what a "continuing offence" is :

"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."

(See the decision in State of Bihar Vs. Deokaran Nenshi and Another, at 909 paragraph 5).

9. To formulate the above expression which gives an intelligible meaning to the expression "continuing offence", the Supreme Court relied on Best v. Butler and Fitzgibbon [1932] 2 KB 108 ; Verney v. Mark Fletcher and Sons Ltd. [1909] 1 KB 444 : Rex v. Taylor [1908] 2 KB 237 ; London County Council v. Worley [1894] 2 QB 826 ; Emperor Vs. Karsandas Govindji Ved, ; State Vs. A.H. Bhiwandiwalla, State of Bihar v. J. P. Singh [1963] BLJR 782 and The State Vs. Mool Chand, .

10. The statement in the American Jurisprudence, second edition, volume 21 at page 424 which deals with "continuing offence" is worth extracting :

"Significantly, the determination of the timeliness of a prosecution hinges on the nature of the particular offence involved. Some offences are complete upon the commission of certain acts, whereas other so-called continuing offences are not. Typically, the statute of limitations begins to run as soon as every element of the crime occurs and the offence is complete. For a continuing offence, however, the crime is not exhausted for purposes of the statute of limitations as long as the prescribed course of conduct continues. Thus, for example, the crime of conspiracy has been held to continue as long as the conspirators engage in overt acts in furtherance of their plot, and the statute of limitation for a conspiracy prosecution generally commences to run from the time the last overt act in furtherance of the conspiracy was committed, The determination whether a given crime is a continuous offence is a matter of statutory interpretation. It has been held that the doctrine of continuing" offences should be applied only in limited circumstances, since the doctrine effectively extends the statute of limitations beyond its stated term. A particular offence should not be deemed continuous unless the explicit language of the substantive criminal statute compels such a conclusion or the nature of the crime involved is such that Congress must have intended that it be treated as a continuing one."

11. A continuing offence gives rise to a continuing cause of action. What is a continuing cause of action ? Lord Lindley in *Hole v. Chard Union* [1894] 1 Ch 295 at page 295 has expressed thus :

"What is a continuing cause of action ? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

12. In the same decision, Lord Justice A. L. Smith, agreeing with the view of Lord Lindley, said (page 296) :

"If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on *de die in diem*. It seems to me that there was a connection in the present case between the series of acts before and after the action was brought ; they were repeated in succession, and became a continuing cause of action. They were an assertion of the same claim--namely, a claim to continue to pour sewage into the stream--and a continuance of the same alleged right. In my opinion, there was here a continuing cause of action within the meaning of the rule."

13. In *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, , his Lordship Justice Gajendragadkar (as he then was), dealing with the essence of a continuing wrong, observed as follows (page 807) :

"It is the very essence of a continuing wrong that it is an act which creates a

continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

14. A similar question came before the Supreme Court in *Bhagirath Kanoria and Others Vs. State of M. P.*, in which provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), came for consideration. As per the Act, non-payment of the employer's contribution was made an offence. A complaint was filed long after the period of limitation on the basis of the initial commission of the offence. The argument was that the offence is a continuing offence and until and unless the requirements of the section are satisfied, the offence continues and a fresh period of limitation begins to run at every moment of time during which the offence continues. This argument was accepted by the Supreme Court. The Supreme Court also adopted the reasoning in the decision reported in *State of Bihar Vs. Deokaran Nenshi and Another*. It was also held by the apex court that non-payment of the employer's contribution to the provident fund before the due date is a continuing offence and, therefore, the period of limitation fixed by Section 465 of the Code of Criminal Procedure cannot have any application. The offence will be governed by Section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of time during which the offence continues. The Supreme Court also added that the question whether a particular offence is a continuing one must necessarily depend upon the language of the statute which creates the offence, the nature of the offence and the purpose which is intended to be achieved by the statute. Failure to pay employer's contribution before the due date, considering the object and purpose of the provision which is to ensure the welfare of the workers, cannot be said to be an offence which is not continuing. The Supreme Court further held that where a controversy is raised as to whether an offence is of a continuing or non-continuing nature, considering the object and purpose of the act, cognisance of the offence ought to be taken even after the expiry of the period of limitation if such period is applicable because the interest of justice so requires. Section 473 of the Criminal Procedure Code empowers a court to take cognisance of an offence after the period of limitation, if it is satisfied on the facts and circumstances of the case that the delay has been explained or that it is necessary to do so in the interest of justice.

