B.P. Thakur Vs. State

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Court : Allahabad

Decided On : Nov-18-1958

Reported in : AIR1959All787; 1959CriLJ1393; (1959)IILLJ34All

Judge : M.C. Desai, J.

Acts : Factories Act, 1948 - Sections 106; Limitation Act, 1908 - Sections 12 and 29(2)

Appeal No. : Criminal Reference Nos. 71, 72 and 73 of 1957

Appellant : B.P. Thakur

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Brij Mohan Lal Srivastava, Adv.

Judgement :
ORDER

M.C. Desai, J.

1. This is a reference by the Additional Sessions Judge, Allahabad, recommending that the proceedings pending against the applicant for an offence committed against the Factories Act be quashed on the ground that the complaint was not

made within three months of the date on which the offence was committed. The relevant facts are that the offence was committed on 13-2-1955 within the knowledge of the Chief Inspector of Factories. He made a complaint of the offence and sent it to the District Magistrate on 22-4-1955 with the request that the Public Prosecutor be directed to present it in the court concerned on or before 12-5-1955, 'the last date for making complaint of the offence.'

On 13-5-1955 the Sub-Divisional Magistrate Handia took cognizance of the complaint and issued process against the applicant. The applicant appeared and questioned his jurisdiction to take cognizance of the offence on 13-5-1955; his contention was that the last date on which he could take cognizance was 12-5-1955. In reply it was said that the complaint was made before 13-5-1955 (because it was sent by the Chief Inspector to the District Magistrate on 22-4-1955) and this plea was accepted. The Sub-Divisional Magistrate held that the complaint was made before 13-5-1955 and proceeded to try the applicant. The applicant went up in revision and the learned Additional Sessions Judge has referred the case to this Court for quashing the proceedings.

The view that he takes is that the complaint was made not on 24-4-1955 but on 13-5-1955, the date on which it reached the court of the Sub-Divisional Magistrate, that under Section 106 of the Factories Act it should have been made within three months of the date on which the alleged commission of the offence came to the knowledge of the Chief Inspector, that the period of three months expired on 12-5-1955 and that consequently the Sub-Divisional Magistrate had no jurisdiction to take cognizance of the offence on the complaint made on 13-5-1955.

2. It is not necessary to go into the question whether the complaint was made on 22-4-1955 or on 13-5-1955 because even if it was made on 13th May 1955 it was within time. The offence came to the knowledge of the Chief Inspector on 13-2-1955 and the period of three months commenced on 14-2-1955 and ended on 13th May, 1955.

3. Section 12 of the Limitation Act provides that in computing the period of limitation prescribed for any suit, appeal or application the date from which such period is to be reckoned shall be excluded. Section 29(2)(a) makes this section

applicable to any special or local Act which prescribes for any suit, appeal or application a period of limitation different from that prescribed in Section 3 and the Factories Act is such a special Act. Therefore Section 12 of the Limitation Act is applicable and the date on which the offence came to the notice of the Chief Inspector is to be excluded in computing the priod of three calendar months. When this is done, the complaint filed on 13-5-1955 must be held to be within time.

4. This is also the rule of interpretation. Under the common law the first day is to be excluded in computing the period of limitation. In Radcliffe v. Bartholomew. (1892) 1 QB 161, the offence was committed on 30-5-1891, and a complaint of it made on June 30, 1891, was held to be a complaint 'within one calendar month after the cause of such complaint shall arise.' When under a law a security must be given within 6 calendar months after the testator's death, security given on 12-7-1805 was held to be within time, the testator having died on 12-1-1805; see Lester v. Garland, (1808) 15 Vesey 248: (10 R. R. 68). In Burnet v. Wilingham Loan and T. Co., (1930) 282 US 437: (75 Law Ed 448) a State statute required the am-cent tax to be assessed within five years after the return was made; a return was made on 15-3-1921 and the assessment made on 15-3-1926 was held to be within time. Holmes, J., said that when we say 'four years after the return was filed', by common usage we think of four years after the day on which the return was filed. He quoted the following from Cornell v. Moulton, 3 Denio 12:

'When the period allowed for doing an act is to be reckoned from ...... .the happening of any other event, the day on which the event happened may be regarded as an entirety, or a point of time; and so may be excluded from the computation. Stewart v. Chapman, (1951) 2 TLR 640, is a re-vent case laying down the same law; a notice served on January 25 of an offence committed on January 11 was held to comply with the law requiring service of notice within 14 days of the com-mission of the offence. Reference may also be made to the article 'Time-Computation' by F. A. Stringer in 14 Encyclopedia of Laws of England,82.

5. The reference is rejected.