

In Re: V.S. Metha and ors.

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Court : Andhra Pradesh

Decided On : Sep-06-1968

Reported in : AIR1970AP234; 1970CriLJ797

Judge : Sharfuddin Ahmed and ;A.D.V. Reddy, JJ.

Acts : [Factories Act, 1948](#) - Sections 106; [General Clauses Act, 1897](#) - Sections 3(35) and 9(1)

Appeal No. : Criminal Revn. Case Nos. 312, 313, 333 to 335 of 1968 and Criminal Revn. Petn. Nos. 270, 271, 291 to

Appellant : In Re: V.S. Metha and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Ramachandra Rao and ;Monohar Pershad Mathur, Advs.

Judgement :

A.D.V. Reddy, J.

1. The point that arises for consideration in these revisions is what exactly is the period of limitation prescribed in S. 106 of the Factories Act for launching of prosecutions for offences under the Act.

2. In all these cases, the State, through the Assistant Inspector of Factories, had filed complaints in Criminal Courts for breach of certain provisions of the Act punishable under Section 92 of the said Act. Section 106 of the Factories Act reads as follows:-

'No Court shall take cognizance 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:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed'.

3. In so far as the knowledge of the Inspector is concerned it is contended that in the first two of the revisions i.e., Nos. 312 and 313 of 68, the Inspector had visited the factory on 29-8-66 and the complaint was lodged on 29-11-66 and in the three other cases Cr. R. Cs. 333, 334 and 335 of 1968, he visited the factory on 21-8-66 and the complaint was lodged on 21-11-66. It has been contended that the prosecution is beyond time. Both the lower Courts have held against this contention. Hence these revisions.

4. The real question relates to the interpretation of the words 'within 3 months of the date on which the alleged commission of the offence came to the knowledge of an Inspector'. What has to be seen is whether the complaints had been laid within a period of three months from the date of knowledge. It is first contended that the word 'month' means a month of 30 days and therefore the complaint should be filed within 90 days from the date of knowledge. For this reliance is placed on *vama Dava Desikar v. Murugesu Mudali*, (1906) ILR 29 Mad 75, wherein it was held that in a suit under Section 40 of the Madras Rent Recovery Act, 1865, the period of limitation of 'one month' prescribed should be construed as meaning 30 days. If that interpretation is to be adopted, these proceedings should have been taken within 90 days from the date of knowledge and in every one of these cases, the complaint admittedly had been filed beyond time. But in *Sashi Kumar v. Mrs. D. J. Hill*, : AIR1951 Cal316 it was held that the word 'month' in its ordinary acceptance, means a 'calendar month' and not a 'lunar month' except where in a particular

place or business or trade the word 'month' has acquired a secondary meaning. In the above decisions the provisions of the General Clauses Act of 1897 had not been considered. Section 3 of the said Act, which defines certain terms, says that in all Central Acts and regulations made after the commencement of this Act (on the principles of this Act) unless there is anything repugnant in the subject or context, the definitions given thereunder would apply. Section 3 sub-clause (35) defines 'month' as:

' 'month' shall mean a month reckoned according to the British calendar'.

5. It is therefore, follows that three months referred to in Section 106 of the Factories Act, which is a Central Act, means three calendar months and not 90 days claculated at the rate of 30 days per month. The Factories Act which had defined 'day' 'week' and 'year' had unfortunately not defined the term 'month', though in several of the provisions, including the important provisions relating to limitation, the word 'month' has come to be used. This necessitates having resort to the provisions of the General Clauses Act and as Section 3(35) defines 'month' as a calendar month, the term three months in section 106 of the Factories Act would only mean a period of three calendar months.

6. The next contention is that the prosecutions will be within three calendar months only if the day of inspection has to be excluded from the calculation (as that is the date of knowledge) but if it is included in the calculation, all the prosecutions would be barred by one day. Under Section 12(1) of the Limitation Act of 1908 in computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. The first limb of Section 29(2) reads as follows:

'Where any special or local law prescribes for any suit, appeal or application period of limitation different from the period prescribed therefore by the First Schedule the provisions of Section 3 shall apply, as if such period is the period of limitation

In the Sita Ram v. State, : (1961)IILLJ1All , it is pointed out that a complaint referred to in Section 106 is an application within the meaning of Section 29(2),

Limitation Act, that since the Limitation Act prescribes no period of limitation for a complaint under Section 106, Factories Act, the period prescribed by Section 106 must be held to be different and the first limb of sub-section (2) of Section 29, Limitation Act would apply, and Section 12, Limitation Act, would therefore, apply because it has not been expressly excluded by the Factories Act, and therefore, the day of the knowledge should be excluded. It was further held that even in case that Section 29(2) and Sec. 12 of the Limitation Act did not apply, under the common law the date on which the offence came to the notice of the Inspector must be excluded when computing the period of three months, that 'within' three months' means within the whole course of three months i.e., before the end of the last day of three months and that anything that is done on the last day of the three months is 'within three months'. In *Puran Chand v. Mohd. Din*, AIR 1935 Lah 291, it was held that the words in a decree 'within three months from today' should be reckoned as excluding the date of the passing of the decree. In *Rama Chandra Govind v. Laxman Savleram*, AIR 1938 Bom 447, it was held that the direction to deposit a certain sum in execution of a decree within 15 days from a certain date, should be taken to exclude that date.

7. Section 9(1) of the General Clauses Act provides that if in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the 'from', and for the purpose of including the last in a series of days or any other period of time to use the word 'to'. But in Section 106 of the Factories Act, the word 'from' has not been used. It is not stated that the complaint thereof is to be made within three months from the date on which the commission of the offence came to the knowledge of the Inspector, 'but within three months of the date'. In *Stroud's Judicial Dictionary* at page 1964 it is stated that 'of' is sometimes the equivalent of after, e.g., the word '21 days of the execution' means '21 days after the execution'.

8. We therefore, find that the term 'within three months of the date' in Section 106 of the Factories Act means 'within three calendar months after the commission of the offence came to the knowledge of the Inspector'. This interpretation based on common law as well as on the provisions of the Limitation Act and the provisions

of the General Clauses Act results in the exclusion of the day of the knowledge, i.e., the date of inspection and the 'three months' being calculated as three calendar months. In this view all the prosecutions are within time.

9. These revisions are therefore, dismissed.

10. Revisions dismissed.

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