

(1969) 11 MP CK 0010
In the Madhya Pradesh High Court

The State of M.P.

APPELLANT

Vs

S.P. Mathur and Another

RESPONDENT

Date of Decision : 06-11-1969

Acts Referred:

Factories Act, 1948 — Section 105, 106, 60, 75
Mines Act, 1952 — Section 24, 72, 79

Citation : (1970) CriLJ 922 : (1972) ILR (MP) 589 : (1970) JLJ 172 : (1970) 15 MPLJ 171 : (1970) MPLJ 171

Hon'ble Judges : S.P. Bhargava, J; P.K. Tare, J

Bench : Division Bench

Judgement

This is an appeal by the State Government, Madhya Pradesh, against the order of acquittal dated 14-3-1966 of the Court of the Magistrate First Class, Katghora, The respondents S. P. Mathur and K. K. Sharma, Agent and Manager, respectively, of the Banki Colliery, were prosecuted for contravention of Regulations 89 (i) (c), 87 (3) (c), 87. (9) (b), 113 and 168 read with Regulation 190 of the Coal Mines Regulations of 1957, and it was alleged against them that the said contraventions constituted offences punishable u/s 72(c), A. and C. of the Mines Act, 1952.

The prosecution case was that on 17-11-64 two loaded tubs were hauled up without attaching a drag or other proper contrivance behind the last tub. When these tubs were hauled up the haulage plane to some distance, the second tub got uncoupled and ran down the plane and struck the buffer provided on the haulage track. As a result of the impact, the said buffer along with its ground stone in which it was fixed and its props were dislodged and were thrown to some distance from their original position as a result of which three persons who were employed as general mazdoors for removing stones from the face and collecting them near the buffer, received fatal injuries and died, and five others, who were similarly employed, sustained minor injuries.

The learned Magistrate, Katghora, on trial came to the conclusion that the

respondents had contravened the Regulation No. 89 (I) (c) only but he did not convict the accused for the breach of the said Regulation because the complaint was barred by time. Feeling aggrieved by the said order of acquittal, the State has filed this appeal.

The first contention raised on behalf of the respondents is that on the date of the alleged commission of the offence, separation of Judiciary from the Executive had already been introduced in Bilaspur District and therefore the District Magistrate was neither competent nor could he try or pass any other orders of judicial nature on the complaint which was received in his office even if it were assumed that the complaint were sent to the office of the Collector in his capacity of being the District Magistrate. For this argument, reliance is placed on instructions which were issued for the guidance of Judge-Magistrates and Executive-Magistrates by the State Government when it decided to introduce in the whole State complete separation of the Judiciary from the Executive on a non-statutory basis. The said decision was taken in the year 1961 but in the Mahakoshal Region the separation of Judiciary from the Executive was made only in Nimar (Khandwa), Hoshangabad, Narsimhapur, Seoni and Balaghat from 1st of January 1962 and we are informed that separation of Judiciary from the Executive in Bilaspur District came into existence on 16-8-1963. Reliance for the said argument is placed on the following direction contained in paragraph 3 of the said instructions:

It is the intention of the Government that Executive Magistrates should ordinarily deal only with the work relating to the prevention of crime, security proceedings, removal of nuisances, breach of peace and supervision and control over investigation of crimes up to the stage the accused persons are challaned in criminal Courts.

On the other hand, it is contended by the learned Deputy Government Advocate that as in this State separation of Judiciary from the Executive has been made only on a non-statutory basis, the powers which a District Magistrate enjoyed under the Code of Criminal Procedure, could not be taken away by mere Government instructions. It is urged that this effect could only be secured by a proper and valid Legislative enactment and as that was not done, the District Magistrate, who is always a Magistrate of the First Class u/s 10 of the Code of Criminal Procedure, was competent to try the complaint lodged before him and could also exercise his other powers under the Code of Criminal Procedure, for example, the power to send the complaint for trial to any other competent Magistrate within his district. We are of the view that the contention raised by the learned Deputy Government Advocate is correct and the executive instructions referred to above are merely of a directory nature and cannot have the effect of depriving the District Magistrate of the powers given to him under the Code of Criminal Procedure. This is also clear from the use of the word "ordinarily" in paragraph 3 of the instructions quoted above.

We may now take up the question as to whether the complaint was validly

presented. It is urged on behalf of the accused respondents that the complaint should be held to have not been validly presented as it was sent by post. It is contended that there is nothing in the Code of Criminal Procedure permitting the complaint to be sent by post. For this contention reliance is placed on *Baldev Das and Another Vs. The State*, where it was held that "Sending by post is not the proper method of presenting the complaint. The complainant should have either personally presented the complaint before the City Magistrate or should have engaged a lawyer to perform the duty of presenting the complaint in person. A complaint sent by post is not a validly presented complaint unless the rules permit it in any given locality, e. g., in Kumaun."

