
(1971) 08 AHC CK 0027
In the Allahabad High Court

State	Vs	APPELLANT
Indersain Ahuja and Others		RESPONDENT

Date of Decision : 24-08-1971

Acts Referred:

Factories Act, 1948 — Section 106
Mines Act, 1952 — Section 16, 17, 18, 23, 24

Citation : (1971) 41 AWR 767 : (1972) CriLJ 358

Hon'ble Judges : Mohd. Hamid Hussain, J;C.D. Parekh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohd. Hamid Hussain, J.—Government Appeals Nos. 1517 and 1518 of 1967 have been referred for decision to Division Bench by the Hon'ble Ramabhadran, J. on the ground that since the question of limitation u/s 79 of the Mines Act 1952 has arisen and therefore, these two appeals be decided by a Division Bench.

2. Government Appeal No. 1517 of 1967 arises out of Criminal Case No. 37 of 1966 in which, Indrasain Ahuja. Chandrasain Ahuja and Ammer Kalam were prosecuted under Sections 66, 69, 70 and 72C(i)(a) read with Sections 16, 17 and 18 of the Mines Act. 1952 on the complaint lodged on 17-2-1966 by the Regional Inspector of Mines. The other Government Appeal No. 1518 of 1967 arises out of Criminal Case No. 36 of 1966 in which Indrasain Ahuja and Chandrasain Ahuja were prosecuted for offences under Sections 66. 70. and 72C(1)(a) read with Sections 16. 17. and 18 of the Mines Act on the complaint lodged on 17-2-1966 by Regional Inspector of Mines.

3. The question which has arisen in the two appeals is whether the two complaints lodged against the respondents were within time and were not hit by Section 79(ii) of the Mines Act. The said Section 79 provides that-

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
- (iii) in any case where a Court of inquiry has been appointed by the Central Government u/s 24, within six months after the date of the publication of the report referred to in Sub-section (4) of that section, whichever is later.

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.

4. In both these appeals the prosecution case is that a lease to operate the Sheora Hill Stones Mines Jhansi. was given to Indrasain Ahuia for a period of one year, with effect from 1-10-1964 to 30-9-1965 and during this period Chandrasain was working as an Agent of Indrasain. It is alleged that during the operations of the mines, the respondents contravened certain provisions of the Mines Act and the Regulations framed thereunder and failed to take adequate safety measures with the result that two labourers working on the Mines died as a result of the accidental falling of stones. The failure to follow the regulations and to take adequate precautions for the safety of the workers was brought to the notice of the authorities by one Sheo Shankar Dayal by his application dated 7-7-1965 addressed to the Ministry of Labour Welfare. Government of India. New Delhi. Copies of this application had been forwarded to (1) The District Magistrate and Collector, Jhansi (U. P.), (2) Chief Engineer Central Railway, Bombay, and (3) the Inspector of Mines, Dhanbad, Government of India. The application was received in the office of the Chief Inspector of Mines on 9-7-1965 and it was forwarded for an immediate inquiry and report to the Regional Inspector of Mines. Ajmer. The Regional Inspector of Mines Sri. K. C. Gansoli. entrusted the inquiry to the Assistant Inspector of Mines Sri. R. Agarwal who went to the site of the accident on 10-9-1965 and made inquiries at the site in respect of the information conveyed in the application. Thereafter on 21st and 29th September 1965 Sri Agarwal wrote out his two reports in respect of the two fatal accidents and forwarded the same to his Superior Officers. On the basis of the two reports of Sri Agarwal two separate complaints dated 17-2-1966 were filed by Sri K. C. Gangoli the Regional Inspector of Mines in the court of the Magistrate Jhansi against the respondents for contravening various provisions of the Mines Act and Metaliferous Mines Regulations of 1951. The magistrate took cognizance of the two complaints and accordingly the respondents were prosecuted in the cases namely, criminal cases Nos. 36 and 37 of 1967.

5. In both the cases, the respondents pleaded not guilty and asserted that the

mines were not operated by them but by some one else and in support of this defence one Khubi Ram was examined as a defence witness. It was further contended that the two complaints were time barred.

6. The trial court, in both the cases, held that the prosecution of the respondents was time barred in view of the specific provision of Section 79(ii) of the Mines Act. The trial court was of the view that the information with regard to the accidents as well as neglect of the respondents in taking due precautions and their failure to comply with the provisions of the Act came to the knowledge of the Inspector on the 9th of July 1965. when the application of Sheo Shankar Dayal was received in the office of the Chief Inspector of Mines. Accordingly, the Magistrate acquitted the respondents in the two cases.

