
(1952) 02 KL CK 0005
In the High Court Of Kerala

State	Vs	APPELLANT
E.C. Govindan Asan and Sons and Others		RESPONDENT

Date of Decision : 29-02-1952

Acts Referred:

Factories Act, 1948 — Section 20, 22, 32, 51, 62
General Clauses Act, 1897 — Section 10, 3
Limitation Act, 1963 — Section 4
Provincial Insolvency Act, 1920 — Section 9

Citation : (1952) CriLJ 901

Hon'ble Judges : Koshi, C.J.;Joseph Vithayathil, J;Govinda Pillai, J

Bench : Full Bench

Judgement

Koshi, C.J.—All these petitions are filed by the State to revise and set aside the orders passed by the learned First Class Magistrate, Chengannoor, in C.C. Nos. 15 to 19 of 1124. The complaints were filed by the Inspector of Factories, Kottayam, with the sanction of the District Magistrate, against the occupier and manager of certain cashew factories, for offences said to have been committed by them in not providing with the necessary amenities in the factories as directed in the Factories Act VIII (8) of 1114. The Inspector of Factories found on 6.8.1123 that the accused had contravened the provisions of Sections 20 32(b) and 51 of the Factories Act, and Rule 67 framed u/s 22 and had committed an offence punishable u/s 74(2) of the said Act. Section 75 of the Act provided that no Court was to take cognisance of any offence under the Act or any rule or order thereunder, other than an offence u/s 62 or Section 64, unless a complaint thereof was made within six months of the date on which the offence was alleged to have been committed. The offences in these cases were said to have been committed on 6.8.1123. But the complaints were filed only on 6.2.1124. That was beyond six months and not within the period as provided for in Section 75 of the Factories Act. The learned Magistrate therefore dismissed all the complaints as being late and hence not cognizable.

2. When these Revision Petitions came up for argument before a Single Judge of

this Court it was thought proper to refer the whole case for decision by a Full Bench on the important Question regarding the applicability of Section 10 of the General Clauses Act to the actions taken pursuant to special statutes which provide for definite period of limitation, apart from those given in the Limitation Act. The views of the several High Courts were conflicting.

3. The offences committed. Were detected on 6.8.1123. The complaints should therefore have been filed on or before 5.2.1124. The fifth "Kanni" 1124 being the "Samadhi" day of Sri Narayana Guru, was a holiday. The learned Government Pleader, therefore, stated that u/s 10 of the General Clauses Act a complaint filed on the next working day would be sufficient. Section 10 reads as follows:

Where, by a Regulation to which this Chapter applies, any act or proceeding is directed or allowed to be done or token in a Court or office, on a certain day or within a prescribed period, then, if the Court or Office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or Office is open.

The Factories Act VIII (8) of 1114 was an Act passed long after the General Clauses Act II (2) of 1072. So, by force of the provision in Section 3 of Act II (2) of 1072, Chapter 2 will apply to all Acts passed, after the commencement of the General Clauses Act, unless a contrary intention appears in the Act thus passed after the passing of Act II (2) of 1072. There is nothing in the Factories Act to indicate that the provisions in the General Clauses Act are not to apply to the same. There are certain findings in *Chenchuramana v. Arunachalam* AIR 1935 Mad 857 a Pull Bench decision of the Madras High Court that if the period of limitation for doing any act under the provisions of a statute is mentioned in the statute itself, then, neither the provisions of the Limitation Act nor those of the General Clauses Act will be allowed to be applied to extend the said period.

That case arose on an application under the Insolvency Act. Section 9(1)(c), of the Provincial Insolvency Act provided that a creditor shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. It was mentioned in that case that this period is a condition precedent to the filing of the petition, that is to say, the petitioning creditor must, on the day when he presents his petition, have a view some act of insolvency which the debtor has committed within the preceding three months.

It was further stressed that the petitioning creditor has to see on the date of the presentation of his application, and on that date only, what acts of insolvency are available to him, and that he cannot make use of any act of insolvency which has been committed outside the period of three months as that has ceased to be an act of insolvency. Thus, if the three months expired on a gazetted holiday, an application filed on the succeeding working day was held as not to give the petitioning creditor the right to present the petition in insolvency. Practically, the

same is the provision in the Factories Act, which provides that no Court is to take cognizance of any offence unless the complaint is filed within six months of the commission of the offence.

