

# CALCUTTA HIGH COURT

G.D. Bhattar

Vs.

State (Calcutta)

Criminal Revn. Cases Nos. 304, 297 and 303 of 1956

(Guha Ray and Renupada Mukherjee, JJ.)

21.03.1957

## JUDGMENT

### **Guha Ray, J.**

1. These three revision cases arise out of three prosecutions under Section 73 of the Indian Mines Act. There are altogether six petitioners, the first five of whom are common to all the three cases. The sixth petitioner in Cases Nos. 304 of 1956 and 297 of 1956 is K. N. Nag, whereas in the third case, namely Case No. 303 of 1956 the sixth petitioner is K. P. Chatterjee. Admittedly the first four petitioners are the directors of Messrs. Bhattars Agency, Ltd., Managing Agents of Ghusick and Muslia Collieries Ltd., owners of Kalapahari Colliery and the Muslia Colliery. M. L. Daga, the fifth petitioner in all the cases is the Agent of the Kalapahari Colliery and the Muslia Colliery and K. N. Nag, petitioner No. 6 in the first two cases is the Manager of the Kalapahari Colliery. K. P. Chatterjee is the Manager of the Muslia Colliery.

2. The first prosecution was for contravention of sub-rule (1) of Rule 3 of the Coal Mines Pithead Bath Rules, 1946 in respect of the Kalapahari Colliery. The second prosecution was for contravention of sub-rule (a) of Rule 3 of the Mines Creche Rules, 1946 in respect of the Kalapahari Colliery and the third prosecution was for contravention of sub-rule (a) of Rule 3 of the Mines Creche Rules, 1946 in respect of the Muslia Colliery.

3. It is the case for the prosecution that in the first case the pit-head bath, which is required to be constructed by the owners within a specified time was not constructed and there was thus a contravention of sub-rule (1) of Rule 3 of the Coal Mines Pit-head Bath Rules, 1946. In the second and third cases the case for the prosecution is that in respect of the Kalapahari Colliery the Creches were not set up as required under sub-rule (a) of Rule 3 of the Mines Creche Rules, 1946.

4. The defense of the petitioners in each of the cases was that they were not guilty and several points were raised during the trial as well as on appeal after conviction. As most of these points have been raised here before us I shall discuss these points one by one.

5. The three cases were disposed of by two Magistrates but the appeals were disposed of by one

Judge. The findings of the trial courts and the appellate court are that there was a contravention of the relevant rules in each of these cases and for these contraventions not merely the directors or the Managing Agents, who were in the position of owners, but also the Agents and the Managers were liable. On this view all the petitioners were convicted and sentenced to varying amounts of fines. There was also an order under Section 78 of the Indian Mines Act that the accused persons must complete construction of the pit-head baths and the creches in the two mines by the 31-3-1956. It is admitted on behalf of the petitioners that up to the time of the prosecution the pit-head bath in the Kalapahari Colliery and a creche in either of the two collieries, namely the Kalapahari Colliery and the Muslia Colliery were not installed. That there was thus a contravention of the relevant rules is also not disputed.

6. On behalf of the petitioners Mr. Mukherjee raises a number of points. All these points except one are common to all these three cases and in the second and third cases he raises an additional point, namely that those prosecutions will be barred under Section 403 of the Code of Criminal Procedure by reason of certain orders of acquittal of some of the petitioners in previous cases arising out of the same contraventions on the part of some of the petitioners.

7. The most important point raised by Mr. Mukherjee on behalf of the petitioners is the question of limitation. The facts necessary to be stated for appreciating this point are briefly that the complaints in the first and the second cases were filed on 31-3-1955 and in the third case the complaint was filed on 1-4-1955. It is conceded on behalf of the State by Mr. Banerjee that the Inspector of Mines knew as far back as 1949 and 1950 that the pit-head bath in the Kalapahari Colliery and the creches in the Kalapahari Colliery and the Muslia Colliery had not been installed by the dates when they were required to be installed. There are inspection reports and letters on the record of the cases to show this. If this is so, the prosecutions must be held to have been started long after six months had expired from the date of the commission of the relevant offences.

8. The relevant rules may now be seen to find out whether the prosecutions were within time. I have already said that the prosecution in each case was under Section 73 of the Indian Mines Act. This section is as follows :

"73. Disobedience of orders. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both, and, if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued."

Then Section 79 of the Act lays down the period of limitation in the following terms :

"79. Limitation of prosecution.- No Court shall take cognizance of any offence under this Act, unless complaint thereof has been made -  
(i) within six months of the date on which the offence is alleged to have been committed,

or

(ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or

(iii) in any case where a Court of inquiry has been appointed by the Central Government under Section 24, within six months after the date of the publication of the report referred to in sub-section (4) of that section, whichever is later." Thus as far as one can judge from Section 79 of the Act the prosecution must be launched within six months of the date on which the offence is alleged to have been committed or within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The relevant rules which are said to have been contravened are as follows :

"The Coal Mines Pithead Bath Rules, 1946

3. Provision of Pithead Baths.- (1) The owner of every coal mine shall construct thereat a pithead bath in accordance with plans prepared in conformity with these rules and approved by the competent authority; provided that -

(i) the competent authority may, in exceptional cases, with the concurrence of the Government of India, grant exemption from this requirement to mines the resources of which are not sufficient to enable them to make provision for adequate supply of water or pithead baths;

(ii) the competent authority may grant exemption in respect of any mine, on production of a certificate from the Chief Inspector of Mines that its productive capacity will be exhausted within the next three years, subject to such conditions as may be prescribed requiring the provision of alternative bathing facilities of a temporary character;

(iii) in a mine with a number of openings, the owner may instal more pithead baths than one, provided that the total number of shower baths installed and of latrines and urinals provided shall not be less than is required to conform with sub-rule (2) of this rule and with R. 9;

(v) if the competent authority is satisfied that no inconvenience will be caused to the miners concerned if a single pithead bath is provided to serve neighbouring mines of category 'A' or 'B' he may authorise the owners of such mines to provide a single pithead bath to serve such mines, which shall for the purpose of sub-rule (3) be deemed to be a single mine with an average monthly output equal to the combined average monthly output of the individual mines.

