
(2016) 08 RAJ CK 0036

In the Rajasthan High Court

Case No : Criminal Misc (Pet.)(Crlmp) No. 3182 of 2015

V.K. Jain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Industrial Disputes Act, 1947 — Section 29

Citation : (2016) 4 CriLR 1753 : (2017) 153 FLR 312 : (2017) LIC 227 : (2017) 1 RajCriC 397 : (2016) 4 RLW 3222 : (2017) 1 WLC 75

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. Suresh Kumbhat with Mr. Sheetal Kumbhat, Advocates, for the Petitioner; Mr. A.K. Rajvanshi with Mr. D.P. Dhaka, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Lohra, J.—Accused-petitioner by the instant petition under Section 482 Cr.P.C. has prayed for quashing criminal complaint and entire proceedings of Criminal Case No.192/2013 pending in the Court of learned Special Addl. Chief Judicial Magistrate (PCPNDT Cases), Udaipur (for short, "learned trial Court") including impugned order dated 28.09.2015.

2. Succinctly stated, the facts of the case are that one Heeralal Kumawat (workman) raised an industrial dispute on 04.08.1992 against termination of his service, which was referred for adjudication to the Central Government Industrial Tribunal cum Labour Court, Jaipur (for short, "learned Labour Court") and the learned Labour Court vide Award dated 28.10.2005 decided the dispute in favour of said Heeralal Kumawat. At the relevant time, the present petitioner was serving with the Life Insurance Corporation as Divisional Manager, Udaipur and was later on appointed as Senior Divisional Manager on 04.05.2012 and thereafter transferred to Ajmer as Principal, Sales Training. On 10.07.2013, the Union of India, respondent herein, filed a complaint against present petitioner,

the ex-Senior Divisional Manager, Udaipur, before the Court of learned Special Addl. Chief Judicial Magistrate (PCPNDT Cases), Udaipur (for short, "learned trial Court") under Section 29 of the Industrial Disputes Act, 1947. In the complaint, respondent Union of India, inter-alia averred that the award passed by Labour Court dated 28th of October, 2005 and published in the Gazette on 24th of November 2005 has not been implemented by the petitioner, therefore, he has committed an offence under Section 29 of the Industrial Disputes Act, 1947 (for short, "Act of 1947"). In the Award dated 28th of October, 2005, the learned Labour Court declared termination order of the workman dated 4th of August 1992 as unjustified and illegal and issued directions for his reinstatement in services with continuity and 50% back wages from 8th April 2003 to the date of award. The complaint laid on behalf of respondent Union of India was registered as Criminal Case No.192/2013 and learned trial Court took cognizance of the said offence against the petitioner.

3. In the petition, precisely, the petitioner has challenged entire further proceedings in Criminal Case No.192/2013, pending in the Court of learned trial Court, as well as order dated 28th of September 2015, whereby cognizance for offence under Section 29 of the Act of 1947 is taken against him. The cognizance is challenged on the anvil of being barred by Section 468 Cr.P.C. wherein limitation prescribed is one year. It is also submitted in the petition that prosecution against the petitioner under Section 29 of the Act of 1947 is not tenable as the petitioner is not appointing authority of the workman and furthermore he cannot be held responsible for breach of any term of the Award passed by Labour Court. A document is also placed on record to show compliance of Award passed by the Labour Court inasmuch as according to the petitioner vide order dated 19th of September 2013 petitioner was reinstated but he has not joined his duty. A specific plea is also raised in the petition that award was challenged by the LIC before Jaipur Bench of this Court by way of filing a writ petition and the same was registered as S.B. Civil Writ Petition No. 7165 of 2006. The petition remained pending for almost 7 years and finally the same was dismissed on 25th of September 2013.