The view taken by the Madras High Court has not been adopted by the other Indian High Courts. In *Raja Pande v. Sheopujan Pande* AIR 1942 All 429, a Full Bench of Allahabad High Court held that Section 10 of the General Clauses Act, applied to a creditor's petition of insolvency filed u/s 9 of the Provincial Insolvency Act, and that consequently, if the period of three months prescribed by Section 9(1)(c) expired on a day when the Court was not sitting "the petition could be validly presented on the next day when the Court was sitting. In that case the Court relied on the definition of period of limitation given by the late Sir John Thom, C.J., in *Koer Durag Pal Singh Vs. Th. Pancham Singh and Others*, thus:

It appears to me that if the result of a statutory provision is in substance to fix a period within which a person must take appropriate and. necessary action if he desires to assert his rights in a Court of law, that provision prescribes a period of limitation.

3. Iqbal Ahmed, C.J., had given his reasons for applying Section 10 of the General Clauses Act to proceedings in insolvency at pages 433 and 434 of AIR 1942 All 429, thus:

I, however, consider that Section 10, General Clauses Act, applies to the proceedings under the Provincial Insolvency Act. That section has been, quoted above, and it has been pointed out that its practical effect is the same as that of Section 4, Limitation Act. It is well-known that the Provincial Insolvency Act of 1920 was modelled on the lines of the English Bankruptcy Act of 1914, and, indeed, some sections of the Indian Act have been copied verbatim from the English Act. In the English Act there exists a provision similar to Section 10, General Clauses Act: "Vide" Section 145, Bankruptcy Act. The Legislature did not reproduce Section 145 of the English Act in the Provincial Insolvency Act for the simple reason that the General Clauses Act governs the Provincial Insolvency Act, and, as such the, provisions of Section 10, General Clauses Act, apply to proceedings under the Provincial Insolvency Act.

It would be noted that Section 10 does not speak of the period of limitation" and applies to "any act or proceeding" which is directed or allowed to be done by any Central Act or Regulation. That the presentation of an insolvency petition u/s 9(1)(c), Provincial Insolvency Act, is an "act or proceeding" within the meaning of Section 10 admits of no doubt. I am, therefore, clear that, in view of the provision of Section 10, the petition presented by Sheopujan on, the date that the Court re-opened was within time.

Before concluding this judgment, I must deal with the question whether or not the period of three months referred to in Section 9(1)(c). Provincial Insolvency Act, is a period of limitation. To my mind it is. A "period of limitation" is, I

consider, synonymous with a "time limit" for proceedings in a Court of law. The period of three months in Sub-clause (c) of Section 9(1) does impose a limit of time about the presentation of an insolvency petition and is therefore a "period of limitation" A period of limitation is in one sense a condition precedent to the enforcing of rights and remedies in a Court of law. It is in this sense that one may call the period of three months prescribed for the presentation of insolvency petitions as a condition governing such petitions. Nevertheless, it does not cease to be a period of limitation. But, as already indicated whether it is or it is not a period of limitation, Section 10, General Clauses Act, must apply to petitions for insolvency. For the reasons given above, I hold that the order of remand passed by the learned District Judge is perfectly correct and accordingly, I would dismiss this appeal with costs.

4. It would appear that the Interpretation put on by the Madras High Court was too technical, though the said ruling had been followed In *V.R.K.M. Kumarappa Chettiar Vs. K.M.V.R. Chidambaram Chettiar and Another*, and *Vakkalagadda Venkata Rama Lakshmayya Vs. Parepalli Subba Rao and Others*, . There was another ruling of the Madras High Court in *P.S. Narayana Ayyar Vs. Official Receiver*, , wherein a contrary view had been taken. It was a decision by a Singly Judge, Krishnan Pandalai, j. This was commented upon and overruled in *Chenchtjramana v. Aruna Chalam* AIR 1935 Mad 857. The Nagpur High Court in *Balkisan v. Bhanuprasad* AIR 1938 Nag 454 , had followed *P.S. Narayana Ayyar Vs. Official Receiver*, , and held that the periods mentioned in the Insolvency Act were governed by the General Clauses Act.

When Section 3 of the General Clauses Act laid down that the provisions in Chapter II of the Act would apply to all Acts passed subsequently unless a contrary intention appeared therefrom, it would not be proper to contend that Section 10 of the General Clauses Act was to apply to statutes which provided for periods of limitation in the provision contained therein. There was a ruling of the Travancore High Court in *Devasiva Chandy v. Ouseph* 19 T L.J 113, which held that Section 10 of the General Clauses Act would apply to the periods of limitation prescribed by the Insolvency Act, and that if on the last day of the prescribed period of three months mentioned in Section 6(4) of the Travancore Insolvency Act in force then, corresponding to Section 9(1)(c), of the Provincial Insolvency Act, the Court in which the creditor should file his application was closed, the creditor would be regarded as in time if he filed his application on the next day afterwards on which the Court re-opened.

