BHAGIRATH KANORIA & ORS. ETC.

v.

STATE OF M.P. & ORS. ETC.

August 24, 1984

[Y.V. CHANDRACHUD, C. J. AND O. CHINNAPPA REDDY, J]

Employees Provident Fund and Family Pension Fund Act 1952, Section 14 and Employees' Provident Fund Scheme 1952, Paragraph 38.

Employers contribution to Provident Fund—Non-payment on due dates—Whether a 'continuing offence period of limitation prescribed in Section 468 and 473 of the Code of Criminal Procedure Code—Applicability of.

Code of Criminal Procedure 1973, Sections 468 and 473—Continuing offence—What is—Period of limitation in continuing offences commencement of.

Words & Phrases : continuing offence—Meaning of.

The Provident Fund Inspector filed complaints against the appellants Directors and Factory Manager and respondent No.2—Company charging them with non-payment of employers' contribution under the Employees' Provident Fund and Family Pension Fund Act, 19 of 1952, alleging that the accused did not pay the employers contribution to the Fund from February 1970 to June 1971.

At the commencement of the trial, the accused filed applications contending that since the limitation prescribed by section 468 of the Code of Criminal Procedure, 1973 had expired before the filing of the complaints, the Court had no jurisdiction to take cognizance of the complaitns. These applicatinos were rejected by the Judicial Magistrate on the ground that the offences of which the accused were charged are 'continuing offences' and therefore, no question of limitation could arise. This order was upheld by the High Court in the revision applications filed by the appellants.

In the appeals to this Court filed by the Directors of the Company it was contended that the offence of non-payment of the employers contribution can be committed once and for all on the expiry of fifteen days after the close of every month and, therefore, prosecution for that offence must be launched within the period of limitation provided in section 468 of the Code.

A

Dismissing the appeals,

HELD 1. The offence of which the appellants are charged, namely non-payment of the employer's contribution to the Provident Fund before the due date, is a 'continuing offence' and, therefore, the period of limitation prescribed by section 468 of the Code cannot have any applica-
tion. The offence which is alleged against the appellants will be governed B
by section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues. [636 D—E]

2. The concept of 'continuing offence' does not wipe out the
original guilt. It keeps the contravention alive, day by day. [636 D] C

S. V. Lachwani v. *Kanchanlal C. Parikh and others*, 1978, Lab. I. C. 868, over-ruled.

3. Courts when confronted with provisions which lay down a rule
of limitation governing prosecutions, in cases of this nature will give due D
weight and consideration to the provisions contained in section 473 of the Code. That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. [636 F—G]

E

4. The expression 'continuing offence' is not defined in the Code but that is because expressions which do not have a fixed connotation or a static import are difficult to define. The question whether a particular offence is a 'continuing offence' must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and,
above all, the purpose which is intended to be achieved by constituting F
the particular act as an offence. [632 E, 635 E]

State of Bihar v *Deokaran Nenshi*, [1973] 1 SCR 1004, explained.

5. The offence of which the appellants is charged is the failure to
pay the employers contribution before the the due date. Considering the G
object and purpose of this provision, which is to ensure the welfare of workers, it is impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the Fund, they committed
a fresh offence. [635 F—G] H

A 6. To hold that the employer who has not paid his contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation, would be putting an incredible premium on lack of concern for the welfare of workers. Such offences must be regarded as continuing offences to which the law of limitation cannot apply. [635 G—636 A]

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 407 to 418 of 1979.

Appeals by Special leave from the judgment and order dated
the 6th July, 1977 and 12th May, 1978 of the Madhya Pradesh
C High Court in Crl. Case Nos. 857, 851, 853, 858, 852, 850 of 1977
and 1394, 1391, 1395, 1392, 1393 & 1387 of 1976.

