

Damodaran Vs. State of Kerala

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Court : Kerala

Decided On : Jul-12-1960

Reported in : 1961CriLJ102

Judge : P. Govinda Menon, J.

Appellant : Damodaran

Respondent : State of Kerala

Judgement :

ORDER

P. Govinda Menon, J.

1. The accused in C. C. No. 43 of 1958 who had been convicted by the Sub-Divisional Magistrate, Trivandrum under Section 92 of the Act, XL III of 1948 and whose appeal to Judge of Trivandrum has been dismissal few Wed this revision.

2. The Inspector of Factories filed a complaint against the accused under Section 105 of the Factories Act alleging that the accused had contravened Section 6, Clause 1 a of the Act and Rule 3 of the Factories Rules by conducting a manufacturing process with the aid of power and employing more than 9 workers without obtaining previous permission in writing of the Chief Inspector of Factories and also for having failed to apply for registration and obtaining licence, offences punishable under Section 92 of the Factories Act.

These facts were not denied and the only point that was raised in the case was that in view of Section 106 of the Act, the complaint is barred by limitation. Both the courts below found that there was no bar of limitation and found the accused guilty of the offence he stood charged with, and convicted and sentenced him to pay a fine of Rs. 100/-.

3. Exhibit DI is a letter sent to Pw. 1 by the Joint Secretary of the Trivandrum District Motor Service and Workshop Employees Union. That letter was received by Pw, 1 on 15-11-1957 and he visited the factory on 28-11-1957 and found that there were contraventions of the provisions of the Act and Rules and so he filed this complaint on 28-2-1958. It was argued that the three months should be computed from 15-11-1957 on which date Pw. 1 got this letter Ext. DI. It would be seen that Ext. DI did not give him any knowledge of the commission of the offence complained against It was only after his inspection that Pw. 1 found out that there were contraventions of the provisions of Section 6, Clause 1(a) and Rule 3 of the Factories Rules,

4. It is then argued that even if the knowledge of Pw. 1 may be taken from 28-11-1957, this complaint is barred because it is only on 28-2-1958 that the complaint was filed while it ought to have been filed on 27-2-1958. Section 106 of the 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

The question is what is the interpretation to be given to the words in Section 106 'within 3 months of the date' of knowledge.

5. In Maxwell on Interpretation of Statutes, 10th Edition, page 351, it is stated:

Again, when so many 'clear days' or so many days 'at least', are given to do an act, or 'not less than' so many days are to intervene, both the terminal days are excluded from the computation. In other cases, it would seem, the rule is to exclude the first and include the last day

If this rule is adopted In this case then 28-11-1957 can be excluded and the complaint need be filed only on 28-2-1958 and it would be within time,

6. This was the view that was taken in the case in *Radcliffe v. Bartholomew* (1892) 1 QB 161. That was a case where a complaint was laid against the appellant charging him with ill-treating certain sheep on May 30th. 1891, By Section 14 of that Act it was enacted that 'every complaint under the provisions of the Act is to be made within one calendar month after the cause of such complaint shall arise'. The complaint was laid on June 30th and objection was taken to the jurisdiction of the justice on the ground that the complaint had not been made within one calendar month after the cause of complaint had arisen. Wills, J., referred to two earlier decisions, *Williams v. Burgess* (1840) 12 A and E 635 and *Hardy v. Ryle* (1829) 9 B and C 603, and observed:

In (1840) 12 A and E 635, the language of the section was 'within 21 days after the execution' and it was held that the day of execution was there to be reckoned exclusively. In (1829) 9 B and C 603, which was an action against a justice for trespass and false imprisonment, the plaintiff had been discharged from custody on December 14, and brought his action on June 14 following, Section 8 of 24 Geo. 2, Order 44, prescribed that 'no action shall be brought against any Justice of the Peace for anything done in the execution of his office unless commenced within six calendar months after the act committed'. Except, as to the difference between one month and six months, those words are the same as those which we are now interpreting, and it is impossible to draw any distinction between the language of the two enactments. In that case the court held that an action brought on June 14 in respect of a cause of action which had arisen on December 14, was in time, because the day on which the cause of action arose was excluded from the computation of the six months, while that on which the action was brought was included in it.

7. In *Thomas Antoney v. Deputy Labour Commissioner*, 1956 Ker LT 609, the interpretation of Rule 9(1) of the T. C. Shops and Establishments Rules 1950 came up for consideration. The relevant rule Rule 9(1) of the T. C. Shops and Establishments Rules 1950 reads as follows:

The Deputy Commissioner of Labour shall be the appellate authority for the purpose of hearing appeals under Sub-section (2) of Section 41 and any such appeal shall be preferred by the person employed within thirty days from the date on and from which his services are dispensed with.