The learned Deputy Government Advocate, on the other hand, contended that merely on the ground that sending of complaint by post is not expressly provided for, a complaint sent by post could not be said to be necessarily bad in law, and could be entertained though the Magistrate had a discretion in the matter.

There appears to be some divergence in judicial opinion on the question as to whether it is permissible to present a complaint validly by sending it by post. In *Baldev Das and Another Vs. The State*, it has been held that such a presentation is not valid but the other view which has been taken is that a complaint not presented in person but transmitted by post is not necessarily bad in law and the Magistrate, if he takes action, may call upon the complainant to appear before him on a date to be fixed by him for examination on oath (see *Empress of India v. Radha Kishen* (1883) ILR 5 All 36, and the comments under Note 12 of Section 200 of Chitaley's Code of Criminal Procedure, 6th Edition, at page 1365). The rule in Section 200 about examining the complainant and his witnesses who are present at once on taking cognizance has been held in some cases to apply only where a complaint is presented in person by the complainant or his agent and not when the complaint is received by post. In *State Govt. Madhya Pradesh v. Rukhaba Jinwarsa* AIR 1953 Nag 180, it was stressed that as there was no procedure in the Code of Criminal Procedure requiring personal presentation of the complaint by the District Magistrate or his representative u/s 105 of the Factories Act, the requirement of law was satisfied when the complaint was forwarded by the District Magistrate and received in the Court charged with the duty of trying the offence. The said decision of the Division Bench is binding on us.

On consideration of all these authorities and particularly in view of the observations in the case of AIR 1953 Nag 180. (supra), we think that it would not be pro-per to dismiss the complaint on the ground that it was not validly presented.

The most important question for consideration in this case is the question of limitation. Section 79 of the Mines Act, 1952, lays down:

79. Limitation of prosecutions. - No Court shall take cognizance of any offence under this Act, unless ,complaint thereof has been made-

- (i) 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 by the Central Government u/s 24, within six months after the date of the publication of the report referred to in Sub-section (4) of that section. Whichever is later.

In the instant case, we are concerned with Section 79(i) only as the date on which the alleged offence was committed was known from the very beginning.

For consideration of this question, it is necessary to state a few facts. The Regional Inspector of Mines, Shahdol Inspection Region, Shahdol, sent a written complaint in his capacity of being a public servant pertaining to the said offence against the respondents in the office of the Collector, Bilaspur. The seal embossed on the front page of the complaint indicates that the complaint was received in the office of the Collector, Bilaspur, on 15-3-1965. The complaint is addressed to "The First Class Magistrate at Bilaspur." The complaint does not bear the signature of the District Magistrate himself or any other officer of his Court in token of the said complaint having been received on 15-3-1965. No action appears to have been taken on the said complaint till 23-6-1965. On 24-6-1965, Mining Officer, acting for the Collector, Bilaspur, sent the said complaint to the Magistrate First Class, Katghora. The said letter reads as under:

To, The Magistrate First Class, Katghora. Dear Sir,

Enclosed herewith please find a complaint received from the Regional Inspector of Mines (Complainant) u/s 200 (aa) of the Code of Criminal Procedure for trial in your Court. In this complaint cognizance is to be taken. This complaint was received in the Collectorate 15-3-65.

Sd/- Illegible Mining Officer, for Collector, Bilaspur.

The said letter was received in the office of the Magistrate on 26-6-1965 and cognizance of the complaint was taken by him.

It has been urged before us that the complaint was not even addressed to the District Magistrate; that the heading of the complaint shows that it was intended to be presented to the Court of the Magistrate First Class at Bilaspur but how it came to be sent to the office of the Collector, Bilaspur, remains a mystery and presumably it was only due to some mistake that it was not filed before the Magistrate First Class, Katghora; that the mere fact that the complaint bears a seal of the office of Collector with the date 15-3-1965 can-not be taken to mean that the District Magistrate had taken cognizance of it at any time within six months of the date of the commission of the alleged offence; that the said complaint was received in the Court of the Magistrate First Class, Katghora, on 26-6-1965 and the earliest point of time on which it could be claimed that

cognizance of the complaint was taken could be that date only and not any earlier date. It was, therefore, urged that the trial Court was right in its view in holding that the complaint was not made within six months of the commission of the offence and therefore it could not take cognizance "of the offence under the Mines Act as the time limit within which the prosecution could be instituted u/s 79 of the Mines Act had already expired.

