
(1957) 09 MAD CK 0024
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

T.A. Rathnam Pillai

RESPONDENT

Date of Decision : 16-09-1957

Acts Referred:

Citation : AIR 1958 Mad 155 : (1958) CriLJ 524 : (1958) 2 MLJ 43

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Judgement

Basheer Ahmed Sayeed, J.—This appeal is against the order of the learned Sessions Judge, West Tanjore division, Tanjore, setting aside

the conviction of the respondent-accused, under Rs. 3 and 6 of the Rules framed under the Madras Factories Act. The accused has been running a

factory known as Swami Motor Transport Ltd. and he has been having a workshop therein. In the workshop he has been building bodies for

buses and repairing automobiles and in connection therewith he was also having welding and smithy work etc. The accused reconstructed his

building without conforming to the rules.

He put a low roof in the premises of the factory and for this he should have obtained the previous permission in writing from the State Government

or the Chief Inspector of Factories " by submitting the necessary plans and estimates. He also failed to obtain the permission in writing from the

State Government or the Chief Inspector of Factories for the extension of the factory, namely, the installation of wood-working machinery driven

by electric motors to a total load of 12 H.P. in the factory. By having installed the woodwork machinery he is said to have contravened the

provisions of Section 6 read with Rule 3.

The accused also failed to get his licence amended when the Horse Power that was utilised in the factory exceeded the Horse power that was originally granted to him, which was 14.9 H.P. He began to use in his factory more than 30 H.P. motors. By doing so he is said to have contravened the provisions of Section 6 of the Act read with Rule 6 of the Rules. The previous sanction for prosecution was obtained from the relevant authority under Ex P. 9 dated 3rd May, 1956 and he was prosecuted actually on 11th May, 1956 for the three offences he is said to have committed as stated above.

2. The learned Sub-Divisional Magistrate, Tanjore, convicted the accused under S 92 of the Factories Act under all the three counts and sentenced him to pay a fine of Rs. 50 and in default to simple imprisonment for two weeks under the first count, to pay a fine of Rs. 40 in default to simple imprisonment for 12 days" under the second count, and to pay a fine of Rs. 25, in default to simple imprisonment for one week under the third count. Against this order, the accused preferred an appeal to the learned Sessions Judge of West Tanjore.

Under the first count the learned Sessions Judge confirmed the conviction but reduced the sentence, to a fine of Rs. 25, in default to one week's simple imprisonment. But on the second and third counts the learned Judge acquitted the accused. There is no appeal preferred against the confirmation of the conviction on the first count. This appeal is by the Public Prosecutor for the State against the acquittal of the accused under the second and third counts.

3. The learned Public Prosecutor urges in support of the appeal that the offences under the second and third counts are continuing offences and there can be no limitation for any prosecution. Section 106 of the Factories Act lays down that "no Court shall take cognisance of any offence punishable under this 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". In this case, the first time when the officers charged with the duty of inspecting the factory came to know of the failure of the accused to comply with the provisions of the Act and the Rules, was on 16th January, 1956.

There was no doubt a second inspection by P.W. 1, in the case on 3rd March,

1956 and the charge was actually laid on 11th May, 1956. There can be no controversy with regard to the fact as to when exactly the contravention came to the knowledge of the Inspecting Officer P.W. 2 on 16th January, 1956. If a second officer inspected and came to know of the commission of the offence on 3rd March, 1956 it cannot take away the fact of the knowledge having been brought home to the officers charged with the duty of inspection on 16th January, 1956. So, any complaint against the commission of the offence punishable under the Act or the Rules made thereunder could be filed only within three months from the date of the knowledge of the commission of the offence by the officer concerned. Obviously, in this case the complaint was filed more than three months after P.W. 2 came to know of the commission of the offence by the accused. Prima facie, the complaint is out of time and the order of the learned Sessions Judge could be said to be not without justification.

4. But the learned Public prosecutor contends in regard to two charges, namely, the failure to obtain the previous permission in writing from the State Government or the Chief Inspector of Factories for the extension of the factory that is, for the installation of wood-working machinery driven by electric motors of a total load of 12 H.P. in the factory and also the failure to get the licence amended when the factory exceeded the limits prescribed. In the licence previously given, namely, No, 642 dated 16th November, 1955 for the year 1956 for using a motor not exceeding 14.9 H.P. that they were offences in contravention of the provisions of Section 6 read with Rule 3 and respectively and were continuing offences, for which there can be no period of limitation.

