

(1982) 01 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. C. No. 1130 of 1971

State

APPELLANT

Vs

V.L. (sic)ain and Others

RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 10, 164, 190, 190(1)(a), 201
Factories Act, 1948 — Section 106
Mines Act, 1952 — Section 22, 24, 7, 72C, 72C(1)

Citation : (1982) J LJ 156

Hon'ble Judges : S.S. Sharma, J;G.L. Oza, J;B.C. Verma, J

Bench : Full Bench

Advocate : R.K. Verma, Deputy A.G. and N.C. Jain, for the Appellant; Y.S. Dharmadhikari and M.M. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.—This miscellaneous criminal case was filed by the applicant State against an order dated 4-8-1977 passed by Additional Sessions Judge, Chhindwara in Criminal Revision No. 36 of 1976.

2. This petition was initially heard by learned single Judge of this Court who by his order dated 14-5-1981 observed that the complaint was dismissed because of the decision of a Division Bench of this Court and as the learned Judge felt that it needs re-consideration, the matter was placed before Hon"ble the Chief Justice and, therefore, it has been placed before this Bench.

3. Facts necessary for disposal of this miscellaneous criminal case are that a complaint (Criminal Case No. 2638/73) for certain contraventions of the provisions of the Mines Act, 1952 was filed in the Court of Chief Judicial Magistrate; Chhindwara on behalf of the State (Government of India) by the Regional Inspector of Mines (now designated as Joint Director of Mines. Safety, Nagpur Region, Nagpur) against the non-applicants. The Chief Judicial Magistrate, by his order dated 25-8-1976, held that the complaint was barred by

time and, therefore, dismissed the complaint. A revision against this order was preferred which was heard by Additional Sessions Judge but he also dismissed the revision petition. It appears that the matter came before the learned single Judge. The records of the Courts below were requisitioned but the records were not available, But a copy of the complaint was placed before the learned single Judge and as the complaint was dismissed only on the ground of limitation, it was felt that reconstruction of the record did not create any problem.

4. The facts which are not disputed or which also are clear from the certified copies of the orders show that the complaint had been filed on 7-9-1973. The Magistrate besides making an endorsement about its presentation also mentioned that the copies of the complaint have not been enclosed and so the complaint be filed along with the copies With this endorsement, the complaint was returned back and it was thereafter re-presented on 15-9-1973. It is not disputed that this complaint was re-presented on 15-9-1973. The trial Magistrate, placing reliance on a Division Bench Decision of this Court in *State of Madhya Pradesh v. S. P. Mathur* 1970 J LJ 172=1970 MPLJ 171, held that since cognizance was taken on 15-9-1973, the complaint was beyond limitation. The learned Additional Sessions Judge was also of the opinion that cognizance having been taken on 15-9-1973, the complaint was barred by limitation u/s 79 of the Act. The learned single Judge felt that this decision in 1970 J LJ 172=1970 MPLJ 171 needs reconsideration and hence the matter has been placed before us.

5. It was contended by learned counsel for the applicant that u/s 79 of the Mines Act, a complaint has to be made within six months of the date on which the offence is alleged to have been committed or within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector. It was also contended that it would be relevant to consider the offence which was alleged in the present case and he, therefore referred to the complaint, a copy of which has been kept on record by the learned single Judge and it was contended that the management of the Mines were directed by a letter No 3086 dated 20-10-1972 to frame and submit systematic timbering rules for approval and to observe in the above Dip 65 district, since the roof thereof was waivy in nature and had a tendency to form a weak and bad roof and also, pending the approval and enforcement of such systematic timbering rules, the management were directed to keep the roof of that Dip district supported in the manner specified in the letter under reference. It was further alleged that inspite of the above directions, the management did not submit the systematic timbering rules. It was further alleged that the working at the junction of 65 Dip and No. 1 level, were supported by only one prop whereas even to keep such a place secured, it should normally be supported by at least two cross-bars supported by resting on cogs, besides one or two props. It was further alleged that therefore, the place where the roof fell causing the accident resulting in the death of a worker on 9-3-1973 was the result of noncompliance and it was clearly stated in the complaint that after this accident was reported, the Deputy Director of Mines, Safety, Parasia visited the mine on 12th and 16th of March

