

(1991) 12 MAD CK 0006
In the Madras High Court
Case No : Criminal Appeal No. 385 of 1987

State by Public Prosecutor

APPELLANT

Vs

M. Shanmugam and Another

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19, 21, 21(1), 21(2), 22(2)

Criminal Procedure Code, 1973 (CrPC) — Section 21(1), 21(2), 468(2)(b), 472, 473

Citation : (1992) LW(Cri) 308

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : P. Govindarajan, Govt., on behalf of the State, for the Appellant; G. Jeremiah, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—This appeal by the State is directed against the judgment of the learned Chief Judicial Magistrate, Salem in C.C.50 of

1986, acquitting the respondents herein, tried for an offence under Sec. 21 Sub-section 2 read with Sec.37 of the Air (Prevention and Control of

Pollution) Act, 1981 on the ground that the complaint was barred by limitation.

2. The Member Secretary, of the Tamil Nadu Pollution Control Board, Madras filed the complaint against the respondents for the offence u/s 21

sub-section 2 read with Sec. 37 of the above Act (hereinafter referred to as "the Act") on the allegation that under Sec. 21(1) of the Act no person

could without the previous consent of the State Board for the Prevention and Control of Air Pollution constituted under the Act, operate any

industrial plant for any industry specified in the Schedule to the Act, that the State Government in G.O.Ms. No. 4, Environment Control

Department dated 28.9.83, in exercise of the powers conferred u/s 19 sub-section (1) of the Act, notified with effect from 1.10.83, the entire area

within the State of Tamil Nadu as Air Pollution Control Area for the purposes of the Act, that under Rule 7, sub-rule 2 of the Tamil Nadu Air

(Prevention and Control of Pollution) Rules, 1983 application for consent under Sec. 21 Sub-section (2) of the Act should be made within six

months from 31.3.1984, that the respondents who were bound to get consent did not make any application before 31.3.84 to the Board for

operating their industrial unit and that therefore the respondents had committed an offence u/s 21, sub-section (2) read with Section 37 of the Act.

3. The respondent raised an objection that the complaint was barred by limitation u/s 468(2)(b) of the Criminal Procedure Code, in that the

offence had been committed on the date of the expiry of six months from 31.3.1984, which was the last date for applying for consent under Sec.

21(2) but that the complaint had been filed only on 27.3.1986, long after the period of limitation prescribed under the Criminal Procedure Code

and that therefore, the respondents were entitled to an acquittal. The appellant's contention had been that the offence under Sec. 21(2) is a

continuing offence within the meaning of Sec. 472 Cr.P.C. The learned Magistrate upheld the contention of the respondents and acquitted the

respondents on the ground that the complaint was barred by limitation. Aggrieved with the acquittal, the State has filed this appeal.

4. The learned Public Prosecutor reiterating the contention made in the trial court urged that the offence of not applying for consent as required

under Sec. 21(2) of the Act was a continuing offence and as such u/s 472 Cr.P.C. prosecution could be launched so long as the offence continued.

5. Per contra, the learned counsel for the respondents submitted that under Rule 7(2), application for obtaining consent has to be made within six

months of the date of the publication in the Gazette declaring the area as a Pollution Control Area and that when an outer limit is fixed for a

particular act and the act is not done within the date so fixed, the offence is committed once and for all the succeeding day and the offence would

not be a continuing offence. According to the learned counsel, the complaint was barred by limitation.

6. The short question that arises for consideration is whether the acquittal of the respondents on the ground that the offence u/s 21(2) of the Act, is

not a continuing offence can be legally sustained.

7. The prosecution is for an offence under Sec. 21(2) of the Act. The relevant portion of Sec. 21 is as follows:

21. Restrictions on use of certain industrial plants: (1) subject to the provisions of this Section, no person shall, without the previous consent of the

State Board, operate any industrial plant for the purpose of any industry specified in the Schedule in an air pollution control area.

(2) An application for consent of the State Board under Sub-section (1) shall be accompanied by such fees as may be prescribed and shall be

made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed.

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial

plant for the purpose of any industry specified in the Schedule, such person shall make the application under this sub-section within such period

(being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall

be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

Rule 7 provides for the manner in which application for consent under Sec. 22(2) of the Act has to be made. Form I of the Schedule to the Rules,

has been prescribed as the Form for the application. Rule 7(2) is as follows:

Every application for consent under the proviso to sub-section (2) of section 21 shall be made within six months from the date of declaration of any

area as air pollution control area.

The area has been notified as a pollution control area by publication in the Gazette on 13.9.1983. The last date for applying for consent was

therefore 12.3.1984. The offence of failure to apply for consent as required under Sec. 21(2) is committed on 13.3.1984. Limitation, therefore,

starts running from 13.3.1984 itself. The offence being punishable with imprisonment for a period of three months, the period of limitation is one

year. It is to be noted that in the instant case the prosecution is not for violation of Sec. 21(1), for operating any industrial plant without the

previous consent. When an industrial plant is operated without the previous consent, in violation of Sec. 21(1) the offence continues so long as the

operation continues without consent. The offence comes to an end only when operation ceases or when the consent is obtained. Unlike an offence

under Sec. 21(1), the offence under Sec. 21(2) is committed on the expiry of the six months period provided under Rule 7(2) for applying for

consent. When the six months period expires, the offence is committed once and for all. Failure to apply for consent within the six months period,

is not a continuing offence. The offence under Sec. 21(2) is not a continuing offence. The prosecution is barred by limitation.

8. It is regrettable that when the offence itself is committed on 13.3.1984, the State has gone about very leisurely in initiating prosecution against

the respondents. The decision by the Board to prosecute the respondents is taken on 19.10.1984. Yet the complaint is filed 1-1/2 years later, on

27.3.1986. The department should have stated in the complaint that the offence was a continuing offence, if they really thought so. Or they should

have taken out a separate application under Sec. 473 Cr.P.C. to have the delay condoned. Neither is done. Obviously the Department was not

aware of the law of limitation applying to criminal offences also. It is also not known why the Department should have preferred to file a complaint

for the offence under Sec. 21(2), instead of filing a complaint for the offence under Sec. 21(1) , when the respondent was operating his plant

without the necessary consent, which even under the Act is continuing offence. If despite stringent legislations, the problem of environmental

pollution still remains untouched, it is due to the Luke warmness of the enforcing machinery.

9. The order of the learned Chief Judicial Magistrate has to be upheld and the appeal is dismissed.