4. Respondent Union of India submitted its reply to the misc. petition. In its return, Union of India has raised a preliminary objection that it has not been sued through the competent authority, i.e. Secretary of the Ministry of Department, and instead the petition is filed against Union of India through Labour Enforcement Officer and, therefore, on this count alone petition merits rejection. While joining issue with the petitioner on merits, it is submitted in the reply that non-implementation of the award passed by learned Labour Court by the petitioner, after its enforcement in terms of Section 17A of the Act of 1947, is a punishable offence under Section 29 of the Act. The respondent Union of India has pleaded that upon receipt of complaint from workman Heeralal Kumawat on 25th of April 2006, notices were issued to Divisional Manager, LIC of India, Udaipur as well as to the petitioner on umpteen occasions to implement the award but none of these notices were paid any heed and therefore in that

background Union of India issued requisite letter No.AJ-7(3)/07/2005-IR dated 23rd of May 2013 for filing criminal complaint in the matter and pursuant thereto aforesaid criminal complaint was lodged against the petitioner on 10th of July 2013.

5. It is also submitted in the return that notice dated 22nd of August 2012 was addressed to the petitioner in the capacity of Senior Divisional Manager, LIC Limited, Udaipur and in response to the same he has addressed a communication to the Assistant Labour Commissioner, Government of India dated 6th of September 2012 with a request to defer the proceedings due to pendency of writ petition No.7165 of 2006 filed by the LIC against the award passed by learned Labour Court. With these assertions, the respondent has pleaded that petitioner cannot shirk from his responsibility by evading implementation of the award and as a matter of fact he was obliged to implement the award which was binding on him. While countering the plea of the petitioner about limitation for taking cognizance under clause (b) of sub-section (2) of Section 468 Cr.P.C., respondent has submitted in the return that said provision is not attracted vis-a-vis complaint under Section 29 of the Act of 1947. A reference in this behalf is also made in the reply to Section 34 of the Act of 1947 and it is asserted that Section 34 of the Act provides no period of limitation. It is also submitted that being Senior Divisional Manager of LIC, petitioner cannot disown his responsibility for implementation of the award and at no point of time he raised such objection when the complaint of the petitioner was under process before the Department and even in the reply also the said objection was not incorporated. In substance, the respondent has refuted all the averments and prayed for rejection of the misc. petition.

6. Learned counsel for the petitioner, Mr. Sheetal Kumbhat, submits that as per scheme of the Act of 1947, Award passed by Industrial Labour Court or Labour Court is required to be published in the Gazette and it becomes enforceable only on expiry of 30 days from the date of its publication in terms of Section 17A of the Act of 1947. Learned counsel, therefore, submits that when the Award became enforceable on 24th of December 2005 and the complaint under Section 29 of the Act of 1947 itself was filed after inordinate delay, the same was barred by law. While referring to the complaint, which was laid in the year 2013, learned counsel for the petitioner would contend that as per Section 468 Cr.P.C., cognizance of offence beyond a period of one year is per se barred by limitation and therefore the impugned order taking cognizance against the petitioner as well as entire proceedings in Criminal Case No.192/2013 are clearly vitiated in law. Learned counsel further submits that the award passed by learned Labour Court was against Divisional Commissioner of LIC and therefore petitioner being Senior Divisional Commissioner prosecution against him is not tenable. Learned counsel has lastly urged that on both the counts; viz., cognizance is barred by limitation and the fact that award is not binding on the petitioner, continuing proceedings in Criminal Case No.192 of 2013 would result in abuse of the process of the Court. In support of his argument, learned counsel for the

petitioner has placed reliance on following judgments:

- (i) M. Kar, Joint Managing Director, Flovel Limited v. State of Haryana (1991) 99 PLR 370.
- (ii) Management, Madurai North Sarvodaya Sangh & Ors. v. S. Syed Batcha 2000 (87) FLR 496.
- (iii) Sm. Manorama Saha and Anr. v. The State (1988) 2 CALLT 224 (HC).
- (iv) Jagdish Prasad Singh v. State of Bihar & Ors. 2007(113) FLR 723.

7. Per contra, learned counsel for Union of India submits that the petitioner has committed offence under Section 29 of the Act of 1947 inasmuch as no endeavour was made by him to implement the award and therefore it is a clear case of breach of the term of award within the four corners of Section 29 of the Act of 1947. Learned counsel for Union of India further submits that the order of reinstatement has furnished recurring cause of action and therefore limitation prescribed under Section 468 Cr.P.C. is not applicable for an offence under Section 29 of the Act of 1947. Learned counsel has placed reliance on following judgments.

