

(1965) 06 KAR CK 0008
In the Karnataka High Court

State of Mysore

APPELLANT

Vs

M.R. Sreenivasan

RESPONDENT

Date of Decision : 03-06-1965

Acts Referred:

Factories Act, 1948 — Section 106, 14, 92

Citation : (1966) CriLJ 560

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

A.R. Somnath Iyer, J.—On November 13, 1963, the Inspector of Factories, Mysore Division, presented four complaints to the District Magistrate, Mandya, against the respondent. In those complaints, the accused was charged with having committed various offences punishable under the relevant provisions of the Factories Act, 1948 (Central Act 63 of 1948).

2. In C. C. No. 60/63 the accusation was that he had not guarded the grinder and had neglected to fence the belts driving the horizontal saw. In C. C. No. 61/63, it was alleged that he had not maintained form No. 7 which was the record of lime washing and providing a first aid box and had not provided washing facilities for the use of the workers. In C. C. No. 62/63 it was said that he had not provided drinking water facilities, latrines and urinals. In C. C. No. 63/63 it was complained that he had not displayed an abstract in form No. 20 as enjoined by the Act. The complaints stated the various provisions of the Factories Act under which the offences stated to have been committed by the accused were punishable,

3. The Inspector of Factories who made those complaints was the only witness who gave evidence in support of the prosecution. During the course of his evidence he stated that he visited the factory of the accused for the first time on May 18, 1963 and again on another occasion on September 12, 1963. He stated that the various transgressions of the various provisions of the Factories Act alleged to in the course of the complaints were all noticed by him both on the

first occasion as well as on the next.

4. On the basis of this evidence given by the Inspector of Factories, the District Magistrate thought that the complaints were time-barred_ complaints presented beyond the period prescribed by Section 106 of the Factories Act which reads, No court shall take cognizance of any of offence punishable under this Act unless complaint there of 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 there of may be made within six months of the date on which the offence is alleged to have been committed.

The District Magistrate thought that since the offences were all to the knowledge of the Inspector committed as early as on May 18, 1963, the complaints which were presented on November 13, 1963 beyond the period of three months prescribed by Section 106 of the Act were time-barred and that the accused was entitled to an acquittal. From these orders of acquittal, the State Government appeals. So these four appeals.

5. In the court below, on behalf of the Inspector one of the arguments advanced was that since the Inspector visited the factory of the accused on September 12, 1963 for the second time and since the Inspector served on the accused a written order directing compliance with the provisions of the Act and there was disobedience to that written order the complaints fell within the proviso to Section 106 since they were made within six months from May 18 1963 when the offences were stated to have been committed and were therefore, well within time. But the District Magistrate repelled that contention on the ground that no evidence was produced that any written order had been served on the respondent as contended. Mr. Government Pleader did not therefore very rightly ask us to pronounce in favour of the prosecution in that regard.

6. But Mr. Ashrit, the learned Government Pleader, advanced the argument before us that the District Magistrate was not right in thinking that the complaints were presented beyond the period of three months prescribed by Section 106 of the Factories Act. It seems to us that this submission is without an answer.

7. P. W. 1 gave evidence that when he visited the factory of the accused on September 1,2, 1963 he observed that the contravention of the various provisions of the Factories Act and disobedience to its provisions was continuing and had not stopped. What follows from this evidence, if it is believed, is that even on September 12, 1963, there was disobedience by the accused to the provisions of the Act. In a case like this where the charge against the accused was that he had not obeyed the positive directions of the provisions of the Factories Act, the accused commits a continuous offence which is punishable under the provisions of the Act in the sense that he commits that offence again and again. That being so, it would not be right to think that the offences to which

the Inspector referred in his complaints were offences committed on May 18, 1963 and not thereafter.

If when the Inspector visited the factory on September 12, 1963 he discovered that the accused had continued to disobey the provisions of the Act, it would be right to say that the accused committed offences punishable under the Act not only on May 18, 1963, when the Inspector visited the factory for the first time but continued to commit such offences throughout the period between May 18, 1963 and September 12, 1963. On every day during that period he committed those offences and the last occasion they were committed to the knowledge of the Inspector was on September 12, 1963.

8. The Magistrate should not have therefore understood the complaints as referring to offences committed on May 18, 1963. The proper way to understand the complaints was to say that the complaints related to offences committed on September 12, 1963 on which date the Inspector made the second visit to the factory and found that the disobedience to the provisions of the Act was continuing. In our opinion, the true meaning of the complaints is that the accused committed the offences referred to therein on September 12, 1963. In that view of the matter, since the complaints were made within the period of three months prescribed by Section 106 of the Factories Act, the complaints were well within time.

9. That this is the correct view to take is what emerges from the decision of the High Court of Bombay, *State Vs. A.H. Bhiwandiwalla*, in which Gajendragadkar J. as he then was referring to the expression "continuing offence" observed:

Even so, this expression has acquired a well recognised meaning in Criminal Law. If an act committed by an accused person constitutes an offence and if that act continues from day to day, then from day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only once. But we may have offences which can " be committed from day to day and it is offences falling in this latter category that are described as continuing offences.

In *The Public Prosecutor Vs. Veerabhadrapa Lakshminarayana Setty*, the complaint was that the accused had failed to construct a pucca dust

proof husk chamber as required by Section 14 of the Factories Act which was noticed by the Inspector of Factories when he visited the factory on October 5, 1950. Again he visited the Factory on January 24, 1951 when also he observed the same defect. Afterwards he presented a complaint on March 15, 1951 for an offence punishable u/s 92 of the Act. Govinda Menon, J. as he then was, expressed the view that the offence committed was a continuing offence and that when the Inspector visited the factory on the second occasion the accused committed the offence to the knowledge of the Inspector and that the offence referred to in the complaint was one committed on January 24, 1951 when the Inspector visited the factory on the second occasion and that therefore the

complaint was within time.

10. In the case before us the Inspector of Factories did not ask the District Magistrate to punish the accused for the old offences committed on May 18, 1963, but for the new ones committed on September 12, 1963. May 18, 1963 might have constituted the starting point of limitation if after the commission of the offences on that date came to the knowledge of the Inspector no disobedience to the provisions of the Act continued up to a point within three months from the date of the presentation of the complaints. These cases do not fall within that category.

11. These appeals must therefore, succeed. We should, in our opinion, set aside the order of acquittal and we do so. But since the District Magistrate did not record his findings on the other questions arising in the proceedings before him and acquitted the accused on the preliminary ground that the complaints were time-barred complaints, we direct a retrial in all these four matters and remit the matters to the District Magistrate for that purpose. Both the parties ask for liberty to produce all the evidence they wish to produce in the fresh trials now ordered and it is clear they are entitled to do so.