

Dileep Vs. State of Kerala

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Court : Kerala

Decided On : Aug-05-1999

Reported in : 1999CriLJ4490; [2000(84)FLR110]; (2001)IIILLJ686Ker

Judge : K.A. Mohamed Shafi, J.

Acts : [Plantations Labour Act, 1951](#) - Sections 40

Appeal No. : Crl. Misc. Case No. 1471/1998

Appellant : Dileep

Respondent : State of Kerala

Disposition : Petition dismissed

Judgement :

K.A. Mohamed Shafi, J.

1. The accused in S.T. 97/1995 before the Judicial First Class Magistrate's Court, Punalur, has filed this M.C. to quash the entire proceedings under Section 482 of the Code of Criminal Procedure.

2. The petitioner is being prosecuted for violation of Section 8 read with Rule 8, Section 8 read with Rules 10(1) and 10(2), Section 10 read with Rule 33(3), Section 23 read with Rule 72(1), Section 43(2) read with Rule 76(2)(a) and Section

3B read with Rule 2-A of the Plantations Labour Act and the Rules framed thereunder, on the basis of Annexure A complaint filed by the second respondent. The only contention urged before this Court to quash the proceedings is that the complaint is barred by limitation.

3. The petitioner contended before the Trial Court that the prosecution is barred by limitation under Section 40 of the Plantations Labour Act. The learned Magistrate by the order, dated July 31, 1997, found that the prosecution is not barred by limitation once this M.C. is filed, before this Court to quash the entire proceedings against him, under Section 482 of the Criminal Procedure Code. In, Annexure A complaint it is stated that on inspection of the estate of the petitioner at about 11.30 A.M. on July 28, 1994 violations of various provisions of law are detected and the petitioner has not rectified the defects in spite of Annexure C inspection order, dated July 30, 1994, sent by the second respondent to the petitioner within 30 days from the date of receipt of the order. The petitioner has contended that Annexure A complaint is filed beyond the period of limitation provided under Section 40 of the Plantations Labour Act. Section 40 of the Act reads as follows:

'40. Limitation of prosecutions, - No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence came to the knowledge of Inspector:

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

4. The counsel for the petitioner submitted that admittedly the offence is detected by the second respondent on July 28, 1994 and therefore, the above complaint, dated January 3, 1995, is obviously barred by time. On the other hand, the Public Prosecutor appearing for the respondents submitted that though Section 40 provides a period of limitation of three months for filing complaint from date of detection of the offence, under proviso to that Section the period of limitation is extended to six months from date of detection of the offence, in case where disobedience of a written order by the Inspector is alleged. Therefore according to

him, in view of Annexure C written order of inspection issued by second respondent to the petitioner to rectify the defects within 30 days of receipt of that order, the period of limitation in this case is six months from the date of detection of the offence on July 28, 1994 as stipulated in the proviso to Section 40 of the Act. Therefore, according to him, Annexure A complaint preferred in this case is well within period of limitation.

5. The counsel for the petitioner submitted that Section 40 of the Plantations Labour Act lays down that the period of limitation to prefer the complaint alleging offence punishable under the Act is three months from the date of detection of the offence by an Inspector and therefore, Annexure A complaint ought to have been filed within three months from July 28, 1994, the date of inspection of the estate and detection of the offence by the second respondent and as such Annexure A complaint, dated January 3, 1995, filed in this case is barred by limitation. He also submitted that the proviso to Section 40 applies only with regard to disobedience of written orders made by the Inspector under the provisions of the Act and the Rules and it has no bearing with the period of limitation of three months provided under Section 40 for filing the complaint, from the date of detection of the offence or the date of knowledge of the offence by the Inspector. He further submitted that this contention has been accepted by this Court to quash the proceedings initiated beyond the period of limitation of three months. The petitioner has produced copies of the order, dated September 13, 1991 in CrI M. C. No. 477 and 478 of 1991 and order, dated June 1, 1995 in CrI. M.C. No. 316 of 1995 passed by two single Judges of this Court to fortify the above contention.