- (i) M/s. Naga Theatre, Bangalore v. R. Raja ILR 1999 KAR 2481: 1999 (5) KarLJ 406.
- (ii) Trichur Urban Co-op Bank Ltd, v. District Labour Officer (1987) II LLJ 38 Ker : 1986 (3) Crimes 440 (kerala).

8. I have heard learned counsel for the parties and perused the materials available on record.

9. From a bare perusal of the complaint laid by Union of India under Section 29 of the Act of 1947, it is explicitly clear that the same was filed before the learned trial Court on 10th of July 2013. The recitals contained in the complaint speak volumes about the fact that the award passed by labour Labour Court was published in the Gazette on 24th of November 2005 and therefore by virtue of Section 17A of the Act of 1947 it became enforceable on expiry of 30 days. Therefore, in that background, this Court cannot lose sight of filing the complaint after delay of more than 7 years for examining the same in the light of Chapter XXXVI Cr.P.C.

10. With a view to examine the question of limitation, it has become imperative for the Court to first address on the nature of offence and the procedure provided for taking cognizance of offence within the four corners of Act of 1947. As the rival parties have joined the issue on applicability of Section 468 Cr.P.C., at the threshold, I feel persuaded to examine "continuing offence" as defined in Section 472 Cr.P.C. A continuing offence is one, which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until

the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or noncompliance occurs and recurs, there is the offence committed. While construing offence under Section 29 of the Act of 1947, in the backdrop of above quoted definition of "continuing offence", the legislative intent has to be given due credence. A bare reading of Section 29 of the Act of 1947 makes it abundantly clear that legislative intent is to construe the same as a continuing offence inasmuch as it envisages further fine where the breach is continuing one after conviction for the first time @ Rs.200/- each day during which the breach continues. Therefore, it is a case wherein legislature has intended the offence, which is susceptible of continuance by prescribing penalty day to day in the event of failure or obey to comply with the award.

11. Supreme Court in Bhagirath Kanoria & Ors. v. State of M.P. (1984) 4 SCC 222, had the occasion to define "continuing offence" and dilated on the nature of offence by observing that it depends upon the language of statute as well as object and purpose of the Act. The Court held:

"The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellant were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply.

12. In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath & Ors. (1991) 2 SCC 141, Supreme Court, while construing the term "continuing offence" within the meaning of Section 472 Cr.P.C., held:

"What then is a continuing offence? According to the Blacks' Law Dictionary, [5th edn. (Special Deluxe)], "Continuing" means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences". Continuing offence means "type of crime which is committed over a span of time." As to period of statute of limitation in a continuing offence, the last act of the offence controls for

commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse."

The Court further observed that offence is a continuing offence or not depends on the language of the statute, and held:

The expression "continuing offence" has not been defined in the Code. The question whether a particular offence is a "continuing offence" or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

13. Now adverting to the legal precedents, on which the learned counsel for the petitioner has placed reliance, in *M. Kar, Joint Managing Director, Flovel Limited (supra)*, learned Single Judge of Punjab & Haryana High Court, while construing Sections 17A & 29 of the Act of 1947, treated the complaint barred by limitation under Section 468 Cr.P.C., which was filed beyond one year from the date of enforcement of the award. The Court held:

"In the instant case the award was made on 23rd July, 1981. It was published in Haryana Government Gazette on 10th November, 1981. In terms of Section 17A of the Industrial Disputes Act the award aforesaid became enforceable with effect from 10th December, 1981. One year period of limitation ended on 10th December, 1982 and, therefore, the complaint filed on 20th March, 1985 is hopelessly barred by limitation."

