
(1977) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 11-M of 1975

Shri Surinder Singh

APPELLANT

Vs

The Indian Standards Institute, Chandigarh

RESPONDENT

Date of Decision : 31-01-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 467, 468

Citation : (1977) 01 P&H CK 0020

Hon'ble Judges : S.S. Sidhu, J;Gurnam Singh, J

Bench : Division Bench

Advocate : D.V. Sehgal, for the Appellant; S.L. Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sidhu, J.

Shri Surinder Singh accused petitioner has filed this revision against the order dated 25th April, 1975, of the Court of the Judicial Magistrate Ist Class, Rajpura (Shri O.P. Goyal), by which his preliminary objection that the complaint filed against him by the complainant was time barred was overruled and it was directed that the trial of the complaint shall proceed further.

2. This revision petition came up before me while sitting in Single Bench when I referred this case to the larger Bench by my following order on July 15, 1975: -

In this petition, the main point involved is whether the provisions of sections 467, 468, 469 and 473 of the Code of Criminal Procedure, 1973 (No. II of 1974), are attracted in the complaint Case No. 170, dated 28th September 1974 No. 5, dated 15th January, 1975, the Indian Standards Institution through Shri R.I. Midha, Head I.S.I. Branch Office, Chandigarh, v. Shri Surinder Singh, Zimindar Chemical, 17, Industrial Estate, Rajpura, under sections 5(2), 6(b), 13 and 14 of the Indian Standards Institution (Certification Marks) Act, 1952 (No. XXXVI of 1952). As the decision thereon is of a great general importance and it is also likely to have an effect on similar cases which may arise in future, I am of the

view that this petition may be heard and decided by a larger Bench. The file be laid before my lord the Chief Justice for constituting a larger Bench.

This is how this case has now come up before us.

3. The facts of the case, in brief,, are that the Indian Standards Institution, through Shri R. 1 Midha, Head of the I.S.I. Branch Office, Chandigarh filed a complaint against Shri Surinder Singh, Zimindar Chemicals, 17, Industrial Estate, Rajpura, under sections 5(2), 6(b), 13 & 14 of the Indian Standards Institutions (Certification Marks) Act, 1952 hereinafter referred to as the Act, in the Court of the Judicial Magistrate 1st Class, Rajpura. The allegations made in that complaint are that Shri Surinder Singh is running business as manufacturer and supplier of agricultural insecticides/pesticides under the name and style of M/s Ziminder Chemicals at 17, Industiral Estate, Rajpura, and has his registered office at of (sic), Sector 18-B, Chandigarh. On September 22, 1970, he as proprietor of the said concern, made an application for and on behalf of that concern for the grant of a license under the Act to use the standard mark in respect of pesticide Malathion EC manufactured according to IS 2567-1963. On that application, the complainant, on 28th December, (sic), granted a license for the period 1.1.1971 to 31.12.1971 on specified terns and conditions. The said license was later on renewed from time to time up to (sic) June, 1974. The Controller of Stores, Punjab, vide his letter dated 27th August, 1973, and the Registrar, Cooperative Societies, Punjab, vide his latter dated 13th September, 1973, made complaints to the complainant that the aforesaid concern had supplied sub-standard Malathion 50 per cent EX duly marked with ISI mark. On the receipt of those complaints, a Committe consisting of various officers of one concerned Department of the Punjab Government, as also the representatives of the complainant and toe accused, was formed. That committee visited various places where the stocks of the I.S.I. marked Malathion 50 per cent EC were available from 9th October, 1973, to 12th October, 1973, and took ten samples of the product from various places. Those were tested in the laboratory of the Indian Standards Institution" New Delhi. All the samples failed in the technical contents and revealed that the stock of I.S.I. marked Malathion 50 per cent EC was of substandard quality. Thereupon, a show cause notice was sent to the said concern by the complainant and after considering the explanation submitted by it the licence of the concern was cancelled with effect from 16th November, 1973. It is alleged in the complaint that since the accused knowingly and wilfully supplied the substandard material with I.S.I. make to the controller of Stores and Registrar, Cooperative societies, Punjab, in violation of section 5(2) and 6(b) of the, he may be punished under sections 13 and 14 of the Act. A prayer has also been made that unused product of the accused firm may be forfeited to the Government.