1973 and further on 14th April 1973 and it was after inspection that this non-compliance was discovered and the offence in the case, according to the learned counsel, lay not in the accident but in non-compliance with the directions and this came to the knowledge of the complainant on 14th of April 1973 and because of this, the complaint was made within six months as required u/s 9 of the Mines Act and it was, therefore, contended that it could not be said that the complaint was not made within six months,

6. It was also contended by learned counsel that the complaint initially was presented on 7-9-1973 and the learned Magistrate put the endorsement of presentation. But wanted the copies of the complaint also to be filed and in order to facilitate it, it appears that he returned the complaint to be filed along with the copies and thereafter it was represented on 15-9-1973. It was therefore, contended that initial presentation on 7-9-1973 itself was making of the complaint and as this was within six months even from the date of accident i.e. 9th of March 1973, it could not be said that the complaint was not made within six months. It was, therefore, contended that both the Courts below committed an error in dismissing the complaint as being barred by time. It was also contended by learned counsel that the decision reported in 1970 M. P. L. J. 171 only uses a different phraseology than is contemplated u/s 79 as, in this judgment what was observed was that if the cognizance of the complaint was not taken within six months from the date of the alleged offence, it had to be dismissed, and it is contended that it was because of this use of phraseology of taking cognizance that has created a little confusion. It was contended by learned counsel that the decision reported in State Government. Madhya Pradesh v. Rukhaba AIR 1953 Nag. 130, and Gopal Das v. The State AIR 1933 All 511, clearly lay down that where limitation is provided for making a complaint what is to be seen is the date on which the complaint is made or filed and not the date on which the Court takes cognizance thereof. The learned counsel also placed reliance on a decision reported in State of Bihar v. Deokaran Ninshi AIR 1973 Sup. Court 908.

7. Learned counsel for the non-applicants contended that the use of the phraseology "taking cognizance of a complaint" has been used in view of section 468 of the Code of Criminal Procedure and, therefore, it could not be said that some mistake has been committed because this phrase has been used. According to the learned counsel section 469 also provides for commencement of the period of limitation and it was contended that therefore the Court was right in following the decision reported in 1970 J.L.J. 172=1970 M.P. L. J. 171. It was also contended that the offence took place on 9-3-1975 and, therefore, the presentation of the complaint on 15th September 1973 would be clearly beyond six months. It was further contended that the matter has also been considered in a decision reported in Madanlal v. State AIR 1954 All, 27; State v. Keshavlal AIR 1958 Bom, 243 and Banwarilal v. State AIR 1970 Patna 377. It was also contended that section 201 of the Code of Criminal Procedure contemplates taking cognizance of the complaint and taking cognizance of the complaint u/s 201 is different from

taking cognizance of any offence as used in section 190 of the Code of Criminal Procedure, and it was contended that in the Division Bench decision when the phrase "taking cognizance" has been considered, it is only in view of the language in section 46S and it only means as is contemplated u/s 201 of the Code of Criminal Procedure. It was, therefore, contended that the Court below was right in dismissing the complaint as barred by time.

8. It was further contended by the learned counsel for the non-applicants that when the complaint was returned on 7-9-1973 it could not be said that it was presented on 7th of September 1973 as according to the learned counsel, the Magistrate had the Jurisdiction to return a complaint u/s 201 of the Code of Criminal Procedure. Therefore, the complaint could only be said to have been presented on 15-9-1973 and on this date, it was filed after the lapse of 6 months and it was, therefore, contended that the complaint was rightly dismissed.

9. It was contended that an accident-occurred on 9th of March 1973 resulting in the death of a worker and the complaint was filed u/s 72-C(1) and punishment is sought under this provision for the loss of life and in this view of the matter, it could not be said that the offence took place on any other date except 9th of March 1973; and as the complaint was presented on 15th of September 1973, it was presented beyond the period of six months prescribed u/s 79 of the Mines Act.