14. In *Management, Madurai North Sarvodaya Sangh & Ors. (supra)*, Madras High Court examined the question of limitation vis-a-vis a complaint under Section 29 of the Act of 1947 on the anvil of sub-section (2) of Section 468 Cr.P.C. The Court held:

"Of course, if no period is fixed, then it would appear that nonenforcement of the award would be a continuing offence. But, by virtue of the provisions of Section 19 of the Industrial Disputes Act, even regarding a continuing offence, if the statute fixes a period of limitation for enforceability of the award, then contingency would cease on the date when the award becomes unenforceable. A clear reading of Section 29 of the Industrial Disputes Act would go to show that the award being a continuing offence has to be enforced within one year. If it is not enforced, within one year, a prosecution would lie and in spite of conviction, the offender continues to breach the award, then it would be a continuing question attracting the matter to the provisions of Section 29 of the Industrial Disputes Act. If no prosecution is instituted within one year, it cannot be said that the award would still be enforceable. I am in entire agreement with the decision rendered by the learned single Judge of the Karnataka High Court in *Cinema Workers' Union (supra)*, and hold that the prosecution has not been launched

within one year from the date of enforceability of the award and the instant prosecution is barred by limitation. Therefore, this criminal original petition is allowed. The further proceedings in S.T.C. No. 1194 of 2000 is quashed. Consequently, Cri.M.P. Nos. 3537 and 3538 of 2000 are closed as unnecessary."

15. In *Sm. Manorama Saha and Anr. (supra)*, Division Bench of Calcutta High Court examined the question of limitation in relation to complaint under Section 27 of the Act of 1947 and while relying on sub-section (3) of Section 19 of the Act of 1947, held:

"From the language used by the legislature in this particular section indicates that a distinction has been made between a simple breach and a continuing breach. In the case reported in 1986 L.I.C. 1123 *Swaranjit Singh and Ors. v. State and Anr.* a distinction has been made between an award which decides question under reference once for all. Such an award for reinstatement and payment of back wages by virtue of Section 19(5), the provision of Section 19(3) has no application to such an award, which is not continuing award. There are also awards involving personal rights directing payment of money or upholding the discharge or dismissal of workmen or directing reinstatement of a discharged or a dismissed workmen. But there are second type of awards which cast continuing obligation on the parties bound by the awards, such as awards dealing with wage structure, paid holidays, clearness allowance, gratuity and other allowances and benefits. In the instant case, the award is of the first category. The dispute by and between the parties has been decided once for all. Under the circumstances, it appears that the cognizance of the offence under Section 29 read with Section 19 Subsection (5) of the Industrial Disputes Act and also Section 468 Sub-section 2(b) of the Criminal Procedure Code as having been filed long after one year from the date of the enforceability of the award, appears to be barred by the law of limitation. Section 468(2b) of the Code of Criminal Procedure is a clear bar of initiation of such prosecution. In that view of the matter, as discussed above, this Court disposes of the reference by passing an order in favour of the petitioners."

16. In *Jagdish Prasad Singh (supra)*, Patna High Court has also opined that in relation to offence under Section 29 of the Act of 1947 embargo of limitation envisaged under Section 468(2)(b) Cr.P.C. can be invoked. The Court held:

"The contention of the learned Counsel for the petitioner is two fold. It is submitted that the maximum punishment under Section 29 of the Industrial Disputes Act is only six months and Section 468(2) (b) of the Code of Criminal Procedure provides limitation of only one year for taking cognizance in those cases which are punishable upto one year. In this very case the prosecution has been launched after more than one year. The other contention is that the Award has already been implemented in to and the service of the person concerned has also been regularised.

Learned Counsel for the opposite party No. 2 does not dispute the contention of

the petitioner. On the other hand, he concedes that the service of opposite-party No. 3 has already been regularised. It is also apparent from the above facts that the prosecution has been launched and cognizance has been taken in this case after expiry of limitation period prescribed under the law.

Thus, having regard to the facts and circumstances of the case it is quite clear that continuance of this criminal proceeding against this petitioner amounts to abuse of process of the Court. Accordingly, this application is allowed and the entire criminal proceeding as well as the order dated 8.2.2002 is hereby quashed."

17. A coordinate Bench of this Court in Mohd. Saddiq v. Raghunath Singh RLW 1978 pg. 488 has examined thoroughly the nature of offence under Section 29 of the Act of 1947 and recorded its finding that an award directing payment of money is an instance of first category which decides the matter under reference once and for all and does not, ipso facto, impose any continuing obligation on the parties bound by it. On the other hand, an award, dealing with conditions of service, like, wage-structure, paid holidays, dearness allowance and other similar benefits which by its very nature impose continuing obligations on the parties, is an instance of the awards of the second category. The Court held:

"Turning now to the second category of awards, I have already mentioned that an award dealing with the conditions of service like wage structure, paid holidays, dearness allowance and the like would fall in this category or it imposes continuing obligations on the parties bound by its throughout the period it remains in operation. As against a single primary is light-duty relation created by an award of the first category discussed above, by an award falling in the second category is a bundle of several primary rights duty relations spread over the entire period of its operation. It is only in the context of the second category of awards that the, commission of a containing offence involving a continuing breach as envisaged by Section 29 of the Act, is possible.