WITH

Criminal Appeal No. 828 of 1981

D

Appeal by Special leave from the Judgment and order dated the 1st May, 1981 of the Madhya Pradesh High Court in Crl. Revision No. 187 of 1977

AND

E

Criminal Appeal Nos. 315-317 of 1982

Appeal by Special Leave from the judgment and order dated the 7th September, 1977 of the Madhya Pradesh High Court in Crl. Revision No. 186, 185 & 184 of 1977

F

G. L. Sanghi. Vinod Bobde, Mrs. A. K. Verma, O. C. Mathur and *D. N. Misra* for the Appellant in Crl. As. 407-18/79.

Gopal Subramaniam and *D. P. Mohanty* for Respondents Nos. 1 & 2 in Crl. As. 407-18 of 1979.

G

Mrs. Urmila Sirur, S. N. Kohli and *M. P. Jha* for the Intervener in Crl. A.. Nos. 407-18/79.

M. K. Ramamurthy and *Miss A. Vaiji* for A. C. in Crl. As. No. 407-18/79.

S. Govind Swaminathan and *S.K. Gambhir* for the appellants
H Crl. A. 828/81 and Crl. A. Nos. 828/81 & 315-17/82.

N. C. Taluqdar and *Miss A. Subhashini* for the Respondents A
in Crl. A. Nos. 828/81 & 315-317/82.

The Judgment of the Court was delivered by

CHANDRACHUD C.J. These appeals raise a question of general public importance as to whether failure to pay the employers' contribution B to the Provident Fund is continuing offence. If it is, no question of limitation can arise. On the other hand, if it is not a continuing offence, the complaint for non-payment of the contribution has to be filed within the stated period.

C

The facts of these appeals vary from case to case but such variation is inconsequential for our purpose. We will therefore state the facts of a representative group of these cases which comprises Criminal Appeals Nos. 407-418 of 1979.

On August 22, 1975 the Provident Fund Inspector, Indore, D Madhya Pradesh, filed six complaints against the appellants and respondent 2, charging them with non-payment of employers' contribution under the Employees Provident Fund and Family Pesion Fund Act 19 of 1952, (referred to herein as "the Act"). Respondent 2 is a Company called M/s Burhanpur Tapti Mills Limited, of which appellants 1 to 3 were Directors and appellant 4 the E Factory Manager. Under section 17 of the Act, the Company was granted exemption from the operation of the Employees Provident Fund Scheme, 1952 which is framed under the Act. That exemption was granted on the condition that the Company will transfer monthly collections of the Provident Fund of workers, inclusive of the F employers' contribution, to the Board of Trustees of the Fund within 15 days of the close of each month. The allegation against the accused, about which there is no factual dispute, is that they did not pay the employers' contribution to the fund from February 1970 to June 1971.

G

At the commencement of the trial, the accused filed applications contending that since the limitation prescribed by section 468 of the Code of Criminal Procedure, 1973 (referred to herein as "the Code"), had expired before the filing of the complaints, the Court had no jurisdiction to take cognizance of the complaints. Those applications were rejected by the learned Judicial Magistrate by an order dated November 29, 1976 on the ground that the offences of H

A which the accused were charged are continuing offences and therefore, no question of limitation could arise.

The accused filed revision applications in the High Court of Madhya Pradesh against the order passed by the trial court. By a judgment dated July 6, 1977 a learned single Judge of the High Court upheld the order of the trial court and dismissed the revision petitions. The Directors of the company who, along with the company, were arraigned as the accused have filed these appeals by special leave, against the judgment of the High Court.

By a Notification dated April 22, 1971 the Company was declared as a Relief Undertaking under the Industries (Development and Regulation) Act, 1951. As a result of that notification, the administrotion and control of the Company are vested in an administrator appointed by the Central Government under that Act. Later, the Company was notified as a Sick Textile Undertaking under the First Schedule to the Sick Textile Undertakings (Nationalisation) Act, 1974, which came into force on April 1, 1974.

The complaints for non-payment of the employer's contribution to the Provident Fund were filed against the accused under section 14 (2A) of the Act which reads thus :

> "Section 14. *Penalties.*
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> × × × ×
>
> (2-A). Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both."

