

Tamal Lahiri

Vs

(Kumar) P. N. Tagore

Criminal Appeal No. 69 of 1972

(CJI Y. V. Chandrachud, R. S. Sarkaria, O. Chinnappa Reddy JJ)

13.09.1978

JUDGMENT

CHANDRACHUD, C.J. -

1. On December 5, 1967, the Baranagore Municipality served a notice on the respondent alleging that he had erected an obstruction over the main municipal drain without the permission of the Administrator of the Municipality and calling upon him to remove the same within fifteen days of the date of receipt of the notice. A similar notice was sent to the respondent by registered post which he received on December 7. On the respondent's failure to comply with the requisition the Municipality, through the appellant who is its Law Assistant, filed a complaint against him under Section 240(1)(b) read with Section 500(1)(b) of the Bengal Municipal Act, XV of 1932 ("The Act"). The respondent took a preliminary objection to the maintainability of the complaint on the ground that since the prosecution was not instituted within six months next after the commission of the offence, it was barred by limitation under Section 533 of the Act. That objection having been rejected by the trial Court, the respondent filed a revisional application in the Calcutta High Court. It will not be quite accurate to say that the respondent's objection, in the form in which it was taken by him, was upheld by the High Court, but the High Court did dismiss the complaint on the ground that it was barred by limitation. The judgment of the High Court rests on when the period of six months began to run than on how the six months' period is to be reckoned. Being aggrieved by the judgment of the High Court dated December 22, 1970 the Municipality has filed this appeal by special leave.

2. Section 240(1)(b) of the Act provides to the extent material that the Commissioners may issue a notice requiring any person to remove any obstruction or encroachment which he may have erected upon any public street, drain or watercourse and which remains so erected after the period covered by any permission given in that behalf has expired. The notice dated December 5, 1967, was given by the Municipality to the respondent under this provision. The relevant part of Section 500(1)(b) of the Act provides that whoever commits any offence by "failing to comply with any direction lawfully given to him or any requisition lawfully made upon him" under any of the provisions of the Act, shall be punished with fine which may extend to the amount mentioned in the third column of the table following that section. Section 533 of the Act prescribes a period of limitation for filing prosecutions under the Act by providing that no prosecution for an offence under the Act shall be instituted "except within six months next after the commission of such offence". The narrow question for determination in this appeal is whether the prosecution was instituted in the instant case within six months next after the commission of the offence as required by Section 533 of the Act.

3. For a proper appreciation of this question it is necessary to advert briefly to the scheme of the Act

because, without a proper appreciation and understanding of what in fact constitutes an offence for the present purposes, it will be impossible to resolve the question as to whether the prosecution is barred by limitation. Section 240(1) of the Act confers by its three clauses various powers on the Commissioners. Under clause (a) the Commissioners may, without giving a notice, remove any obstruction or encroachment which has been erected without obtaining the requisite permission. Clause (b), on its true reading, empowers the Commissioners to issue a notice requiring any person to remove an encroachment which has been erected without permission or which remains erected after the expiry of the period converted by a permission granted in that behalf. Clause (c) of Section 240(1) confers upon the Commissioners the power to remove without notice any materials or goods which have been deposited in public street without the requisite permission or which continue to be deposited after the permission has expired. The person to whom a lawful direction has been given or upon whom a lawful requisition has been made through notice under Section 240(1)(b) has to carry out the direction or comply with the requisition, as the case may be. Failure in that regard attracts penal consequences. Though clause (b) of Section 240(1) does not expressly provide that the Commissioners may permit such time as they think fit for the removal of the encroachment, it is implicit in the power conferred by that clause that by a proper direction or requisition, the Commissioners can allow for the removal of the encroachment such time as they consider reasonable in the circumstances of the case. Section 500(1)(b) of the Act creates a somewhat artificial offence which, it must be remembered, does not consist in the original act of erecting the obstruction or encroachment but in "failing to comply with any direction lawfully given" to a person or "any requisition lawfully made upon him".

4. Respondent having been allowed by the notice dated December 5, 1967 a period of fifteen days for the removal of the encroachment alleged to have been erected by him, it is plain that within and during that period he could not have been prosecuted under Section 500(1)(b) for failure to comply with the direction or requisition. The reason simply is that by the terms of the very notice which contained the direction or requisition, he was at liberty to remove the encroachment at any time within fifteen days after the receipt of the notice. In other words, failure to comply with the direction or requisition occurred for the first time, within the meaning of Section 500(1)(b), on the expiry of fifteen days after December 5, that is to say, after the expiry of December 20.

5. A proper appreciation of this scheme will facilitate the understanding of the true position, namely, that since the offence under Section 500(1)(b) for which the respondent is being prosecuted consists of his alleged failure to comply with the particular direction or requisition, and since such failure occurred for the first time after December 20, the period of limitation prescribed by Section 533 of the Act for instituting the prosecution will commence to run on the expiry of December 20. It is impossible to accept the submission made by the respondent's counsel that the offence must be deemed to have been committed when the obstruction or encroachment was erected, which of course would be prior to December 5, 1967, when the Municipality served the notice on the respondent. It may perhaps be that constructing an encroachment or obstruction on a public street may itself amount to an offence under some provision or the other of the Act, but we need not go into that question because the offence for which the respondent is being prosecuted does not consist in his erecting the encroachment or obstruction on a public street but in his failure to remove it within the period allowed to him by the notice. The error into which the High Court fell was to hold that the offence was committed on December 5, being the date on which the Municipality gave the notice to the respondent to remove the encroachment. On that date no offence indeed was committed because, as stated above, the offence charged against the respondent consists in his failure to remove the encroachment within the time allowed by the Municipality by its notice.

6. We must, therefore, proceed on the basis that the failure to remove the encroachment having occurred on the expiry of December 20, limitation began to run for the purpose of Section 533 on that and not on any earlier date. The only question which then requires examination is whether the prosecution which was filed on July 19, 1968, was instituted as required by Section 533, "within six months next after the commission" of the offence. An argument was raised in the High Court that "six months" must be constructed to mean 180 days and not six calendar months. The High Court does not appear to have accepted that submission. There the High Court is right is right, because, Section 3(27) of the Bengal General Clauses Act, 1 of 1899, defines "a month" to mean a month reckoned according to the British calendar. The expression "six months" which occurs in Section 533 of the Act must accordingly be constructed to mean six calendar months and not 180 days. The offence, being alleged to have been committed on the expiry of December 20, 1967, and the prosecution having been instituted on June 19, 1968, the provisions of Section 533 must be held to have been duly complied with.

7. To sum up, we are of the view that the offence charged against the respondent consists, not in the erection of an obstruction by him, but in his failure to comply with the direction lawfully given to him to remove that obstruction; that the offence must be deemed to have been committed by the respondent, if at all, not on the date of the notice, viz., December 5, 1967 nor on any anterior date but on the expiry of the period permitted to him for removing the obstruction, viz., on the expiry of fifteen days after the receipt of notice; and that, the expression "six months" which occurs in Section 533 of the Act means six calendar months and not 180 days.

8. For these reasons we set aside the judgment of the High Court and send back the case to the learned Magistrate for disposal in accordance with law.

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