
(1981) 09 GAU CK 0030
In the Gauhati High Court

The Chairman, Silchar Municipal Board

APPELLANT

Vs

Azizur Rahman

RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:

Assam Municipal Act, 1956 — Section 174, 176, 177

Citation : (1982) CriLJ 1061

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Judgement

K. Lahiri, J.—This is an appeal against an order of acquittal passed by Shri B. Saikia, Magistrate (J, 1st Class, Silchar, acquitting the accused of the charges Under Sections 176/177, Assam Municipal Act, 1956(Assam Act 15 of 1957, for short "the Act".

2. The allegations against the accused were that he had constructed a house without previous sanction of the Municipal Board, Silchar, as required u/s 174 of "the Act". Further the accused violated the requisitions served on him u/s 177 of the Act. The accused appeared and the offences were explained. Three witnesses on behalf of the complainant and one defence witness were examined.

3. The case that emanates from the prosecution witnesses is that the accused had constructed one house in Municipal Holding No. 452 in Ward No. 20 without obtaining prior permission from the Board. He was served with notice dated 18-1-1971, by the Municipal Board to show cause why he should not be prosecuted. Thereafter, on failure to comply with the terms of the notice he was served with another notice dated 20-3-1971 asking him to demolish the unauthorised construction. But the accused did not comply with this requisition as well. Therefore, according to the Municipal Board, the accused was liable to be punished u/s 176/177 of "the Act". The indubitable position is that the commission of the offence u/s 176 of "the Act" was brought to the knowledge of the Vice-Chairman for the first time on 8-1-1971 and the complaint was lodged on 15-6-1971. This is admittedly within 6 months of the date on which

commission or existence of the offence was first brought to the notice of the Vice-Chairman of the Board. The learned Magistrate has held that offence u/s 176 of "the Act" is a "continuing offence", but committed an arithmetical error in calculating the period- When the alleged offence was brought to the notice of the Chairman on 8-1-1971 and the complaint was lodged on 15-6-1971, by all means the case was instituted within 6 months.

4. Mr. M. A. Laskar, learned Counsel for the accused has submitted that an offence u/s 176 of "the Act" is not a "continuing offence". Section 324 of "the Act" reads as follows;?

324. No prosecution for an offence under this Act of any rule or bye-law made in pursuance thereof shall be instituted without the order or consent of the Board, and no such prosecution shall be instituted except within three months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of date on which the commission or existence of the offence was first brought to the notice of Chairman of the Board;

Provided that the failure to take out any licence under this Act shall be deemed to be a continuing offence until the expiration of the period for which such licence is required to be taken out.

It is a provision made to safeguard frivolous accusations, prevent multiplicity of prosecution and to ensure that prosecution is launched after allegations are properly scrutinised by the Chairman. There are two class of offences contemplated u/s 324 of "the Act". First, the offences which are complete, and, secondly, offences which are continuing in their nature. In the instant case, the allegation has been made that the accused had commenced erection of a structure without proper sanction of the Board required u/s 174 of "the Act". Penalty for building without sanction or in contravention of sanction is a liability in law. Section 176 postulates that it is an offence to make any construction etc. "Without the previous sanction of the Board". Therefore, omission to take prior sanction from the Board is a statutory offence. There are two phylum of offences or liabilities in law. The first type of offence is an act of omission for which a liability is created in law- The second class of offence is an act of commission for which similar liability may be created in law. In the instant case, the allegation against the accused is that he had omitted to take any sanction from the Board required u/s 174 of "the Act". This omission has been made penal in Section 176. Ordinarily, a wrongful act or failure to perform an act required by law to be done becomes a complete act of omission or commission, as the case may be, as soon as the wrongful act is committed or omitted. According to Mr. Laskar, learned Counsel for the accused the wrong or the default is not a continuing wrong or default giving rise to a liability "de die in diem", that is, from day to day. The distinctive feature of a continuing wrong is that the law that is violated makes "the wrong doer" continuously liable for penalty, The question of similar nature came up for consideration in State Vs. A.H. Bhiwandiwalla, . In that case the

accused was charged with two offences ? (a) failure to comply with registration of his factory and to give notice of occupation, and, (b) running the factory without a licence issued under the Factories Act, 1948. The accused raised the plea of limitation against the prosecution. Similar limitations as contained in Section 324 of "the Act" are there in the Factories Act, 1948. Gajendragadkar and Shah, JJ. considered the nature of the offences in respect of the two categories of offences. Their Lordships also considered the meaning of the expression "continuing offence" and quoted with approval the significant observations of Beaumont C. J. in *Emperor Vs. Chhotalal Amarchand*, Their Lordships have observed that answer the question as to whether an offence is continuing or not, is to look into the nature of the offence and the description thereof. If the alleged offence is or can be committed only once then the offence cannot be said to be continuing one. On the other hand if the alleged offence is of such a character which may be committed by the accused from day to day then it may amount to continuing wrong or offence.

5. Their Lordships held that the wrong committed by the accused in running the factory without a licence or permit issued under the Factories Act was a continuing wrong. The reason was that the factory was made use of by the owner of the factory continuously without a valid licence or permit. Their Lordships held that the offence was a continuing offence because running the factory without a valid permit or licence or sanction was a wrong committed "die in diem".

