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**(1972) 07 MP CK 0004**  
**In the Madhya Pradesh High Court**

Regional Inspector of Mines

APPELLANT

Vs

K.K. Sengupta and Others

RESPONDENT

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**Date of Decision :** 13-07-1972

**Acts Referred:**

Mines Act, 1952 — Section 18, 79

**Citation :** (1973) CriLJ 1671 : (1975) ILR (MP) 173 : (1973) JLJ 456 : (1973) 18 MPLJ 559 : (1973) 18 MPLJ 553

**Hon'ble Judges :** Suraj Bhan Grover, J

**Bench :** Single Bench

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## Judgement

Surajbhan, J.

This is a revision by the complainant-applicant against the order dated 19-7-1967 passed by the learned Additional Sessions Judge, Durg at Rajnandgaon, whereby the learned Judge held that the complaint filed is within time as the offence in question was a continuing one but further held that as no prior sanction for the prosecution of the non-applicant No. 1 K. K. Sengupta and non-applicant No. 2 V. G. Sesh, of the Central Government u/s 197 of the Code of Criminal Procedure was taken, the case could not proceed against both of them and dismissed the revision.

The facts in brief out of which this revision arises were that on 13-4-1966, one Mst- Jaeotinbai was working at the bottom point of the bench side of the quarry which had been undercut and was insecure and overhanging on the side of the quarry, collapsed with the result that she died on the spot. Non-applicant No. 1 at the relevant time was the agent and the non-applicant No. 2 was the Manager of the Kokan Iron Ore Mine. Dalli Raihara, district Durs. It is also alleged that on 26th February. 1966, they were asked to rectify those violations but nothing was done and they continued to work the quarry with a total disregard of the safety provisions of the Metalliferous Mines Regulations. 1961, framed under the Mines Act. 1952. Non-applicant No. 3 was at the relevant time said to be one of the partners of the contractors who were looking after and supervising the work of

the above mine. It is alleged that due to the abovesaid contraventions of the regulations under the Mines Act, the non-applicants are punishable u/s 72(I) (a) and (c) of the Mines Act, 1952 read with Section 18 of the same Act. Both the non-applicants raised an objection that the complaint was time-barred as it was not filed within six months from the date of contravention which came to the notice of the Inspector of Mines and moreover without a prior sanction of the Central Government as required u/s 197 of the Code of Criminal Procedure they could not be prosecuted. The non-applicant No. 3, Premraj Jain, said that he was not present on the site at the time of the incident and he was given no notice by the Mining Authority. for any breach of the rules and, therefore, he is not liable to be prosecuted.

Learned Magistrate held that the complaint was not within time as required u/s 79 of the Mines Act and also the case against non-applicants 1 and 2 could not proceed unless a prior sanction of the Central Government for their prosecution was obtained. The applicant complainant went in revision before the learned Additional Sessions Judge who held as aforesaid.

First question that arises for decision is whether the complaint in question filed by the Regional Inspector of Mines, Parasia, is within time. The learned Magistrate held that the contraventions as detailed in letters dated 17-5-1965 and 26-2-1966 came to the knowledge of the Inspector of Mines on 13-4-1965 and these contraventions were punishable u/s 72(c)(I) (a) and (c) and the complaint having been filed on 5-10-1966. was time barred. The learned Additional Sessions Judge, on the other hand, held that the death of Mst. Jagotin Bai occurred on 13-4-1966 and the correspondence on record shows that it was a continuing offence with the result that the complaint is within time.

Section 79 of the Mines Act, 1952, says: ?-

No Court shall take cognizance of any offence under this Act. unless complaint thereof has been made, ?

(i) within six months of the date on which the offence is alleged to have been committed, or

(ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or....

There is an explanation added to this Section which runs as follows: ?

Explanation. ? For the purposes of this Section. ?

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.

According to explanation (a) above, if the offence is a continuing one. the period

of limitation shall be computed with reference to every point of time during which the offence continues. It is true that in its application to company cases, it would only mean that if a continuing offence gives rise to a fresh offence *de die in diem*, every such fresh offence shall give rise to a starting point for limitation.