6. In the order in CrI M.C. Nos. 477 and 478 of 1991, a single Judge of this Court has stated that he is unable to construe Annexure O therein as a written order to attract the proviso to Section 40 of the Act and since the complaint was not filed on October 19, 1990 within three months of the detection of the offence on July 19, 1990 and filed only on January 15, 1991, it was out of time and cognizance of the alleged offence should not have been taken in that case. Therefore, that decision of a single Judge of this Court is of no help to the petitioner herein. In the order passed by another single Judge of this Court in CrI M.C. No. 316 of: 1995 it was held that the complaint not filed within three months of the detection of the offence

on June 5, 1993 is barred by limitation under Section 40 of the Act. In that case even though the prosecution had contended that Annexure D inspection order was made on January 29, 1994 and as there is violation of that order the prosecution is not barred by limitation, that contention was negated by this Court. It has to be noted that in that case the offence was detected on June 5, 1993, when the Inspector of Plantations inspected the estate and Annexure D inspection order was made only on January 29, 1994. In that case the learned Judge of: this Court found that Annexure D is only a continuation of Annexure A which would show that the Inspector of Plantations instead of filing a complaint for the violation which he noted on June 5, 1993, has chosen to write another letter under Annexure D and Annexure D will not help the complainant to contend that the offence was noticed on January 29, 1994 and as such the complaint filed on July 7, 1994 is within time.

7. In this case the offence is detected by the second respondent on July 28, 1994 and Annexure C written order sent by the second respondent calling upon the petitioner to rectify the defects noted during the inspection on July 28, 1994 is dated July 30, 1994, and the complaint is dated January 3, 1995. Therefore, the facts and circumstances obtaining in those two decisions of this Court relied upon by the petitioner are entirely different and distinct from the facts and circumstances obtaining in this case. Therefore, Annexures G and H orders passed by this Court are of no help to the petitioner herein.

8. It is the well settled rule of interpretation of statutes that a proviso to a particular section should be read and construed in relation to the matters stated in the principal section to which the proviso is attached. It cannot have a different and distinct meaning altogether which the Legislature has not intended while interpreting the main Section. The proviso should be limited to the subject-matter of the enacting clause in the statute. In the decision in *Dwaraka Prasad v. Dwaraka Das Saraf* AIR 1975 SC 1758 : 1976 (1) SCC 128 the Supreme Court has observed as follows:

'A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or

independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' [1912 A.C. 544]. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, since (sic) against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso, ordinarily is but a proviso although the golden rule is to read the whole Section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction'.

9. In the light of the above principle laid down by the Apex Court regarding interpretation of statutes especially the main enacting provision along with its proviso, the contentions raised by the petitioner that while the enacting provision of Section 40 refers to limitation with respect to filing of complaints regarding the offences detected by the Inspector, the proviso thereto relates to the violation or disobedience of the written orders issued by the Inspector pertaining to the other Sections of the Act and the Rules cannot be accepted. A meaningful, harmonious and pragmatic interpretation of Section 40 and the proviso thereto clearly establishes that reference to the offence consisting of disobedience of written order made by the Inspector in the proviso should refer only to the written order issued by the Inspector on detection of the offence as contemplated under Section 40 and not to any written order given by the Inspector to the employer with respect to any other matter within his power and authority under the provisions of the Plantations Labour Act and Rules, Therefore, Annexure A dated January 3, 1995, taken on file by the Court on February 2, 1995, is well within the period of limitation provided under, proviso to Section 40 of the Act, in view of Annexure C inspection order, dated July 30, 1994, issued by the second respondent with regard to the detection of the offence on July 28, 1994.

10. Therefore, the learned Magistrate is perfectly justified in finding that the complaint filed in this case is not barred by time. Hence I find that Annexure A complaint filed by the second respondent against the petitioner is well within the period of limitation as provided under Section 40 of the Plantations Labour Act and

the proviso thereto and the contention of the petitioner that the complaint is barred by limitation is absolutely untenable. Therefore, this Crl. M.C. is devoid of any merits and hence the same is dismissed.

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