10. The complaint was filed for an offence u/s 72-C(1) (a) and (b) and in the body of the complaint what has been stated is that on receiving the information about the accident on 9th of March 1973, an enquiry was conducted on 12th, 16th of March 1973 and 14th April 1973 and it is further stated that as a result of this enquiry, it was found that there was non-compliance with the directions made with regard to the security and it is alleged that the offence alleged is the non compliance of the directions with regard to the security and as this non-compliance has resulted in the loss of life, sentence under clause (a) of section 72-C reads : -

72-C. Special provision for contravention of law with dangerous results;--

(1) Whoever contravenes any provision of this Act or of any regulation, rule or bye law or of any order made there under other than an order made under sub-section (1-A) or subsection (2) or sub-section (3) of section 22, shall be punishable:--

(a) if such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both; or

(b) if such contravention results in serious bodily injury, with imprisonment which may extend to one year or with fine which may extend to three thousand rupees, or with both; or

(c) if such contravention otherwise causes injury or danger to persons employed

in the mine or other persons in or about the mine, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both.

A reading of this provision makes it clear that the defence does not lie in the loss of life or serious bodily injury but the offence is contravention of any provision of this Act, regulation, rule, bye-law or any order made there under. Clauses (a) and (b) provide for punishment and it has been provided that where such non compliance results in loss of life enhanced punishment is permissible, Similarly, when this results in serious bodily injury, enhanced punishment is permissible. A reading of this provision, therefore, clearly goes to show that the offence is not the loss of life or serious bodily injury but the offence is non compliance with the order or direction made under this Act or disobedience of rules or bye laws.

11. In the light of this provision coupled with the allegations of facts made in the complaint constituting the offence, it is clear that what was alleged was the offence of non compliance with the orders or directions with regard to the security measures and this is clearly stated in the complaint to have been discovered when enquiry was made after receiving the information of the accident on 12th, 16th March and 14th April 1973. It is therefore, clear that after the enquiry was completed on 14th April 1973 that the offence was discovered and it is, therefore, clear that it is for this offence discovered on 14th April, 1973 that a complaint was filed on 7th of September 1973.

12. Section 79 of the Mines Act provides:--

79. Limitation of prosecutions.--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.

The section provides that no Court shall take cognazance of any offence under this Act unless the complaint thereof has been made and sub clause (ii) provides that this complaint has to be made within six months from the date on which the

alleged commission of the offence came to the knowledge of the Inspector. It is, therefore, clear that for an offence of this kind, as alleged in the complaint, a complaint had to be made within six months from the date on which the offence came to the knowledge of the Inspector and as stated above, it is clearly stated in the complaint that this offence was discovered after the enquiry was completed on 14th April 1973 and, therefore a complaint had to be made within six months from this date i.e. 14-4-1973.

13. It was contended that presentation of the complaint on 7-9-1973 is of no consequence because after putting an endorsement of the complaint being filed, it was returned and it was re-presented on 15-9-1973 and on this basis, it was contended that this return would be u/s 201 of the Code of Criminal Procedure and, therefore, the making of the complaint could only be said to be on 15-9-1973 and not on 7-9-1973. This contention advanced by the learned counsel is mis-conceived. Section 201 of the Code of Criminal Procedure provides for return of the complaint in case where the Court comes to the conclusion that the offence is such of which the Magistrate is not competent to take cognizance. Section 201, Code of Criminal Procedure provides:--

201. Procedure by Magistrate not competent to take cognizance of the case.--If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,--

