
(1957) 11 BOM CK 0017
In the Bombay High Court
Case No : Criminal Reference No. 229 of 1957

State of Bombay

APPELLANT

Vs

Keshavlal Amrutlal Ozha

RESPONDENT

Date of Decision : 21-11-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438
Mines Act, 1952 — Section 74

Citation : (1958) 2 LLJ 698

Hon'ble Judges : J.R. Mudholkar, J

Bench : Single Bench

Judgement

1. This case has been reported under S. 438 of the Criminal Procedure Code by the Additional Sessions Judge, Chanda.

2. The relevant facts are briefly these : On 18 October 1955, there was a fatal accident in the Mahakali Coal Mines at Chanda. The non-applicant No. 1 Keshavlal is the managing director of these mines while the non-applicant No. 2 Walker, is the manager thereof. Notices of the accident were given immediately by telegrams to the Chief Inspector of Mines, Dhanbad, and the Regional Inspector of Mines, Chhindwara. Similarly, notices of the accident under S. 23(1) of the Mines Act 1952, were also given immediately. Early in May 1956, the Regional Inspector of Mines directed Shankaran (P.W. 1), an Inspector of mines, to inquire into the accident. He accordingly inquired into the matter and during the course of the inquiry he learnt of the first time that the non-applicants had committed breaches of regulations 96 and 146 and had thereby committed an offence punishable under S. 74 of the Mines Act. A complaint was lodged by the Regional Inspector Mines on 25 June 1956. Thereupon both the non-applicants were proceeded against for the alleged breaches. During the course of the trial an objection was raised on behalf of the non-applicants that the complaint was barred by time. Their objection was overruled by the trying magistrate, Thereupon the non - applicants preferred an application of provision before the Additional Sessions Judge, Chanda, Being of opinion that the complaint was

barred by time he has reported the case to this Court.

3. Section 79 of the Mines Act provides, no Court shall take cognizance of any offence under this Act, unless complaint therefore has been made :

(1) 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 under S. 24, within six months after the date of the publication of the report referred to in Sub-section (4) of that section.

4. It is contended on behalf of the State that the offence came to the knowledge of the Inspector only after the completion of the inquiry by Shankaran and that the complaint having been made within six months of the completion of that inquiry, it was within time.

5. On behalf of the non-applicants it is, however, contended that where knowledge of the commission of offence is dependent upon the result of an inquiry, such inquiry must necessarily be started within two months of the date of intimation of the accident. It is pointed out on their behalf that where there has been an accident causing loss of life of a workman, S. 23 requires a notice of such accident to be given by the owner of the mines to the appropriate authority. Now, where such a notice is given, inquiry into that accident has to be commenced by the appropriate authority within two months of the receipt of the notice. Where it is claimed that knowledge of the offence is obtained only as a result of inquiry made under S. 23 of the Act, then, according to him, the inquiry must necessarily be commenced within two months of the receipt of the intimation of the accident and the period of limitation cannot be permitted to be extended by delaying the inquiry.

6. Sub-section (2) of S. 23 reads thus :

"Where a notice given under Sub-sec (1) relates to an accident causing loss of life the authority shall make an inquiry into the occurrence within two months of the receipt of the notice and, if the authority is not the Inspector, he shall causes the Inspector to make an inquiry within the said period."

7. It is no doubt clear from this provision that making of an inquiry is made obligatory thereby and also that an inquiry has got to be instituted within two months of the receipt of notice. Had the provisions of this section been complied with, the Regional Inspector who filed the complaint would, undoubtedly have come to know of the alleged offence earlier. But the point is, what bearing an inquiry under S. 23(2) has on the question of limitation ? The inquiry that is made obligatory by it is with respect respect to certain kinds of accidents and not with regard to breaches of the provisions of the Act or of the rules made there

under. 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 S. 79(ii) which sets out only one starting point of limitation, viz, the date of the knowledge of the breach by an Inspector, and no other. It would follow, therefore, that when the fact of a breach comes, for the first time, to the knowledge of the Inspector as a result of the inquiry, the limitation for making a complaint in respect of it would commence to run on the date on which he acquires such knowledge. Even the date of conclusion of the inquiry is not material for this purpose. Where such inquiry is made by an inspector not empowered to make a complaint, then the starting point would be the date on which the report of that inquiry is submitted to the Inspector authorized to make a complaint.

8. According to the learned Additional Sessions Judge, the inquiry should not only have been commenced but also completed within two months of the receipt of the notice of the accident and the complaint filed within six months of the completion of the inquiry. In the first place, S. 23(2) requires only the commencement of the inquiry within two months and says nothing as to how long it may go on. Secondly, as already pointed out, the date of completion of the inquiry is not recognized by S. 79(ii) as a starting point of limitation.

9. The learned Additional Sessions Judge thinks that S. 23(2) controls S. 79. There is no connexion 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.

10. 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 "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.

11. No doubt, had the inquiry been made earlier, the fact of the commission of the breach or offence would have come to the knowledge of the Inspector earlier. But S. 79(ii) does not say that the date on which an Inspector would or ought to have acquired knowledge of the commission of an offence had he been diligent or had he complied faithfully with the provisions of the Act, would also be a

starting point of limitation. In the circumstances, therefore, the delay in making the inquiry, however irregular or deplorable, cannot affect the question of limitation.

12. I may point out that where a Court of inquiry has been appointed under S. 24 of the Act, it was thought necessary by the legislature to provide for a special period of limitation for filing a complaint based upon the findings in that inquiry. It, therefore, enacted a special provision, which is S. 79(iii). There is no such provision with respect to an inquiry under S. 23. The proper inference to be drawn would thus be that the legislature did not intend to provide a special period of limitation for making a complaint in a case where an inquiry under S. 23 has been made. This fact, therefore, lends support to my view that in the matter of limitation for filing a complaint, the legislature has kept the provisions of S. 79(ii) independent of those of S. 23.

13. Upon this view, I hold that the complaint is within time. The report is accordingly rejected.