4. Before the trial of the accused could start, a preliminary objection was raised on his behalf that the complaint filed against him was time barred. That objection was overruled by the learned Magistrate vide him impugned order dated 25th

April, 1978 as already stated above.

5. The accused petitioner is alleged to have contravened the provisions of sections 5(2) and 6(b) of the Act which are punishable under sections 13 and 14 of the Act. Sections 13 and 14 of Act are as under:-

13. Penalty for improper use of Standard Marks, etc.-(I) Any person who contravenes the provisions of section 5 of section 6 shall be punishable with fine which may extent to ten thousand rupees.

(2) Any Court trying a contravention under sub-section (1) may direct that any property in respect of which the contravention has taken place shall be forfeited to the Government.

14. Penalty for other offences.-whoever contravenes any of the provisions of this Act or of any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extent to one thousand rupees.

Section 53 of the Indian Penal Code provides as under :-

53. The punishments to which offenders are liable under the provisions of this Code are-

First.-Death:

Secondly.-Imprisonment for life;

* * * *

Fourthly,-Imprisonment, which is of two descriptions, namely:-

(1) Rigorous, that is with bard labour;

(2) Simple

Fifthly.-Forfeiture of property;

Sixthly-Fine.

The provisions as to limitation for taking cognizance of the offence are contained in Chapter XXXVI of the Code of Criminal Procedure, 1973, hereinafter referred to as the new Code. The provisions insofar as they are relevant to the present case are contained in sections 467, 468, 469 and 473, which are reproduced below :-

457 Definitions.

6. For the purposes of this Chapter, unless the context otherwise requires, period of limitation means the period specified in section (sic) for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be;

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to be knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may 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 or that it is necessary so to do in the interest of justice.

7. It has been argued by the Learned Counsel for the accused petitioner that the forfeiture of the property which is provided for by sub section (2) of section 13 of the Act is merely a consequence of conviction and does not form part of the punishment for the offence and, therefore, that offence, as provided for by sub-section (1) of section 13, is to be treated as punishable with fine only for the purposes of limitation, the provision regarding which is contained in sections 467 to 473 of Chapter XXXVI of the new Code. He in support of his contention has cited. The Empress v. Baidanath Das I.L.R (3) Cal. 360 in which it has been held as under.

The confiscation, which is provided for by Section 49, is merely a consequence of the conviction, and does not form part of the punishment for the offence.

This was a case relating to an offence u/s 49 of the Act XXI of 1856, the punishment for which is thus described : "the offender "shall forfeit for every such offence a sum not exceeding Rs. 200. It is further sated, "and the liquors and drugs, together with the vessel, pack ages and coverings in which they are found and the animals and conveyances used in carrying them, shall be liable to confiscation."

8. The Learned Counsel for the complainant-respondent, on the other hand, contends that the provision for forfeiture of the case property, in the present case, as contemplated by sub section (2) of section 13 *ibid* is a different kind of sentence which is independent of sentence of fine as provided for by sub-section (1) of section 13 and, therefore, it cannot be said that the offence u/s 13 alleged to have been committed by the accused-petitioner is punishable with fine only and consequential the provisions of section 468(2)(a) of the New Code are not attracted in the case because the offence u/s 3 of the Act alleged to have been committed by the accused-petitioner is punishable with two kinds of sentences one of fine and the other forfeiture of property. He in support of his contention, has cited *Aziz Khan Vs. State*, , in which it has been held as under :-

Section 408, Criminal Procedure Code, confers on a person convicted by a Magistrate, First Class, a right of appeal to the Court of Session. Section 414 contains an exception to the general rule and provides that "Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act u/s 200 passes a sentence of fine not exceeding two hundred rupees only." In order to make his section applicable two conditions must exist, viz., (1) the sentence must be of fine only and (2) the amount of fine imposed on the convicted person must not exceed rupees two hundred. If the sentence is not of fine only in the sense that besides fine some other kind of punishment also is inflicted the section does not apply.

In the present case the Magistrate awarded, in addition to the sentence fine, a sentence of forfeiture of cloth. Forfeiture of property is one of the recognised forms of punishments. Section 53, I.P.C. enumerates the different kinds of punishments which can be awarded to an accused person and forfeiture of property and fine are mentioned as two distinct kinds of punishments under clauses fifthly and sixthly. The result, therefore, is that in the present case punishments of two different kinds were awarded to Aziz Khan and therefore, the sentence was not of fine only within the meaning of section 414. If the exception contained in section 414 did not apply the case fell within the ordinary rule contained in section 408, Code of Criminal Procedure, and the appeal lay.