7. Aggrieved by the orders of acquittal passed by the Magistrate in the two cases, the State has preferred in this Court these Government Appeals Nos. 1517 and 1518 of 1967 on two grounds, namely:

(1) Because the acquittal of the accused is unwarranted in law and upon the facts and circumstances of this case.

(2) Because the order of acquittal is based upon findings which are against the weight of evidence on record.

8. The contention of the learned State counsel is that knowledge to the Inspector with regard to the irregularities committed by the respondents and the contravention of the provisions of the Act should be reckoned either from the dates on which the Assitt. Inspector wrote out his reports after visiting the site or from the 10th of September 1965. when the Assistant Inspector of Mines visited the site to ascertain the correctness of the facts contained in application dated 7-7-1965. We are unable to accept this contention of the learned State counsel. It is admitted that the application of Sheo Shankar Dayal dated 7-7-1965 reached the Chief Inspector of Mines on 9-7-1965, and it bears an endorsement of the same date for immediate inquiry and report. These facts are also borne out from the application itself which is on record. The learned State counsel has contended that the mere receipt of an application informing about the two fatal accidents and the irregularities committed by the respondents will not amount as Knowledge of the Inspector so as to reckon from that date the period of six months as provided in Section 79(ii) on the Mines Act. The learned Counsel contends that the Inspector had to ascertain by an inquiry about the correctness of the information given in the application and it is after his satisfaction that the knowledge of the facts contained in the application could be imputed to the Inspector.

8. Sri Shushil Kumar. State counsel has strenuously endeavoured to draw a distinction between the words "information" and "knowledge". The learned Counsel has placed reliance on a decision reported in State Vs. Keshavlal Amrutlal Ozha and Another, . In this case Mudholkar J. while considering the impact of Section 23(2) on Section 79 of the Act observed that:

The Learned Additional Sessions Judge thinks that Section 23(2) controls Section 79. There is no connection between the two. For, as already stated, while the former deals with an accident the latter deals with a breach of a statutory provision or of a rule. There is no penalty for an accident but there is penalty for the breach of a statutory provision or of a rule. Again, an inquiry is made obligatory in respect of certain kinds of accidents, but not in respect of every breach of rules or statutory provisions. I therefore hold that the two provisions are wholly independent of one another.

It was then said that had an inquiry been instituted earlier, the Inspector would have come to know of the breach in question earlier and so limitation must be deemed to have started running from the date of the notice of the accident or at most from the expiry of two months of the giving of the notice. It is common ground that the knowledge of an accident is not the same thing as the knowledge of an "offence", that is of a breach which is made penal. Therefore, the date of notice of the accident can in no circumstances be regarded as a starting point for the commencement of limitation. The expiry of two months from the date of notice cannot, for the same reason, be regarded as a starting point of limitation.

9. In the above cited Bombay case the question that came up for consideration was as to whether Section 23(2) controls Section 79(ii) of the Mines Act and Mudholkar, J. held that the legislature had kept the provisions of Section 79(ii) independent of those of Section 23. In the course of his judgment Mudholkar, J. has also observed thus:

But the point is. what bearing an inquiry u/s 23(2) has on the question of limitation? The inquiry that is made obligatory by it is with respect to certain kinds of accidents and not with regard to breaches of the provisions of the Act or the Rules made thereunder. The accident may or may not be the result of a breach of a rule or of a provision of the Act. It may be the result of a breach of which the Inspector was already aware. In that case, could it be said that the conclusion of the inquiry would furnish a fresh starting point of limitation? That would be contrary to the provisions of Section 79(ii) which sets out only one starting point of limitation, viz. the date of knowledge of the breach by an Inspector, and no other.

10. On a careful examination of the Bombay case, we are of the opinion that it has no applicability to the cases before us. The two cases against the respondents, with regard to the commission of irregularities, breach of the provisions of the Act and the Regulations, centre round two accidents resulting in the death of two labourers Ajodhya and Ammu which were brought to the notice of the Inspector of Mines and other authorities by the application D/- 7-7-1965 of Sheo Shankar Daval. This application was received in the office of the Inspector on 9-7-1965 and from this date, in our opinion, the Inspector would be deemed to have knowledge of the breaches complained of. It is a different matter that the Inspector, in order to collect specific data and further details before filing the

complaint, directed an immediate inquiry and called for a report.

