

**(1963) 08 GUJ CK 0005**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 595 of 1962**

State of Gujarat

APPELLANT

Vs

V.L. Vakharia

RESPONDENT

**Date of Decision :** 22-08-1963

**Acts Referred:**

Bombay Factories Rules, 1950 — Rule 72  
Factories Act, 1948 — Section 106

**Citation :** AIR 1964 Guj 125 : (1964) CriLJ 666 : (1966) 12 FLR 343 : (1964) 10 GLR 29

**Hon'ble Judges :** V.B. Raju, J

**Bench :** Single Bench

**Advocate :** A.D. Desai, Asst. Govt. Pleader, for the Appellant; I.M. Nanavati and B.J. Shelat, for the Respondent

## Judgement

V.B. Raju, J.—This is an appeal by the State against the acquittal of the respondent who was prosecuted u/s 92 of the Factories Act, 1948, for contravention of Rule 72 of the Bombay Factories Rules, 1950. This rule reads as under:-

"Canteens. -- (1) Rules 72 to 78 shall come into force in respect of any class or description of factories on such dates as the State Government may by notification in the official gazette appoint in this behalf.

(2) The occupier of every factory wherein more than 250 workers are ordinarily employed and which is specified by the State Government by a notification in this behalf, shall provide, in or near the factory, an adequate canteen according to the standards prescribed in these Rules. The canteen shall be available for the use of the workers within six months from the date of such notification."

The trying Magistrate took the view that the prosecution was barred by limitation in view of the provisions of Section 106 of the Factories Act which provides that

"No Court shall take cognizance of any offence punishable under the 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."

According to the learned Magistrate, Rule 72, which was framed u/s 46 of the Factories Act, 1948, was made applicable to the factory of the respondent on 20-12-1950, but the prosecution was launched in 1961. The learned Magistrate relied on 1956 Lab LJ 153 (Bom) State of Bombay v. Bhiwandiwalla, and held that the offence of not providing a canteen within six months from the date of notification was not a continuing offence and that as the prosecution was not launched within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, it was barred by limitation. Hence the present appeal by the State.

2. Section 106 of the Factories Act provides that no Court shall take cognisance of any offence punishable under the 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. We have, therefore, to see on what date or dates the alleged offence was committed and the alleged commission of the offence came to the knowledge of the Inspector.

3. The expression "commission of the of-fence" may refer to positive acts as well as omissions. An offence may be committed by the commission of a positive act or by the omission to do an act. In the case of certain acts, the commission of the act would be complete as soon as the act is committed and the offence would be repeated only if the act is repeated. But there may be some positive acts, which by their definition imply the continuous commission of the act. For instance, the offence of kidnapping is defined as taking or enticing a minor out of the keeping of the lawful guardian of the minor etc. The taking out of the lawful guardianship is an act which continues after the act is once commenced and which continues until it is terminated by another positive act. In a sense there is nothing like a completion of the act unless the minor is restored to the lawful guardian. Such a positive act does not terminate unless the person commits another positive act of restoring the minor to the lawful guardian. But omission to do a positive continuous act may be made criminal. Here again the omission once begun does not terminate until a positive act is done. For instance, if the omission to provide food is an offence, that omission continues unless and until food is provided. But the omission to do a single positive act which is not continuous may not be a continuing offence.

4. It makes no difference to those principles that a prescribed act has to be done within a specified period. The positive act of providing a canteen has got to be done within six months of a particular notification, but the omission to do so does not become complete as soon as the six months' period is over. The establishment of a factory without a licence may be an offence. Similarly, working a factory without a licence may be an offence. Both of these are positive acts, but the establishment of a factory is complete as soon as the factory is established. The offence of working a factory without a licence continues so long

as the factory continues to work. It is this principle, which has been explained in Emperor Vs. Karsandas Govindji Ved, , and State Vs. Umashankar Laxminarayan Jaiswal and Another, : State Vs. Umashankar Laxminarayan Jaiswal and Another, , relied on by the learned counsel for the State. I agree with the following observations in 1956-2 Lab LJ 153 (Bom):-

"If the offence committed was one which would be committed only once, then that offence was not a continuing offence and the provisions of limitation u/s 106 of the Act would apply to it, but if the offence committed was of such a character that it was committed by the respondent from day to day, then it was a continuing offence to which the provisions of limitation did not apply."

A distinction has to be made between an omission to do a single act which is prescribed and an omission to do an act when what is prescribed is a continuous act such as the provision of a canteen.

5. In the instant case, the law namely Rule 72 requires the provision of a canteen. The rule further provides that the canteen shall be available for the use of the workers within six months from the date of such notification. The omission to provide a canteen does not become complete after the expiry of six months and the omission, continues unless and until the canteen is continuously provided. In other words, the offence is what may be called a continuing offence. It is committed every moment the omission continues, after the prescribed period of six months. It would be an offence even if a canteen is provided within six months if the canteen is closed at any time.

6. I, therefore, hold that the omission to provide a canteen or the failure to provide a canteen is an offence, which is repeated every moment the omission continues, and that therefore Section 106 of the Factories Act does not come in the way of the prosecution. The view taken by the lower Court is, therefore, wrong. The appeal is allowed, the acquittal of the respondent is set aside and the matter is remanded for re-trial.