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court,

It does not contemplate a return of the complaint because it does not contain the copies thereof. There is no provision in the Code of Criminal Procedure for return of the complaint except section 201 and it is also clear that there is no provision for return of a complaint merely because it does not accompany a copy the complaint. The copy of a complaint is needed only under clause (iii) of section 201 and there is nothing in the provisions of the Code of Criminal Procedure to indicate that that a copy of the complaint could not be filed after the complaint was made to the Court and before the stage for clause (3) of section 204 of the Code of Criminal Procedure is reached. It is, therefore, clear that when the complaint was presented to the Magistrate on 7-9-1973 and The Magistrate put an endorsement of its presentation, it will be 7-9-1973, the date on which the complaint could be said to have been made to the Magistrate. Its return for purposes of copies and re-presentation on 15-9-1973 is of no consequence within the language of section 79 of the Mines Act. The complaint was made to the Magistrate on 7-9-1973 and it is on this date that the Magistrate put an endorsement of presentation. Section 79 (i) and (ii), quoted above, require that a complaint should be made within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector and it is, therefore, clear that when the complaint was presented on 7-9-1973 a complaint

was made and as the offence came to the knowledge of the Inspector on 14-4-1973, it could not be said that the complaint was not made within six months and in this view it is clear that both the Courts below committed an error of law in dismissing the complaint.

14. In *State of Madhya Pradesh v. S. P. Mathur* 1970 J LJ 172-1970 MPLJ 171, a Division Bench of this Court while considering section 79 of the Mines Act observed:--

18. In our opinion, the decision of the trial Court that the complaint is barred by limitation is correct. There is nothing to show that the District Magistrate, is a Magistrate First Class "under section 10, Criminal Procedure Code" by virtue of his office, ever took cognizance of the complaint. Taking cognizance does not involve any formal action or action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Taking of cognizance is both a mental as well as a judicial act. Before a Magistrate can be said to have taken cognizance u/s 190(1)(a), Criminal Procedure Code, he must not have only applied his mind to the complaint but must have done so for proceeding in a particular way under the subsequent provision of Chapter 15, for example, investigation by the police u/s 164 or issue of a search warrant, he cannot be said to have taken cognizance of the offence (see *Superintendent and Remembrancer of Legal Affairs v. Abani Kumar Banerjee* AIR 1950 Cal 437 and *R. R. Chari v. The State of Uttar Pradesh* AIR 1951 SC 207

In these observations, the learned Judges constituting the Division Bench analysed the language "taking of cognizance" but the observations made in the next paragraph of the judgment: -

19. There is nothing in the record on the basis of which it could be asserted that the District Magistrate, Bilaspur, had ever applied his mind to the suspected commission of the offence which was alleged in the complaint. The Mining Officer who sent the complaint with his covering letter does not appear to have any authority to transfer the case for trial to the Court of the Magistrate First Class, Katghora, No one has been examined in the case to show as to how and under what circumstances the papers remained in the office of the Collector and were then sent to the Magistrate First Class, Katghora. The best that can be urged in his favour is that he acted in his executive capacity in sending the complaint to the authority to whom it was addressed. The cognizance, therefore, of the complaint cannot be said to have been taken before 26-6-1965 on which date the complaint reached the Court of the Magistrate First Class, Katghora.

Clearly go to show that what was made by the Division Bench of taking cognizance of was nothing more than the presentation of the complaint as is clear from "The cognizance, therefore, of the complaint cannot be said to have been taken before 26-6-1965 on which date the complaint reached the Court of the Magistrate First Class, Katghora." It may be that the phraseology "taking cognizance of the complaint" may have been used in this judgment is the

language of section 468 of the Code of Criminal Procedure, as was contended by the learned counsel for the non-applicants But so far as the present case is concerned, we are concerned with section 79 of the (sic) Act and the Division Bench also was merely concerned with section 79 of the Mines Act and it is always proper to use the language used by the Legislature in order to avoid confusion. In section 79, the Legislature used the language "unless complaint thereof has been made". It is, therefore, clear that what S. 79 contemplates is making of the complaint to the Magistrate and if the complaint is in writing it will only mean presenting the complaint before the Magistrate. It appears that by use of the phraseology which looks like the language of section 468 of the Code of Criminal Procedure by the Division Bench in 1970 MPLJ 171, some confusion has been created and the learned single Judge, therefore, felt that this view does not appear to be correct. But a reading of this judgment clearly goes to show that some confusion does exist by the use of phraseology but what it lays down clearly is that the complaint must reach the Magistrate within six months from the date of offence as is provided in clause (i) of section 79 and that is clearly the law as contemplated u/s 79 of the Mines Act.