The question whether the offence was a continuing one or not is a question of fact and the law has to be applied to it. Unless the documents referred to by the prosecution are properly proved and if the Court comes to the conclusion that it is a continuing offence then only the complaint filed will be within time. This question cannot only be decided by letters which have not been proved so far. Therefore, the order passed to this effect by the learned Additional Sessions Judge deserves to be set aside and the learned Magistrate is directed that after taking evidence of both the parties- he shall decide the point whether the complaint filed is within time or not.

Shri Khaskalam. learned Counsel for the non-applicant No. 2. has contended that Shri K. K. Sentrapta (Non-applicant No. 1) was appointed to officiate until further orders as Senior Geologist in Bhilai Steel Plant by a letter dated 12th June, 1956, by the Government of India and, therefore, previous sanction u/s 197 of the Code of Criminal Procedure for his prosecution was necessary and in the absence of any such sanction, his Prosecution cannot be allowed to proceed. Shri N. C Jain, learned Counsel for the applicant, on the other hand, has urged that no sanction for his prosecution was necessary as at the relevant time, he was not employed in connection with the affairs of the Union, but his employment was in connection with the affairs of the Hindusthan Steel Ltd. Bhilai Steel Plant. He has also cited in support of his contention rulings reported in *R.R. Chari Vs. State of U.P.*, *The State Vs. B.L. Ohri and Others*, and *K.N. Shukla Vs. Navnit Lal Manilal Bhat and Another*, .

The object of Section 197 of the Code of Criminal Procedure is to protect Judges and other public servants against irresponsible, frivolous or vexatious proceedings for acts done in discharge of official duty and to see that no Prosecution is started unless there is some foundation for the charge brought. If such a power is pleaded by any public servant, it is his duty to show facts bringing Section 197 of the Code into operation. The non-applicant No. 1 has only filed a letter dated 12th June 1956 from the Under Secretary Government of India showing that he was appointed as Senior Geologist in the Bhilai Steel Project. The question relevant for deciding the point whether a sanction from the Government was necessary or not. is to find out whether at the relevant time when the offence is alleged to have been committed, the non-applicant was a public servant employed in connection with the affairs of the Union. It is true that he may be a public servant but there is no material on record to show that at the time of the commission of the offence, the non-applicant No. 1 was working in connection with the affairs of the Union. It is also pertinent to note that the Bhilai Steel Plant may be a Government company but it is a separate legal entity from the Central Government. Therefore, looking to the material on record, the non-

applicant No. 1 has failed to show that at the relevant time, he was working with the affairs of the Union and if it is not so. no sanction for his prosecution from the Government was necessary.

As regards Non-applicant No, 2 V. G. Sesh, the learned Counsel has rightly conceded that he was appointed by the Hindusthan Steel Ltd. and as such no sanction for his prosecution was necessary.

Shri Gulab Gupta, learned Counsel for the non-applicant No. 3, Prem-raj Jain, has raised two contentions before me, His first contention is that the complaint filed by the Regional Inspector of Mines is not properly filed as regards the non-applicant No. 3 and that he was only a partner of the contractor concern-ed. Both the contentions are without substance. It is true that the complaint in Question was sent to the District Magistrate, Durg by the Regional Inspector of Mines and the Additional District Magistrate (Judicial) by his letter dated 3-10-1966 appointed Shri C. L. Maheshwar, Advocate, Balod. to file the complaint and he complied with the order. Section 190 of the Code of Criminal Procedure deals with the cognizance of offences by Magistrates. Section 190 (a) says that the District Magistrate etc. May take cognizance of any offence upon receiving a complaint of facts which constitute such offence: The word "complaint" is defined in Section 4 (h) of the Code of Criminal Procedure. As the complaint is in writing, Clause (a) of Section 190 of the Code will be applicable and it could be filed by any one and the Magistrate can take cognizance of the same. The objection raised in this behalf is not valid.

Similarly by reading the provision of Section 72(c)(i) (a) and (c) of the Mines Act and onwards, it is clear from the words used that ""Whoever contravenes any provisions of this Act or of any regulation, rule or bye-law or of any order made thereunder, an action prescribed by this Act can be taken.

The result therefore is that the revision of the applicant is allowed and the case will now go back to the learned Magistrate for trial according to law. in the light of the direction made.