Mention has to be made here of a Full Bench decision of the Travancore High Court in *Kochoonni v. Devasia* 16 TLR 163. The case referred to the right of a non-Malayali Brahmin "Jenmi" to eject his "Kanapattom" tenant. Section 1 of the Jenmi & Kudiyan Act, while enacting that the said Act was to come into force throughout Travancore on the first day of "Makaram" 1072, provided "inter alia" that Paragraph 2 of Section 5 shall come into force on first "Chingom" 1074. On this later date, the tenants of non-Malayali Brahmin "Jenmis" would acquire a

permanent right of occupancy in their holding. The non-Malayali "Jenmis" were allowed time till the first "Chingom" 1074 to file suits for eviction. Such a "Jenmi" filed the suit on the second "Chingom" 1074 because the last day of "Karkatakom" 1073 and the first day of "Chingom" 1074 were gazetted holidays. The question therefore for consideration in that case was whether such a suit would be within time as provided in the Jenmi and Kurtiyan Act.

Since by a declaration in the Act a permanent occupancy was granted to the Kudiyan of a non-Malayali Brahmin "Jenmi" from the first "Chineom" 1074, it was held that such substantive right of permanent right of occupancy conferred by an express statute from and after a particular date could not be defeated by any proceeding taken after the accrual of the said right. The said provision in the Jenmi and Kudiyan Act was not one prescribing any limitation for the purpose of suits. On the other hand, the statute had declared a substantive right from a particular date so that effigy person who wanted to get over the same should file the suits before the right accrued to the tenant. It was, therefore, held that the suit filed on the second day of "Chingom" 1074 could not be maintained as the Jenmi and Kudiyan Act could not be held in abeyance by the Courts on any ground not provided for by that statute. Since the Jenmi and Kudiyan Act had been promulgated before the General Clauses Act, the application of the General Clauses Act to the Jenmi and Kudiyan Act would not arise for consideration to the present instance.

5. The counter-petitioners' learned Advocate had referred to paragraphs 212 and 213 of page 144 of Halsbury's Laws of England, Volume 32. For purpose of easy reference these two paragraphs are given below:

212. The fact that the last day of a prescribed period is a Sunday or other holiday does not generally give the person who is called upon to act an extra day; it is no excuse for his omission to do the act on some prior day.

213. The general rule does not hold good where the effect of it would be to render performance of the act impossible. This would be the case if it happened that the whole period during which the act could be done consisted of holidays, in which case the act may lawfully be done on the next possible day.

Again, the general rule does not hold good where the last day is a Sunday and the act to be done is one the performance of which on a Sunday is prohibited by the Sunday Observance Act, 1677 or where the act to be done has to be done, not by the party only; but by the Court or by the party in conjunction with the Court. In such cases the act may, when the last day limited for the performance of it happens to be a day when the Court or its office is closed, be done on the next practicable day.

The exception to the general rule laid down above would apply to the present case when the last day limited for the doing of an act happened to be a day when the Court was closed. The principle laid down in Section 10 of the General Clauses Act had therefore been accepted in paragraph 213 referred to above and

so it is not a passage that would help the counter-petitioners. Reference had also been made to *GELMINI v. MORIGGIA* (1913) 82 LJKB 949 : (1913) 2 KB 549, for the position that when a particular period is mentioned in any act for commencing any action, the action should be commenced within the period thus prescribed. This principle could not be applied because the law there is different. Apparently there was no provision corresponding to Section 10 of the General Clauses Act. It is therefore no authority for the position in hand.

6. We are, therefore, of the view that the position taken by the Allahabad High Court in *RAJA PANDE v. SHEOPUJAN PANDE* AIR 1942 All 429 (FB), is more in accordance with the principles of equity and justice. We prefer to follow the same and hold that the six months" period prescribed in Section 75 of the Factories Act is governed by Section 10 of the General Clauses Act; so that if the six months expired on a gazetted holiday, the complaint could be filed on the next day when the Court sat. The view of the learned Magistrate that the action started by the Inspector of Factories is barred by limitation is not correct.

In the present case we wish only to point out this mistake to the Subordinate Magistrates. The offence alleged was of a technical nature and it was alleged to have been committed nearly four years ago. We do not think that the continuance of the proceedings in the case would serve any useful purpose and so we do not order the re-entertainment of the complaints for trial and disposal. After laying down the general principle that is to govern matters of the kind before us, we dismiss all the revision petitions.