The allegation against the accused is that by not paying their contribution to the Provident Fund, they committed default in complying with the condition subject to which exemption was granted to them under section 17 of the Act from complying with the provisions of the Act. Stated briefly, section 17 confers upon the appropriate Government the power to exempt any establishment from the operation of all or any of the provisions of the Act, if such establishment has its own scheme of Provident Fund, of which A the rules are not less favourable than the rules of the scheme framed under the Act. The Company, in the instant case, was granted exemption under section 17 on the condition that it shall pay the employer's contribution within fifteen days of the close of each month. This condition is the same as the one contained in paragraph B 38 (1) of the Employees' Provident Funds Scheme, 1952. Paragraph 38 (1) reads as follows, in so far as is relevant ;

> "38. *Mode of payment of contribution*—
>
> (1) The employer shall, before paying the member his C wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution... ... he shall, within fifteen days of the close of every month, pay... to the Fund."

D

The question as to whether the offence of non-payment of the employer's contribution of the Provident Fund is a continuing offence, arises because of the provisions contained in Chapter XXXVI of the Code which is entitled 'Limitation for taking cognizance of certain offences.' Sections 468, 472 and 473 which occur in that Chapter and which are relevant for our purpose, read as follows:— E

> "468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. F
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> (2) The period of limitation shall be—
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> (a) six months, if the offence is punishable with fine only ;
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> G
>
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year ;
>
> (c) three years, if the offence is punishable with imprisonment for a term exceeding one year H but not exceeding three years."

A "472. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

"473. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cogni-
B zance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

It is contended by Shri Bobde who appears on behalf of the
C appellants that, the offence of non-payment of the employer's contribution can be committed once and for all on the expiry of fifteen days after the close of every month and, therefore, prosecution for that offence must be launched within the period of limitation which is mentioned in section 468 of the Code. It is common ground that if the offence is non-continuing, the period of limitation
D for filing the complaint will be one year as provided in clause (b) of sub-section (2) of section 468 since, the offence in the instant case is punishable with imprisonment which may extend to three months or with fine.

It is impossible to accept Shri Bobde's contention. The expres-
E sion 'continuing offence' is not defined in the Code but, that is because expressions which do not have a fixed connotation or a static import are difficult to define. How difficult it is to put the concept of a continuing offence in a strait jacket is illustrated by the decision of this Court in *State of Bihar* v. *Deokaran Nenshi*.(1)
F In that case, respondents who were owners of a stone quarry in Bombay were required to forward certain annual returns in respect of the preceding year, on or before January 21 in each year. Failure to forward the returns as required is punishable with fine under section 66 of the Mines Act, 1952. The respondents having failed to furnish the returns by the due date, which was January 21, 1960
G a complaint was filed against them in a Court at Dhanbad on April 12, 1961. One of the contentions of the respondents was that the complaint was barred by limitation under setcion 79 of the Mines Act which provided that no Court shall take cognizance of an offence under that Act unless the complaint was filed within six
H months of the date of the offence. The Explanation to section 79

(1) [1973] 1 SCR 1004.

provided that if the offence in question was a continuing offence, the period of limitation shall be computed with reference to every part of the time during which the said offence continued. It was held by this Court that the infringement which occured on January 21 of the relevant year was complete when the owner failed to furnish the annual returns on that date. Since, the Regulation did not lay down that the owner would be guilty of an offence if he continued to work the mine without furnishing the returns, the offence was non-continuing and, therefore, the complaint was time barred. While discussing the question as to when an offence could be said to be a continuing offence, the Court made the following observations :

> "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all." (p. 1006)

This passage shows that apart from saying that a continuing offence is one which continues and a non-continuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence. Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a non-continuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar.

In *Best* v. *Butlar and Fitzgibbon*, (1) the English Trade Union Act, 1871 made it penal for an officer or a member of a Trade Union to wilfully withhold any money, books, etc. of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys were wilfully withheld, the offence was committed.