Case law on the subject also lends support to the view taken above. In Benatras Ice Factory v. U.P. Government, a Division Bench of the Allahabad High Court held that:

"The award of an Industrial Tribunal or an Adjudication may impose upon an employer the duty of some act which extends over a period of time such for example as reinstatement of dismissed employees, or it may impose upon the employer an obligation to pay a sum of money. In the first case, the obligation is one of a continuous nature, in the second it is not."

Therefore, in this verdict, the Court has construed the award of reinstatement of a workman in second category so as to treat it a continuing offence under Section 29 of the Act of 1947 within the four corners of Section 472 Cr.P.C.

18. In a latter judgment, a coordinate Bench of this Court in Subrato Roy & Anr. v. State of Rajasthan & Anr. 1990 (60) FLR 206: (1990) II LLJ 351 Raj., again

examined the nature of offence under Section 39 of the Act of 1947 and held that it is a continuing offence. The Court observed:

"Thus, I have no hesitation in holding that the provisions of Section 468(2)(b), Cr. P. C. are not applicable and the case is fully covered by Section 472, Cr. P.C. as well. Regarding the contention raised about Section 34 of the I.D. Act, 1947, the same has been raised to be rejected as it is concluded by several decisions including the one in *Feroz Din and Ors. v. State of West Bengal* (1960) I LU 244 and *S.N. Hada v. Binny Ltd. Staff Association* (1988) I LLJ 405.

19. In *Trichur Urban Co-op Bank Ltd.(supra)*, Kerala High Court examined the offence of employer under Section 29 of the Act of 1947 in relation to a Labour Court Award of reinstatement of a workman. While construing it a "continuing offence", as envisaged under Section 472 Cr.P.C., the Court held:

"The material portion of Section 29 of the Act reads:

"Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first..."

The offence is thus "the breach" of the term of an award. On the expiry of 30 days from the date of publication of the award in the Gazette as provided in Section 17A of the Act, the award became enforceable and thus on the next day the person bound by the award is obliged to comply with the terms of the award and his failure to do so would amount to his committing a breach of the term of the award. But if he does not comply with the terms of the award on the next day of the expiry of thirty days of the said publication, does it mean that his obligation to comply with the direction in the award would cease at the end of that day? Section 19(3) of the Act says that "an award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17A." This subsection shows that the persons bound by the award are obliged to comply with the terms therein and that the obligation continues during the terms therein and that the obligation continues during the entire period of one year when the award remains in operation. It would be preposterous to suggest that on the second day after the expiry of the said period of thirty days, the persons bound by the award are free to ignore it. Unless he complies with the direction contained in the award, his obligation continues until the termination of the period during which the award remains in operation. The commission of a breach of the term of the award on the first day of its operation does not absolve him from his obligation. If that obligation survives during the successive days, and if he does not comply with the term during those successive days also, the commission of the breach continues. The breach continues so long as the obligation. In that view, the

offence also continues as a consequence. It is not a case where he can commit the breach only on the next date of expiry of the period of thirty days after publication of the award. "Continuing offence is one which is susceptible of continuance" as observed by Shelat, J., in *State of Bihar v. Deekaran*. The Supreme-Court drew a distinction between continuing offences and other offences on the premise that the latter class of offences includes an offence which is committed once and for all. "The distinction between the" two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues." The aforesaid principle was followed by the Supreme Court in a later decision in *Bagirath Kanoria v. State of M.P.* The observation of Chandrachud, C.J. is helpful in understanding the real nature of the distinction between the two types of offences. It reads thus: "A continuing offence is one which continues and a non-continuing offence is one which is committed once and for all.... The question whether a particular offence is continuing offence must necessarily depend upon the statute which created that offence, the nature of the offence, and above all, the purpose which is intended to be achieved by constituting the particular act as an offence." The learned Counsel contended that Section 19(3) does not apply to an award which contains only a direction for the reinstatement of a workman and it does not impose any further obligation on the parties. To support this contention, he made reference to Sub-section (5) of Section 19 which reads thus:

"Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award."

