

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 854 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHANKHESHWAR JAIN

Appearance:

MR KP RAWAL, APP for Petitioners
(MR MC KAPADIA) for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 29/09/2000

ORAL JUDGEMENT

The Labour Officer and Inspector under Minimum Wages Act, Mehsana filed two complaints (Criminal Case No.176 and 177 of 1991) against the respondents in the court of Judicial Magistrate, First class, Harij alleging

that the respondent had committed breaches of Rules 22, 26(2) and 26(B)(1) of the Gujarat Minimum Wages Rules, 1961, which are punishable under Section 22A of the Minimum Wages Act, 1948. The Learned Magistrate issued process and the respondents entered appearance through their advocate. The respondents filed an application in each case contending that, according to the complainant, he had made the inspection on 05.12.1990 and since the complaint was filed beyond a period of six months from that date, it was barred by limitation. The respondents, therefore, made a prayer that they should be discharged. However, the learned Magistrate found that the complaint was filed on 27.05.1991 but the period of six months from 05.12.1990 would expire on 05.06.1991 and hence, the complaint was within the period of limitation. He therefore, by his order dated 05.08.1992, dismissed the applications filed by the respondents.

2. The respondents, feeling aggrieved by the said orders of the Magistrate, filed Criminal Revision Applications No.115 of 1992 and 116 of 1992 in the Sessions Court at Mehsana. The two Revision Applications were heard together and the learned Sessions Judge by his common judgment and order dated 22.12.1992 allowed the said Revision Applications and set aside the orders passed by the learned Magistrate and held that the learned Magistrate was not entitled to take cognisance of the complaint since they were filed beyond the period of limitation. It is the said order of the learned Sessions Judge which is under challenge in this Special Criminal Application filed by the State invoking the jurisdiction of this court under Article 227 of the Constitution.

3. Rule was issued on 16.06.1992 and interim relief was granted staying the impugned order of the learned Sessions Judge during the pendency of this petition. Since the order of the learned Sessions Judge was stayed, it is possible that by now the proceedings in the trial court may have been over. However, the learned APP has no instructions. No one appears on behalf of the respondents. It appears from the judgment of the learned Sessions Judge that he proceeded on the footing that the Rules in question, the breach of which was alleged in the complaint, were framed under Section 13 of the Act and hence the offence would be punishable not under Section 22A but 22(b) of the Act for which the period of limitation is one month under Section 22B(2)(a). However, it was not pointed out to the learned Sessions Judge that the Rules in question were framed not under Section 13 but Section 30 of the Act, the breach of which is punishable under section 22A and the period of

limitation for the said offence is six months from the date on which the offence becomes known to the Inspector. It is, therefore, obvious that the learned Sessions Judge fell into error in holding that the complaints were barred by limitation. The impugned order passed by the learned Sessions Judge is therefore set aside. Rule is made absolute accordingly.

(M.C. Patel, J.)

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