In *Verney* v. *Mark. Fletcher & Sons Ltd.*, (2) section 10 (1) of the Factory and Workshop Act, 1901 provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Section 135 provided the penalty for non-compliance with section 10 (1), while section 146 provided that information of the offence shall be laid within three months after the date on which the offence comes to the knowledge of the Inspector. It was held that the breach of section 10 (1) was a continuing breach and therefore the information was in time. Every day that the fly-wheel remained unfenced, the factory was run otherwise than in conformity with the Act of 1901 and, therefore, the offence defind in section 10 was a continuing offence.

The third English case referred to is *The London County Council* v. *Worley*, (3) in which section 85 of the Metropolis Management Amendment Act, 1852 prohibited the erection of a building on the side of a new street in certain circumstances, without the consent of the London County Council. The Court construed section 85 as creating two offences : building to a prohibited height and, continuing such a structure already built after receiving a notice from the County Council. The Court held that the latter offence wsa a continuing offence.

In *Emperor* v. *Karandas*, (4) section 390 (1) of the Bombay City Municipal Act, 1888 provided that no person shall newly establish in any premises any factory of a certain description without the previous permission of the Commissioner nor shall any person work or allow to be worked any such factory without such permission. It was held by the High Court that establishing a new factory was an offence commited once and for all but working it without permission was a continuing offence.

(1) [1932] 2 K. B. 108.
(2) [1909] 1 K. B. 444.
(3) [1894] 2 Q. B. 826.
(4) **A. I. R. 1942 Bom. 326.**

In *The State of Bombay* v. *Bhiwandiwala.* (1) it was held that the offence of using the premises as a factory without a licence is a continuing offence. A

In *State of Bihar* v. *J.P. Singh,* (2) the High Court of Patna held that conducting a restaurant without having it registered and without maintaining proper registers were continuing offences. B

The decision of this Court in *State of Bihar* v. *Deokaran Nenshi* to the effect that failure to furnish returns before the due date is not a continuing offence must be confined to cases of failure to furnish returns. It cannot be extended to cases like those before us in which, the contravention is not of a procedural or formal nature and goes against the very grain of the statute under conside-raion. What is of closer resemblance to the cases before us are the three English cases, the two Bombay cases and the Patna case referred to by this Court as illustrative of cases in which the offences were held to be of a continuing nature. We adopt the reasoning in those cases as applicable to the circumstances of the instant prosecutions. C D

The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellant were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid E F G

(1) I, L. R. 1955 Bom. 192. H

(2) 1963 Bihar Law Journal Report, 782.

contribution or the cotribution of the employes to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply.

Our attention has been drawn to a judgment of the Bombay High Court in Criminal Revision Applications 337 and 338 of 1976, which were decided by a learned single Judge on November 7, 1977. It was held in that Judgment that the failure to pay the employer's share of contribution to the Provident Fund is not a continuing offence. For reasons which we have mentioned above, we dissent from that judgment. With respect, we are uanble to appreciate the reasoning of that judgment that if the failure to pay the employer's contribution is regarded as a continuing offence, it would be open to the employer to pay the contribution even after the due date has expired, in order to escape punishment. The concept of continuing offence does not wipe out the original guilt. It keeps the contravention alive, day by day.

For these reasons, we are of the opinion that the offence of which the appellants are charged, namely, non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation prescribed by section 468 of Code cannot have any application. The offence which is alleged against the appellants will be governed by section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues.

Before we close, we consider it necessary to draw attention to the provision of section 473 of the Code which we have extracted above. That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, *inter alia*, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take congnizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in case of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in section 473 of the Code. A

We confirm the view of the High Court that in passing the impugned order, the learned Magistrate has not in any manner reviewed his earlier order dated September 20, 1976. B

In the result, these appeals are dismissed. The prosecutions will proceed and be disposed of expeditiously in accordance with law. The learned Magistrate will dispose of these cases by considering all the points together, that is to say, without treating any particular point as a preliminary point. C

N. V. K. *Appeals dismissed.*