The enforceability of the award is alive for a period of one year unless the award by its nature or obligation, imposes a continuing obligation. In this context Sub-section (6) of Section 19 is also to be looked into. That subsection provides a further period for the enforcement of the award. It says that the award shall continue to be binding on the parties until a period of two months has elapsed from the date, on which notice is given by any party bound by the award to the other parties intimating its intention to terminate the award. A reading of Subsection (3) and Sub-section (5) would show that Sub-section (5) does not make any exception to Sub-section (3), for, the former is only intended to be a clarificatory provision. In some awards, the implementation of the terms thereof will put an end to all further obligations: e.g. if the award directs only reinstatement of a dismissed workman, the compliance with that direction will put an end to the continuation of the period of enforceability of the terms of that award. The words "after it has been given effect to" in Sub-section (5) would make the position clear that if an award, by its nature or terms or other circumstances, does not impose "any continuance of the obligation on the party," then the period of one year described in Sub-section (3) has no practical consequence. This is how Sub-section (5) vis-a-vis Sub-section (3) is understood by a Division Bench of the Delhi High Court. (*Caz & Kings (Agent) v. Their*

Workmen. In that case Deshpande, J. (as he then was) observed thus: "Sub-section (5) of Section 19 is more by way of explanation to Sub-section (3) of Section 19 rather than by way of an exception to it. Sub-section (3) applies only when an award remains operative after becoming enforceable under Section 17A." I am in respectful agreement with the aforesaid observations. I therefore do not find any difficulty in holding that the obligation under the award continues for a period of one year, and continues for a further period of two months, if in the meanwhile, a notice under Subsection (6) is given by one party to the other. The breach of the terms of the award continues during that period until the terms are complied with, in *M/s. Guha & Co. v. R.N. Misra*, a single Judge of the Calcutta High Court (M.K. Mukherjee. J.) held that:

"... there cannot be any manner of doubt that the obligation of the petitioner to implement the award continues so long as the award is not terminated in accordance with Section 19(6) of the Act;.... It necessarily follows that so long as the award remains valid and operative, the petitioners are bound to implement it and their liability for prosecution under Section 29 of the Act for non-implementation continues."

That was a case where an employer was directed to reinstate one of his employees as per an award passed by the Labour Court and when the employer did not implement the award, a complaint was filed against him for the offence under Section 29 of the Act. The question of limitation was raised in that case as the complaint was filed only two and a half years after the publication of the award in the Gazette."

20. In *Management of M/s. Naga Theatre, Bangalore* (supra), Karnataka High Court, while relying on the judgments of this Court as well as Madras and Calcutta High Courts, recorded a definite finding that non-implementation of award of reinstatement by the employer constitute a continuing offence. The Court held:

"Thus on going through the various pronouncements referred to above of the Apex Court as well as the High Courts of Madras, Rajasthan, Calcutta and also the latest pronouncement of this Court in the case of *N.K. Shah*, supra, and the undisputed fact in the case on hand that though by the award reinstatement was ordered and as long as the reinstatement award was not complied with or implemented, it would be, in my opinion a continuing offence. Merely because the period of operation has expired, it does not mean that the character of the offence as continuous offence "does not cease to operate". As stated earlier it is binding nature of the award and non-implementation of the same is punishable under Section 29 of the I.D. Act and it does not depend on the period of operation of one year as contemplated under Section 19(3) if the said provision is read with sub-sections (5) and (6) of Section 19 of the I.D. Act."

While dilating on offence under the Act of 1947, the Court also opined that it is an offence under social beneficial legislation and held:

"In my opinion, especially when the offence is under social beneficial legislation like Industrial Disputes Act mere delay in approaching for grievance or the allegations of noncompliance should not come in the way of the complainant. It is also to be noted that though the competent Court has passed the award in the year 1985, the petitioner-employer has instead of implementing the same has been taking around the complainant to various proceedings including the challenge to the award, challenge to the initiation of proceedings, etc., and as such as it is the petitioner who has contributed to the delay, I do not think the contentions raised by the learned Counsel requires any attention or merit."