15. This court in *Sudarsan Chits (India) Ltd. v. Registrar of Companies* [1986] 59 Comp Cas 261 dealt with the provisions of Section 220 read with Section 162 of the Companies Act and held that the offence for violating the provisions of Section 220 of the Act can be treated as a continuing offence and so the provisions of Section 468 of the Code have no application and on that basis

refused to quash a complaint pending before the trial court. In the said decision, this court also relied on the penalty provision contained in Section 162(1) of the Act, which is already extracted above.

16. A similar view was taken by this court in *Velayudhan v. ESI Corporation* [1990] 3 ILR Ker 928. This court in extenso dealt with the Employees' State Insurance Act, 1948, and considering the various decisions of the Supreme Court and other High Courts, came to the conclusion that non-payment of contribution by the employer constitutes a continuing offence and the offence continues till the requirements of the section are complied with. The contention that the complaint in the case was filed beyond the period of six months, taking shelter u/s 468 of the Code, was rejected by the learned judge.

17. Though we have dealt with the decisions of various courts which conclude that the offence similar in nature contained in Sections 159 and 220 of the Act is a continuing one until it is performed, there is a cleavage of judicial opinion on this point, a set of decisions are there which deal with similar question in which it is held that the offence cannot be treated as a continuing offence and as the complaint was not filed within the period prescribed u/s 468 of the Code, it should be treated as barred by limitation. The High Courts of Calcutta, Punjab and Haryana, Delhi and Karnataka have taken this view.

18. In *National Cotton Mills v. Asst. Registrar of Companies* [1984] 56 Comp Cas 222 (Cal), a similar question regarding violation of the provisions u/s 159 of the Act came up for consideration and a Division Bench of the Calcutta High Court held that the offence is complete as the default in submission of the return is made and so the offence cannot be said to be continuing in nature and held that the complaint is liable to be quashed. In *Chandra Spinning and Weaving Mills v. Registrar of Companies* [1990] 69 Comp Cas 117ker, a learned single judge of the Karnataka High Court considered the question in detail and came to the conclusion that failure to submit balance-sheet and profit and loss account within the prescribed time as provided u/s 220 of the Act is not a continuing offence and the complaint should have been filed within the time prescribed by the Code of Criminal Procedure. In *K.K. Mehra v. Registrar of Companies* [1991] 71 Comp Cas 669 ker, a learned single judge of the Delhi High Court dealt with the provisions of Sections 159 and 220 of the Act and held that the offences under the above sections are not continuing in nature. Similar is the view taken by the Punjab and Haryana High Court in *Shivalik Ice Factory v. Registrar of Companies* [1988] 64 Comp Cas 113 ker.

19. We have carefully gone through the judgments referred to above. In view of the authoritative pronouncement of the Supreme Court in *State of Bihar Vs. Deokaran Nenshi and Another*, and in *Bhagirath Kanoria and Others Vs. State of M. P.*, , we cannot agree with the view expressed by the High Courts of Calcutta, Karnataka, Delhi and Punjab and Haryana. The only possible conclusion which we can legitimately arrive at is that the offences which are the subject-matter of the complaints for violation of the provisions of Sections 159 and 220 of the Act are

continuing in nature and until and unless the legal requirements contained in the provisions mentioned above are complied with, the company and the personnel in charge of the company are liable to be prosecuted and the complaints are not liable to be quashed on the ground of limitation. A fresh period of limitation starts on each day until the requirements of the provisions are satisfied. We can take only this interpretation bearing in mind the social object of the legislation which is intended to be achieved. We also hold that the decision of Justice Bhat (as he then was) in *Sudarsan Chits (India) Ltd. and Others Vs. Registrar of Companies*, is correctly decided and we affirm the same.

20. In this view of the matter, we hold that the complaints which are challenged in the Crl. M. Cs. are not liable to be quashed on the ground of limitation. The court below was justified in taking cognisance of the complaints. We make it clear that we have dealt only with the question of limitation and the other points available to the petitioner are left open to be urged before the trial court.

21. With this observation, the Crl. M. Cs. are dismissed.