He has referred to a series of decisions of this and other Courts in support of his contention. There can be no question of any period of limitation prescribed for continuing offences, The question then is whether the offences complained of by the Inspector of Factories and contained in the charge sheet filed against the accused could be said to be continuing offences or offences at a single point or time. The learned Public Prosecutor invited my attention in this connection to the decision in *The Public Prosecutor Vs. Veerabhadrapa Lakshminarayana Setty*, , in support of his contention that the kind of offence complained of in the charge under consideration in the present case should be taken only as a continuing offence

and not a specific offence committed at a particular point of time.

In that case the Inspector of Factories noted the failure to put up dust proof chamber as required by Section 14 of the Factories Act on 5th

October, 1950 and issued a notice to rectify the defect, but nothing was done. When the Inspector again visited the factory on 24th January, 1951

he found that the status quo ante continued and a charge sheet for an offence punishable u/s 92 was laid before the Magistrate on 15th March,

1951. It was held that the offence committed was a continuing one and therefore the prosecution was not barred u/s 106 of the Factories Act. The

charge in that case was u/s 14 of the Factories Act.

That section is to the effect that in every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or

other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in

substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is

necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be

enclosed so far as possible. The Sub-clause of that section was not relevant to that case. Obviously, what is contemplated u/s 14 is conformity to

the requirements of the health of the workers and if this requirement is not complied with, certainly it cannot be said that this conformity is a

particular act and has not to be continuously attended to.

If the owner fails to provide for the safeguard required in Section 14, that failure will certainly be a continuous offence as long as the factory is

working and the workers are to be protected from nuisance that arises from dust in the factory, or fume or other impurity. If what is contemplated

in Section 14 involves a continuing offence as the keeping of the factory safe and healthy for the workers is a continuous obligation and In the

nature of a continuous process, then certainly the decision in *The Public Prosecutor Vs. Veerabhadrapa Lakshminarayana Setty*, is beyond any

exception. But that is not the case in the present appeal, where the acts which have been complained of are specific acts and not acts that are

required to be repeated and continued from day to day or from hour to hour.

The second count is the failure to obtain the previous permission in writing from

the State Government for the extension of the factory. The obtaining of the previous permission cannot be conceived of as a continuous process which has to be repeated from day to day and failure to obtain such permission, is not in the nature of continuing wrong as defined in *Hole v. Chard Union*, 18941 Ch 253 (B), The present complaint is that under Rule 3 of the Rules framed under the Factories Act the owner of the factory is required to do a specific act before he puts the factory to any additional use, and that is he should obtain the previous permission in writing from the State Government or Chief Inspector of Factories. If he fails to do this specific act which he is called upon to perform as part of his duty as the owner of the factory, then a complaint against this failure to discharge his duty as a factory owner in respect of obtaining a licence previous to the actual user of the factory must be filed within a period of three months prescribed u/s 106 of the Factories Act."

The owner, via., accused in this case failed to discharge the duty which was cast upon him and this was noticed and came to the knowledge of the officer concerned, viz., P.W. 2 on 16th January, 1956. The charge was laid on 11th May, 1956. This is certainly beyond three months and therefore out of time. Even so, with regard to the third count where the complaint is about the failure on the part of the owner of the factory to get his licence amended under Rule 6 of the rules; he had previously obtained a licence for a smaller horse power and he has subsequently increased the horse power to 30 H.P. For doing so he should have obtained an amendment of the licence by conforming to the requirements laid down in Rule 6.

He did not file his application, did not pay the fees and did not obtain the amended licence in order to enable him to run the factory. The application, payment of fees and the amendment of the licence cannot be said to be a continuous process which the owner of a factory is called upon to conform to. It is not a continuous obligation to be discharged from day to day. Therefore the failure to apply for and obtain the amendment of the licence is only a single specific act he should have complied with and which he has failed to execute as required by the rules and if that were a specific and not a continuing act then certainly the period of limitation prescribed u/s 106 will operate.

5. The learned Public Prosecutor has again relied upon a decision in State Vs. A.H. Bhiwandiwalla, , which is said to follow the decision in The

Public Prosecutor Vs. Veerabhadrapa Lakshminarayana Setty, . I am afraid this decision also does not help the Public Prosecutor. It upholds the

principle that the act of a single failure will come within the mischief of Section 106 of the Act and that if there is continuing offence like continuous

use of the factory without the licence it will not be hit by the rule of limitation prescribed by Section 106.