21. Apart from the nature of offence, it is also pertinent to note here that essentially the offence as such is of social welfare legislation with the solemn object to penalise employer for not obeying the award passed in favour of the workman. However, predicament of the workman is that as per scheme of the Act of 1947 he is not authorised to launch prosecution against the employer. In terms of Section 34 of the Act of 1947, cognizance of an offence cannot be taken by a Court under the Act of 1947 save on complaint made by or under the authority of the Government. Therefore, only obligation on the part of workman is to approach the appropriate Govt. for filing complaint under Section 29 of the Act of 1947.

22. Indisputably, in the instant case, after the award passed by learned Labour Court became enforceable, the workman approached the appropriate Govt. without any delay inasmuch as the Award was passed on 24th of November 2005 and by virtue of Section 17A of the Act of 1947 it became enforceable on expiry of one month, i.e., with effect from 23rd of December 2005, and complaint by the workman before appropriate Government was laid on 25th of April 2006, i.e., within four months. Thus, the delay in processing the complaint of the petitioner cannot be attributed to the workman, rather requisite decision/sanction for prosecuting the petitioner was delayed either by the appropriate Government or by the inaction of LIC/petitioner. It is also apparent from the materials available on record that the appropriate Government has addressed communications/show cause notices to the LIC and the petitioner to implement the award but on one pretext or the other, at the instance of LIC and the petitioner, decision in the matter by the appropriate Govt. remained inconclusive. It is also noteworthy that although LIC has challenged the award by way of filing a writ petition in the year 2006 before the Jaipur Bench of this Court but no interim relief was granted and therefore there was no plausible reason available with the LIC and the petitioner for non-implementation of the award. Thus, in totality, taking into account the language employed under Section of the Act of 1947 and the legislative intent, in my opinion, offence under Section 29 of the Act of 1947 is not governed by clause (b) of sub-section (2) of Section 468 Cr.P.C. and the same is governed by Section 472 Cr.P.C. being continuing offence. Even otherwise, taking into account the embargo envisaged under Section 34 of the Act of 1947, which postulates that cognizance can be taken by the Court only on a complaint made by or under the authority of the appropriate Govt., is sufficient to reject the argument of

delay by invoking explanation to sub-section (2) of Section 470 Cr.P.C.

23. The legal precedents relied upon by the learned counsel for the petitioner, in my considered opinion, have not properly discussed the nature of offence under Section 29 of the Act of 1947 as to whether it is a continuing offence or not. Therefore, I respectfully disagree with the ratio decidendi of all these judgments and fully concur with the judgments of this Court in Mohd. Saddiq (supra) and Subrato Roy & Anr. (supra), by relying on the judgment of Supreme Court in Bhagirath Kanoria & Ors.(supra). My view is also fortified by a judgment of Kerala High Court in Trichur Urban Co-op Bank Ltd. (supra). Reliance in this behalf can also be profitably made to a decision of High Court of Jharkhand in A.K. Sahay and three Ors. v. The State of (Bihar) and Labour Enforcement Officer (Central) 2008 1 RCR(Criminal) 838, wherein Court held:

"In the instant case, as mentioned above, the date of the notification of the award was 27.2.1992 and it was to be complied within 30 days from the notification of the Award. Failure to comply within the statutory period is an offence punishable under Section 29 of the Act. However, the contention of the learned Counsel for the petitioners that the date of the offence should be deemed to be the date immediately after lapse of the period of thirty days from the notification of the Award and that the cognizance of the offence should have been taken within one year from the aforesaid date of the offence and, therefore, the impugned order of cognizance is bad since it was passed in the present case much beyond the period of limitation as prescribed under Section 468(2) of the Code of Criminal Procedure., does not appear to be persuasive or convincing. The Award passed by the Tribunal is binding on the parties and even after expiry of statutory period of 30 days for compliance, the liability continues to exist till the Award is finally implemented. The limitation prescribed under Section 468 Cr.P.C cannot therefore be attracted to a case of continuing offence. In the case of a continuing offence, the provisions of Section 472 Cr.P.C. are applicable and the first period of limitation shall begin to run at every time during which the offence continues. The ground of limitation is, therefore, not acceptable.