For appreciating the contentions raised, it would be helpful to refer to some decisions. In Provincial Govt. C. P. and Berar v. Ganpat Dharmaji AIR 1943 Nag 243, the prosecution was for an offence punishable u/s 60 of the Factories Act, 1948. Section 75 of the Factories Act provided a similar rule of limitation of six months. The offence was committed on 18-2-1942. The complaint was made to the Deputy Commissioner by the Inspector of Factories on 27-7-1942. The Deputy Commissioner sanctioned the prosecution but the papers remained in his office till 20-8-1942. The complaint was received by the Sub-Divisional Magistrate on 21-8-1942, beyond six months of the date of offence. It was held that the complaint was barred by limitation and it was observed:

The rule of limitation laid down in Section 75 is peremptory and cannot be circumvented by any considerations imported from the provisions of the Limitation Act. A complaint, therefore, which is made more than six months after the date of the offence is time-barred under the provisions of Section 75 : Kisonadas v. Dhondu ILR 44 Bom 542 : AIR 1920 Bom 142; Muhammad Ahmad Vs. Bezwada Venkanna and Another, and Purna Chandra Bagchi, Nabadwip Municipality Vs. Satish Chandra Modak and Others, , Ref.

In AIR 1953 Nag 180, it was held that where the complaint u/s 106 of the Factories Act was made to the Magistrate within the prescribed period of three months but he took cognizance beyond that period, there was no contravention of the provisions of Section 106 of the Factories Act and the complaint could not be held to be barred by limitation. It was also held that the requirements of law were satisfied when the complaint was received by the District Magistrate and received in the Court charged with the duty of trying the offence by the reader who was acting on behalf of the Court in receiving the complaint; it was not necessary that the Magistrate should have personally received the papers.

In Baldev Das and Another Vs. The State, , the facts were that a complaint addressed to the City Magistrate was received by post in the office of the District Magistrate on 12-11-1949. In the margin, the office Superintendent of the District Magistrate's office had made an endorsement reading as follows:

To C.C, Illegible for D. M.

12-11-1949.

After the said endorsement, the complaint was sent to the City Magistrate and the first order on his order-sheet was dated 5-12-1949. It was contended on behalf of the accused that the complaint was in fact made to the City Magistrate

on 5-12-1949, i. e., on the day on which it was put up before him and he took cognizance thereof. The offence in that case was detected by the Inspector of Factories on 13-8-1949 and cognizance could be taken of the offence u/s 106 of the Factories Act within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector. It was held that it was not possible to argue that the District Magistrate himself took cognizance on 12-11-1949 and thereafter he transferred it to the City Magistrate as he had not signed the endorsement. It was further held that the office Superintendent who was not a Magistrate had no power to take cognizance of the case nor had he any power to order the transfer of the case. He merely performed the administrative duty of forwarding to the addressee a document which had been wrongly received by post in the District Magistrate's office.

In *Gopal Das Sakseria and Another Vs. The State*, it was held that what Section 106 of the Factories Act, 1948, requires is that a complaint must be made within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector and not that the Court must take cognizance of the offence within such period.

In *State v. Mediratta* 1965 2 Lab ic 305, the case before the Court was under the Mines Act, 1952, and it was held that there was no doubt that if a complaint was made beyond six months, no Court can take cognizance of the offence under the Mines Act.

In our opinion, the decision of the trial Court that the complaint is barred by limitation is correct. There is nothing to show that the District Magistrate, who is a Magistrate First Class u/s 10, Criminal Procedure Code by virtue of his office, ever took cognizance of the complaint. Taking cognizance does not involve any formal action or action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Taking of cognizance is both a mental as well as a judicial act. Before a Magistrate can be said to have taken cognizance u/s 190 (1) (a), Criminal Procedure Code, he must not have only applied his mind to the complaint but must have done so for proceeding in a particular way under the subsequent provision of Chapter 15, for example, u/s 200 for enquiry and report. When he applies his mind not for the above purpose but for taking "action of some other kind, for example, investigation by the police u/s 156 (3) or issue of a search warrant, he cannot be said to have taken cognizance of the offence (see *Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee*, and *R.R. Chari Vs. The State of Uttar Pradesh*,).

There is nothing in the record on the basis of which it could be asserted that the District Magistrate, Bilaspur, had ever applied his mind to the suspected commission of the offence which was alleged in the complaint. The Mining Officer, who sent the complaint with his covering letter does not appear to have any authority to transfer the case for trial to the Court of the Magistrate First Class, Katghora. No one has been examined in the case to show as to how and under

what circumstances the papers remained in the office of the-Collector and were then sent to the Magistrate First Class, Katghora. The best that can be urged in his favour is that he acted in his executive capacity in sending the complaint to the authority to whom it was, addressed. The cognizance, therefore, of the complaint cannot be said to have been taken before 26-6-1965 on which date the complaint reached the Court of the Magistrate First Class, Katghora.

For the aforesaid reasons, we are of the view that the complaint was rightly dismissed by the Magistrate on the ground of its having been barred by limitation. The appeal fails and is dismissed.