The facts in the Bombay case were: The accused, an occupier of a salt factory which was in existence prior to the commencement of the Factories

Act, 1948 was called upon to comply with the requirements of the Factories Act by the Inspector of Factories when he visited the factory on 10th

March" 1952. On a second visit by the Inspector on 23rd May 1953 it was found that the accused had taken no steps to comply with the

requisition. The accused was thereupon prosecuted within three months from 20th May 1953 but beyond three months from 10th March 1952 u/s

92 of the Factories Act for having failed to apply in form No. 2 for registration of the factory and grant of Licence as required by 8. 6 read with

Rule 4 of the Bombay Factories Rules and also for failing to give a written notice of occupation in form No. 3 as required u/s 7 (1) of the Act and

the rules thereunder.

It was held that the failure to apply for the registration of the factory as well as the failure to apply for the grant of a licence were punishable within

the meaning of Section 92 of the Factories Act. The failure of the accused to apply for registration and to give a notice of occupation was not,

however, a continuing offence and therefore the prosecution in respect thereof filed more than three months was barred by limitation u/s 106. But

the conduct of the accused in using the premises as a factory without obtaining a licence constituted a continuing offence and therefore no bar of

limitation u/s 106 could be pleaded In respect of this charge.

The phrase ""continuing offence"" was considered by the Bombay High Court. It observed as follows." The expression "continuing offence" though

not a very happy expression, has acquired a Well-recognised meaning in Criminal law. If "an act committed by an accused person constitutes¹ 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 there may be offences which can be committed from day to day and it

is offences falling in this latter category that are described as "continuing offences". The Bench observed.

In every case of a continuing offence it may" be possible to describe the default as amounting to an omission or to a positive act on the part of the

defaulter. Hence the distinction between a default which consists of an omission to do an act and a default which consists in failure to comply with a

direction to do a positive act may not be very helpful in determining the character of a continuing offence.

As already observed the principle of the ruling in this decision also is unexceptionable. What the Bombay High Court held to be a continuing

offence in the case was the conduct of the accused in running a factory without complying with the requirements of the notice, namely, that he

should have applied for a licence. The ground on which his conviction was upheld was not that he failed to apply for a licence but that he was using

the premises as a factory without a licence.

If the charge sheet in the present case before me had also been laid in the same terms, namely,; that the accused has been using the additional

machinery or that he has been using machinery for which no licence had been granted, then: certainly his conduct in using the additional machinery

in the factory without the necessary permit or without amending the licence With reference to the horse power which he was to utilise in his factory,

would not justify the learned Sessions Judge in interfering and setting aside his conviction.

But on the other hand, when one reads the terms of the two counts in the present case, they do not have any reference to the conduct of the

factory owner, namely, that he was using the premises and running the factory with this additional machinery and without getting the licence

amended for the extra horse power. But they refer only to his failure to obtain the previous permission and his failure to get the licence-amended as

required by Rule 3 and Rule 6 of the Factories Rules.

6. A further decision referred to by the Public prosecutor was in *The State Vs. Mool Chand*, , i do not think every that decision is of any great

assistance to the learned Public Prosecutor." This decision again affirms the principle that even a specific act is complained of it will be hit by

Section 106 of the-Factories Act unless the prosecution is laid within three months from the date of the Inspector or the Officer coming to know of

the omission of the offence. If that is a continuing offence there would be no limitation.

In that case the decision was that the words ""shall be begun"" or ""carried on in any building or part of a building"" in Rule 3 (3) connotes that an

offence of this nature might be a continuing offence and if upon a previous inspection the Inspector of Factories allowed the matter to go unnoticed

and without filing a complaint but with a verbal warning to the factory owner that the errors should be rectified, it would not be open to the factory

owner or occupier to say upon a subsequent inspection of the factory where the same breach was still found to exist that the subsequent breach

should be condoned and a complaint based upon it should be held to be time-barred because the earlier breach was not brought into question in a

court of law.

That followed the decision in *The Public Prosecutor Vs. Veerabhadrapa Lakshminarayana Setty*, .

7. Therefore on a consideration of the facts in this case and the authorities cited before me I am of opinion that the charge sheet as laid does not

lend any scope for the construction of the offence complained to be a continuing offence. On the other hand, the only interpretation that could be

put upon the language used in the two counts of the charge sheet now in question is" that they are particular offences at a particular point of time

and if the charges had been laid within three months, certainly they could have been sustained. Since the charge sheet has been filed beyond three

months, the learned Sessions Judge was right in his decision and the decision of the Sub-Divisional Magistrate was not according to law.

8. This appeal is dismissed.