24. The next contention of the petitioner, that he is not bound by the award passed by learned Labour Court and therefore his prosecution under Section 29 of the Act of 1947 is not tenable, appears to be quite alluring but not of substance. The award as such was passed against LIC and being its responsible officer and in the helm of affairs as Senior Divisional Manager, petitioner cannot be allowed to disown his responsibility to implement the award. Section 29 of the Act of 1947 envisages with clarity and precision that breach of any term of the award which is binding on an incumbent is a punishable offence and therefore it does not lie in the mouth of the petitioner to say that he is not bound by the award passed by learned Labour Court.

25. One more facet of the matter is that the petitioner was very much aware about the award passed by learned Labour Court. The communication dated 22nd of August 2012 (Annex.R/7 with the reply) was addressed to him by

Assistant Labour Commissioner (Central), Ajmer, calling upon him to implement the award and in response to the same petitioner has addressed a letter dated 6th of September 2012 to the Assistant Labour Commissioner (Central), Ajmer. The recitals of the letter dated 06.09.2012, in vernacular, are reproduced as under:

lanHkZ% ea0dk0@101@dk0 ,oa vkS0la0@2012&13 fnukad % 06-09-2012

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fo"k;kUrxZr dsUnzh; vkS|ksfxd U;k;kf/kdj.k] t;iqj }kjk Hkkjrh; thou chek fuxe] mn;iqj ,oa Jh ghjkyky dqekor ds e/; Isok lekfiR ds fookn esa ikfjr iapiV ds dze esa vkids i= lanHkZ%& ,sts&7@1@2@ 2006&Ijvk fnukad 22-08-2012 ds izR;qRrj esa ys[k gS fd %&

1- dsUnzh; vkS|ksfxd U;k;kf/kdj.k t;iqj }kjk dsl la[k;k 61@2004 ds ekeys esa ikfjr iapiV fnukad 28-10-2005 ds fo:) Hkkjrh; thou chek fuxe }kjk SBC writ ;kfpdk la[k;k 7165@2006 nk;j dh xbZ] tks ekuuh; jktLFkku mPp U;k;ky; cSap t;iqj ds le{k yfEcr gSA

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26. That apart, the last communication dated 7th of March 2013 was also

addressed to the petitioner by the Deputy Chief Labour Commissioner (Central), Ajmer with a clear stipulation that the award of Labour Court be implemented within seven days else legal action would be initiated against him for non-implementation of the award. Therefore, in the backdrop of facts and circumstances of the instant case, petitioner cannot shirk from his responsibility to implement the award and his argument that award is not binding on him is bereft of any merit, and being simply an ambitious plea merits rejection.

27. The so called order of reinstatement passed by the petitioner on 19th of September 2013 is of no avail and consequence inasmuch as the complaint was filed two months anterior to the said date, i.e. on 10th of July 2013, and cognizance was also taken by the learned trial Court. Moreover, this order was made only six days prior to the dismissal of the writ petition, with the stipulation that reinstatement is subject to the decision of the writ petition, further goes to show that it was a clear case of camouflaging the things and no genuine attempt was made by the LIC/petitioner to reinstate the workman. It is also pertinent to note here that no proof has been placed on record by the petitioner to show that order of reinstatement was communicated to the workman. In absence of workman being party to the litigation, for whose benefit prosecution is launched by the respondent Union of India, it is rather difficult to ascertain the factum of communication of reinstatement order to its beneficiary (workman).

28. Thus, upon examining the matter in its entirety, I am unable to find any manifest error in the impugned order passed by learned trial Court warranting interference in exercise of inherent powers of this Court. Moreover, in view of categorical finding recorded supra, there is no semblance of proof that continuance of proceedings in Criminal Case No.192/2013 before the learned trial Court would be an abuse of process of the Court or otherwise it is necessary to clog these proceedings perpetually for securing ends of justice.

29. The upshot of the above discussion is that I find no merit in this criminal misc. petition and therefore the same is hereby dismissed.