6. Now, let us turn to S- 176 to find out whether the intention of the legislature is to make offence of violation of Section 174, a continuing offence, under "the Act". We extract the provisions of Section 176 :

176. Whoever erects, materially alters or re-erects or commences to erect, materially alter or re-erect any building without the previous sanction of the Board, or in contravention of any directions given by the Board granting sanction u/s 174, shall be liable to a fine not exceeding one hundred rupees for every such offence, and to a further, fine not exceeding five rupees for each day during which the offence is continued after he has been convicted of such offence.

(Emphasis added)

Therefore, construction of a house without obtaining a prior sanction has been expressly made a continuing offence in; Section 176 of "the Act". A similar question came up in *The State Vs. Kunja Behari Chandra and Others*, The Bench presided over by S. K. Das, J. considered the effect of the Indian Mines Act, 1923 as well as considered the meaning of the expression "continuing offence". Section 39 of the Indian Mines Act reads as follows:

39. Whoever contravenes any provision of this Act or any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinafter provided shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing contravention, with a further

fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.

(Emphasis added)

On interpretation of Section 39, their Lordships concluded that the language of the Section was obvious enough that violation of S- 39 would result in a continuing offence. The language of Section 39 of the Indian Mines Act, 1923 and that of Section 176 of the Act is similar. Turning to the decision of this Court, we find that in *Md. Nadir Shah Vs. The State and Another*, similar question cropped up. Therein, Marmora, J. as he then was held that Section 217; of the Assam Municipal Act, 1923 was a continuing offence. Section 217 of 1923 Act is extracted hereinbelow :

Whoever, being the owner or occupier of any land wilfully or negligently permits the same to be used as a market without a licence u/s 216, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued after conviction of such offence.

7. His Lordship held that an offender of this nature is continuing wrong or offence. On interpretation of Section 176, we find that the offence is continuing in its nature. However, the offence is continuing in nature but so far the penalty is concerned the offender is liable to a fine not exceeding Rs. 100/- on his conviction for the commission of the offence. If the wrong-doer continues to commit the wrong he is liable to a fine not exceeding Rs. 5/- for each day during which the offence is continued "after he has been convicted of such offence". Therefore, a person committing the offence can be penalised with fine not exceeding Rs. 100/-. However, if the offender demolishes the construction, or obtains permission or sanction for construction, he cannot be fined for the second time. Then the offence shall cease to be continuing offence. Therefore, ordinarily the offence is a continuing one but the offender can, by his own act, get himself exonerated to penalty in future. However, if he does not, his penal liability is of continuing nature. As such, we conclude that Section 176 has also created an act of omission in law as continuing offence.

8. However, the accused is also charged u/s 177 of "the Act". Section 177(2) is the nature and character of the offence, which we extract hereinbelow :

177(1) *** ***(2) Any person who fails to comply with a requisition issued by the Board under the provisions of Sub-section (1) shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding ten rupees for every day during which the person continues to make such default after service on him of such requisition.

(Emphasis added)

Therefore, the offence is a continuing one if the wrong-doer defaults to comply

with the requisition. Thus his liability is continuous after the date of service of the requisition. The act of omission, which is an offence in law, is a continuing offence. In the instant case the allegations are that the accused failed to comply with the requisition issued by the Board u/s 177(I). The nature of the offence clearly denotes that it is a continuing wrong or offence. As such, the offences as created Under Sections 176 and 177(2) are continuing offences. If a person upon conviction u/s 176 continues to commit the wrong he shall be liable to daily fine. As such, it is a continuing offence. Section 177(2) clearly makes the wrong a continuing offence and the penal liability is a continuing fine which is writ large. As such, we hold that the learned Magistrate is justified in concluding that the offences u/s 176 and Section 177(2) are continuing offences and the prosecution can be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of Chairman of the Board which includes Vice-Chairman also.

9. In the result, we hold that when the offence was brought to the notice of the Chairman on 8-1-71 and the criminal case was instituted on 15-6-71", that is, within six months from the date on which the commission or existence of the offence was first brought to the notice of the Vice-Chairman of the Silchar Municipal Board, prosecution u/s 176 of "the Act" was not barred u/s 324. Mr. Laskar has pointed out that P.W. 1, Municipal Overseer, stated that he submitted the report of violation to the Chairman on 26-12-70 and not 8-1-71, as claimed by the prosecution. However, we find that the report was submitted on 26-12-70, but the Chairman received the report and perused it on 8-1-71. As such, the commission or existence of the offence came to the notice of Vice-Chairman of the Board on 8-1-71 and not on the date of submission of the report by the Overseer. Even if we hold that the date of the report is the date of the knowledge, the complaint was lodged within six months therefrom. This aspect has been fairly conceded by Mr. Laskar. Therefore, we hold that the lodgment of the complaint for prosecution u/s 176 was not barred by limitation. Further, the accused was charged with the offence u/s 177 of "the Act" which is also a continuing offence- The requisitions were served on 18-1-1971 as well as 23-1-1971. As such, the prosecution u/s, 177 is also well within the period of limitation prescribed u/s 324 of "the Act". In the result, we hold that the learned Judge committed arithmetical error in calculating the period. We hold that the prosecution is competent Accordingly, we set aside the order of acquittal and remit back the case to the learned Magistrate or his successor with the direction to conclude the trial ex-peditiously, in accordance with the law.

10. In the result, the appeal is allowed.