11. The words "Knowledge of the Inspector" in Section 79(ii) have been used in a general form so as to include personal knowledge of the Inspector as well as knowledge acquired by him on receipt of information. No such words as "personal knowledge of the inspector" or "the inspector acquiring knowledge on inquiry" are to be found in section. Therefore, in our opinion, the knowledge; of the Inspector in the two instant cases would be inferred from the date of receipt of the application conveying the information which he had no apparent reason to doubt.

12. In a case reported in 1961 All LJ 624 : 1962 Cri LJ 2511 R. S. Sharma v. State, the import of the word "knowledge" as used in Section 106 of the Factories Act 1948 came up for consideration before a Division Bench.

13. Section 106 of the Factories Act which was being considered in the above case is to the effect:

No court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector.

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

14. While considering the import of the word "knowledge" as used in Section 106 quoted above, the Division Bench in that case (supra) has observed as under:

(i) The key word in the section is "knowledge", it has been contended on behalf of the State that there is a difference between "knowledge" and "information" and knowledge can be imputed to a person only at the stage when he believes the information to be true and that stage can only be reached after an enquiry has been made and satisfaction reached by the Inspector that the information is correct. It has been submitted that whether or not an Inspector had knowledge can be proved by him alone. In shorter Oxford English Dictionary among other the following meanings have been given to the word "knowledge".

Acquaintance with a fact : state of of being aware of informed; consciousness, (of anything). Acquaintance with facts, range of information. Intellectual acquaintance with or perception of fact or truth; the fact, state or condition of understanding. Formerly, also intelligence intellect. A mental apprehension; a cognition. Theoretical or Practical understanding of an art. science, language, etc The fact or condition of being instructed, information acquired by study; learned Information, intelligence : intimation." "It would be seen from the above that the word "knowledge" is sometimes used also in the sense of information.

It may be noticed that the words used in Section 106 of the Act are "came to the knowledge of an Inspector" and not "when the Inspector was satisfied about the

correctness of the information.

In our judgment the word "satisfaction" has not been purposely used in Section 106 of the Act.

In our opinion the word "knowledge" has been used in the sense that if the Inspector himself sees an offence being committed or if he receives information which he has no reason to disbelieve it would amount to his having knowledge of the offence.

We are respectfully in agreement with the Views of the Division Bench expressed in the above case.

15. Similar words as used in Section 106 of the Factories Act are to be found in Section 79(ii) which runs thus:

No court shall take cognizance of any offence under this Act, unless complaint thereof has been made-

(i) ...

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

(iii)...

16. After having given our anxious consideration, we interpret the words "knowledge of the Inspector" in Section 79(ii) of the Mines Act. to imply personal knowledge of the Inspector as well as knowledge acquired from information which the Inspector has no reason to doubt.

17. In the two cases before us there is no material on record to indicate that the Inspector did not believe or felt suspicious about the allegations contained in the application of Sheo Shanker Daval dated 7-7-1965. On a plain read me of the complaint filed in the two cases it is abundantly clear that the basis of the complaint was the information received by the Inspector through the application of Sheo Shankar Daval dated 7-7-1965. Therefore in the two cases before us. the knowledge of the Inspector will be deemed from 7-7-1965 that is on receipt of the application of Sheo Shankar Daval dated 7-7-1965. Accordingly, the two complaints filed on 17-2-1966, were beyond six months from 7-7-1965 and no cognizance of them could be taken by the court.

18. While considering the question of limitation we had also occasion to examine the evidence on record. The evidence adduced by the prosecution in the two cases in support of the charges levelled against the respondents is also lacking in material particulars to bring home the charges against the respondents.

19-24. [After discussing the evidence in both the cases their Lordships proceeded.]

We accordingly conclude:

(i) That the two complaints filed in the two cases Criminal Case No. 36 of 1966 and Criminal Case No. 37 of 1966 having been presented beyond six months were clearly time-barred and no cognizance of them could be taken by the court.

(ii) That the evidence produced by the prosecution in both the cases is not sufficient to bring home the charges levelled against the respondents.

25. In the above circumstances the two appeals Nos. 1517 and 1518 of 1967 are dismissed.

C.D. Parekh, J.

26. I agree with the proposed order.