M.S. Menon, J., referred to Stroud's Judicial Dictionary, Volume II, page 1182 which states as follows:

'From' is much akin to 'after'; and when used in reference to the computation of time, e.g., 'from' a stated date, prima facie excludes the day of that date

Reference has also been made in the decision to the case in South. Staffordshire Tramway Co, Vi. Sickness and Accident Assurance Association (1891) 1 QB 402 in which the court held that the effect of 'from' in the expression 'for twelve calendar months from November 24, 1887", in a policy of insurance 'was to exclude November 24, 1887, and to include November 24, 1888, in the period of the insurance'.

The order of discharge in that case was on 21-12-1955 and the appeal was filed on 20-1-56. The date 21-12-55 was excluded and when the appeal was filed on 20-1-56 it was within 30 days and the court held that the appeal was filed within time. This decision also supports the position taken up by the learned Government Pleader.

8. I might also refer to the decision in Dasru-lal Bhagchand Lal v. Narayan Mahadeo AIR 1937 Nag 105 the question that arose was with regard to the meaning of the words 'within one month' in Order 41, Rule 22 of the Code of Civil Procedure and it was held:.. the words 'within one month' would be more reasonably interpreted as meaning not beyond one month and therefore the respondent has a right to file cross-objections at any time up to one month after the date of service.

9. The learned Counsel for the petitioner referred to the Full Bench Decision of the T. C. High Court in State v. Govindan Asan 1952 Ker LT 211 : AIR 1952 Trav. - Co. 188). That was a case under the Travancore Factories Act, Act VIII/1114. The

Inspector of Factories found on 6-8-1123 that the accused had contravened certain provisions of the Factories Act and the Rules. Section 75 of the Act provided that no court is to take cognizance of any offence unless complaint was made within six months of the date on which the offence was alleged to have been committed. The complaint was filed on 6-2-1124 and the learned Magistrate dismissed the complaint as being barred by time.

10. When the revision petition came up for hearing before a Single Judge it was referred to a Full Bench to consider the applicability of Section 10 of the General Clauses Act. It so happened that 5-2-1124 was a holiday and the question that was considered was whether by virtue of Section 10 of the General Clauses Act, the complaint need be filed only on the next day. It was held that the six months period provided in Section 75 of the Factories Act is governed by Section 10 of the General Clauses Act and so if the six months expired on a gazetted holiday, the complaint could be filed on the next day when the court sat. This question whether the date of the commission of the offence should be excluded was not specifically considered nor was there an occasion to consider the same. Therefore this decision according to me has no application to the question involved in this case.

11. Another decision that has been referred to by the petitioner's learned Counsel is the decision in *Municipal Council, Nagercoil v. Pioneer Motors Ltd., Nagercoil*, 1956 Ker LT 738 : (S) AIR 1957 Trav. - Co. 95 (FB). The question that was raised in the case was whether the Municipal Council, Nagercoil was entitled to collect profession tax. The objection that was raised was whether the notification issued by the Council was in conformity with Section 78 of the Travancore District Municipalities Act, 1116. Section 78 provided that before the Council passed a resolution imposing a tax, there must be due publication fixing a reasonable period 'not less than one month' for submission of objections.

The notice of the Council published, stated that objections should be filed 'within 30 days' of the date of the publication and the objection was that the time allowed was less than what is provided for in the section and hence the procedural require-merits were not complied with. M.S., Menon J., who delivered the majority judgment stated:

There can be no doubt that 'within 30 days' denotes a period of time less than 'one month'.

Reference was made to the decision in Commissioner of Income-tax v. Ekbal and Co. AIR 194S Bom 316 where it is stated as follows:

'Within 30 days' and 'not less than 30 days' are two quite different things, 'Within 30 days' is within two points of time, one at which the period begins and the other at which it expires. On the other hand, 'not less than 30 days' is outside these two points of time. There must be an interval of not less than 30 days and that means 30 days clear: see *In re Railway Sleepers Supply Co.*, 1885 29 Ch. D. 204. The period must continue beyond the expiration of the stated time. Whereas 'within' the stated period must mean what it says, something less than the moment of expiration.

So the real question for decision in the case was whether 'within 30 days' is shorter than the period 'not less than one month' and the court held that 'within 30 days' is definitely lesser than not less than one month'. This interpretation is in consonance with what is contained in Maxwell's Interpretation of Statutes referred to by me earlier and does not decide the question in issue in this case.

12. It will not be out of place to refer to Section 12 of the Limitation Act where it is stated that:

(1) 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.

13. The learned Sessions Judge was therefore justified in finding that the complaint was within time and excluding the day on which the Inspector detected the offence.

In the result the conviction and sentence passed on the petitioner is confirmed and the petition is dismissed.