15. In *Stale Government, Madhya Pradesh v. Rukavsa* AIR 1953 Nag. 150, a Division Bench of this Court was considering the language of section 106 of the Factories Act and it was clearly stated:--

10. Section 106, Factories Act. does not say that the cognizance should be taken within 3 months. Here the Magistrate no doubt took cognizance after 3 months but the complaint was made within 3 months. There is no contravention of the provisions of section 106, Factories Act. In *Provincial Government C. P, and Berar v. Ganpat* AIR 1943 Nag 213 the offence was committed on 18-2-1942. The complaint was made to the Deputy Commissioner by the Inspector of Factories on 27-7-1942. The Deputy Commissioner sanctioned the prosecution but the papers did not leave his office until 20-8-1942. The complaint was actually received by the Sub-Divisional Magistrate on 21-8-1942. It was in view of these facts that the complaint was held to be barred by limitation.

In the present case the complaint was sent from The office of the District Magistrate on 20-5-1950 and was received the next day in the Court concerned within 3 months of the commission of the offence. The office is said to have been committed on 26-2-1950.

The decision in "*Lakhan v. Emperar*" AIR 1936 All 788 and in *Gopal Marwari v. Emperor* AIR 1943 Pat 245 (SB) are in applicable to the present case as the facts therein are distinguishable, we hold that the complaint is not barred by limitation. We set aside the order dated 8-2-1951 acquiring the respondents. As there has been no trial on the merits we direct the lower Court to dispose of the case in accordance with the law.

And it could not be disputed that the language used in section 106 of the Factories Act is practically the same as used in section 79 of the Mines Act.

16. In *Gopal Das v. The State* AIR 1955 All 511, a Division Bench of Allahabad High Court also had an occasion to consider the language of section 106 of the Factories Act and it was observed:--

It appears to us therefore that the Chief Inspector of Factories did not send this complaint to the District Magistrate for his taking action as a Magistrate but for his taking action on the executive side as an Inspector or just as a senior officer in the executive hierarchy. It follows, therefore, that no proper complaint to a competent Magistrate was made within three months of the detection of the offence and that, therefore, the Sub-Divisional Magistrate of Firozabad could not have taken cognizance of this offence.

17. In *State v. Keshavlal* AIR 1958 Bom 243, section 79(ii) of the Mines Act came for consideration and it was observed:--

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 the 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 circumstance 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.

In *State of Bihar v. Deokaran* AIR 1973 SC 908, section 79 of the Mines Act came up for consideration before their Lordships of the Supreme Court and it was observed:--

A complaint in respect of such an offence has, u/s 79, to be filed within six months from the date of such default, in the present case January 21, 1950. The question then is whether the offence in question is covered by the substantive part of section 79, or whether it is covered by the Explanation thereto. If the offence is of the former kind, the complaint in regard to it would be clearly time barred. It would not be so if the offence is of the kind, often called a continuing offence, in which event the Explanation of section 79 would operate.

18. It is clear from these observations that what was meant by section 7 was the making of the complaint or the filing of the complaint within six months. A similar question u/s 79 of the Mines Act came up for consideration before a single Judge of this Court in *Regional Inspector of Mines, Parasia v. K. K. Sen Gupta* 1973 J LJ 456=1973 MPLJ 553, His Lordship observed:--

...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.

19. It is, therefore, clear that section 79 only contemplates making of a complaint within six months and in a case falling under clause (ii) it has to be

made within six months from the date on which the commission of the offence came to the knowledge of the Inspector and, as discussed earlier, it is clear from the statements contained in the complaint that in the present case it came to the knowledge of the Inspector after the enquiry was completed on 14th April 1973 and as the complaint was made to the Magistrate on 7th September 1973, it was made clearly within time.

20. Consequently, this petition is accepted and the complaint is sent back to Chief Judicial Magistrate, Chhindwara with a direction that he shall proceed with it in accordance with law.