9. Reference may also be made in this connection to section 415, Criminal Procedure Code, which lay down that :

An appeal may be brought against any sentence referred to in.....section 414 by which any punishment therein mentioned in combined with any other

punishment...

By the application of this section also an appeal could be brought. In the present case a sentence of fine has been combined with the sentence of forfeiture of property which is a punishment of a different kind. An appeal, therefore, lay to the learned Sessions Judge. The value of the cloth ordered to be forfeited was totally immaterial.

10. We have applied our mind to the above arguments of the Learned Counsel for both the parties and are of the considered opinion that the contention of the Learned Counsel for the complainant-respondent must prevail against that of the Learned Counsel for the accused petitioner. Section 53, Indian Penal Code, Takes it clear that forfeiture of property and fine are two distinct and separate punishments to which offenders are liable under the provisions of that Code. It may be pointed out that provisions of section 468 of the new Code are confined only to those categories of offences which are punishable with fine only or with imprisonment for not exceeding three years. Obviously, the provisions of that section will not be attracted to that category of offence which are punishable with forfeiture of property. Section 13 of the Act empowers the Court to award two types of punishments, namely, one of fine and the other of forfeiture of property to the Government. This view finds support even from the observation made by their Lordships of the Supreme Court in *Suleman Issa Vs. The State of Bombay*, , which are to the following effect :-

Now the power of the court no doubt extends to confiscation of property in the custody of the court but it is not every case in which the court must necessarily pass an order of confiscation irrespective of the circumstance of the case. It is possible to conceive of cases where the subject-matter of the offence may be property which under the law relating to that offence is liable to be confiscated as a punishment on conviction.

11. Thus, we are of the opinion that section 468 of the new Code does not prescribe any period of limitation for filing criminal proceedings against the accused for committing an offence which is punishable with forfeiture of the case property, besides time with all due respects for the view taken by the esteemed learned Judges of the Full Bench of the Calcutta High Court in *Bajnath Das's* case (supra), which is contrary to the view taken by the Supreme Court in *Suleman Issa's* case (supra), we are unable to subscribe to that view because not only punishment of confiscation but punishment of fine also in the present case, which is provided for u/s 13 of the Act, can be said to be a consequence of conviction. This case will be quite different if the law relating to the offence for which the accused may be tried does not provide for forfeiture of the case property in respect of which that offence may have been committed. In such a case, order of disposal of property, by destruction, confiscation or delivery of the same to somebody or otherwise, may be made by the criminal Court u/s 45? of the new Code which is equivalent of section 51 7 of the old Code of Criminal Procedure, 1898, when an inquiry of trial in that Court is concluded. In that case,

if order for disposal of case property by confiscation is passed, the same cannot be said to have been passed by way of punishment as provided for by section 53, Indian Penal Code. But when the subject matter of the offence may be property which under the law relating to that offence is liable to be confiscated as a punishment on conviction, as in the present case then there can be no doubt that provision for forfeiture of case property in such a case is by way of punishment as provided for by section 53, Indian Penal Code. In this view of the matter the provision made in sub-section (2) of section 13 of the Act for forfeiture of the case property to the Government, in respect of which contravention of the provisions of section 5 or section 6 of the Act has taken place, is by way of a separate and distinct punishment from the punishment provided for by sub-section (1) of that section, as contemplated by section 53, Indian Penal Code. That being so, the trial Court took a correct view that the provision of section 468 of the new Code are not attracted in this case. This view, as already observed above, finds support from the view taken by the Hon'ble Judges of the Supreme Court in *Suleman Issa's case* (supra). Thus, the complaint filed against the accused petitioner is not barred by time as urged by his Learned Counsel. If the provisions of section 468 of the new Code are not attracted in this case, the question of determining whether the provisions of sections 468, 469, and 473 of the new Code are also attracted, does not arise at all.

12. For the reasons given above, we find no force in this revision petition which is hereby dismissed. The trial Court shall now proceed further in this complaint case and decide the same in accordance with law.

Gurnam Singh, J.

13. I agree.