(2) Pithead baths as aforesaid shall be constructed within eighteen months of the coming into force of these Rules.

(3) Every pithead bath shall be provided with shower baths on the following scale :-

Category 'A' mine: 10 for men and 4 for women.

Category 'B' mine: 20 for men and 8 for women.

Category 'C' mine: 24 for men and 10 for women.

Category 'D' mine: 40 for men and 16 for women".

"The Mines Creche Rules, 1946.

3. Provision of Creches.- (a) The owner of every mine shall construct thereat a creche in accordance with plans prepared in conformity with these rules and previously approved by the competent authority.

Provided that where the competent authority is of the opinion that the situation, nature and extent of the workings or other places where women are employed are such as to render compliance with the provisions of the Rules not reasonably practicable the competent authority may by order in writing exempt any owner of a mine from the provisions of the rule for such period as may be specified in the order :

Provided further that where an exemption is granted under this rule the competent authority may require, within such period as may be specified in the order, a suitable room or rooms with an attendant and other necessary equipments to be provided and maintained at or near any working place or part of the mine;

(b) Such creche shall be constructed within nine months of the date of publication of these rules, provided that where land has to be acquired for the purpose, the competent authority may extend the time limit to a period of not exceeding twelve months from the said date.

(c) If in any case the competent authority is satisfied that by reason of a shortage of building material or of labour the owner of a mine is unable to provide within nine months a creche in accordance with the specifications in these rules, he may approve of the erection of a temporary structure to be replaced by a permanent structure within such time as he may prescribe.

(d) If in any case the competent authority is satisfied that no inconvenience will be caused to the employees concerned, if a single creche is provided to serve neighboring mines, he may authorize the owners of such mines to provide jointly a single creche and on such condition, as he may prescribe.

(e) On the production of a certificate from the Chief Inspector of Mines that the productive capacity of a mine will be exhausted within the next three years, the competent authority may on condition that the owner of the mine shall provide a temporary structure to serve the purpose of a creche and on such other conditions as the competent authority deems fit grant exemption from the construction of a creche in accordance with these rules."

Both these sets of rules came into operation on the 23rd July, 1946 as appears from the Department Labour Notifications Nos LMW 5(5)/5460 dated 23-7-46 and LMW 5(7)/46, dated 23-7-46. The pithead baths were under Rule 3(2) required to be constructed within 18 months of the coming into force of these Rules, that is to say, the pithead baths were to be constructed by the 23rd January, 1948. Under sub-rule (b) of Rule 3 of the Mines Creche Rules, 1946, a creche was to be constructed within 9 months of the date of the publication of the rules provided that where lands were to be acquired for the purpose the competent authority might extend the time limit to a period of not exceeding twelve months from the said date. The rules are said to have been published on the 23rd July, 1946. If that is so, a creche was to be constructed in every mine

within 9 months, that is by the 23rd April, 1947 and it was open to the authorities to extend this time to the 23rd July, 1947 where lands were to be acquired for the purpose.

9. It is argued on behalf of the petitioners that as the pithead baths and the creches were to be constructed by the 23rd January, 1948 and the 23rd July, 1947, respectively, at the latest, the offence in each case was completed as soon as the relevant period expired and there could be no question of the continuation of the offences. Mr. Banerjee, on the other hand, argues on behalf of the State that the omission on the part of those on whom a statutory duty is imposed to carry out that duty, continues so long as the omission is not made good and Mr. Banerjee further argues that if it is a continuing offence there is a fresh start of limitation every day.

10. The question, therefore, has first to be considered whether the offence in these cases, an offence consisting of an illegal omission, is in reality a continuing offence and if it is a continuing offence whether there would be a fresh starting point of limitation every day, so that in fact there will be no limitation at all so long as the omission continues. The question whether an illegal omission is a continuing offence or not can hardly be answered in a summary manner without considering the nature of the duty imposed, the object, which the legislature had in view in imposing the duty in question and the evils which the legislature sought to combat by imposing such a duty. The pithead baths and the mines creches are amenities required by the legislature, the first for the sanitation and health of the miners and the second for the proper care of the children of female miners and if the owner was required to provide pithead baths for the miners in every colliery and also a creche in every colliery, it was simply because without these the miners could not be expected to preserve their health, and children of the female miners could not be properly looked after. Mr. Mukherjee on behalf of the petitioners argues that because a specific date was fixed by which the owner was to carry out the duty imposed on him, this duty does not continue beyond the date, or in other words, while he becomes punishable for his omission to carry out the duty imposed within the time specified, once the date expires there is no longer that duty on him; in other words, according to Mr. Mukherjee, once an owner can somehow or other succeed in putting off till the expiry of the specified date the construction of the baths and the creches he can no longer be compelled to carry out the duty imposed on him. He seeks to strengthen this argument by reference to certain sections of the Indian Penal Code, namely, Sections 284, 285 and 289 and argues that these are cases where an omission to take an order with any property in the possession of the persons concerned is punishable and where no date is mentioned so that in such cases the omission continues to be illegal and punishable in law so long as it is not made good. He might have referred to Sections 283, 286, 287 and 288 of the Indian Penal Code also. But Section 78 of the Mines Act, which confers on the Court after a conviction the power to make an order requiring the owner, agent or manager within a period specified in the order, which may be extended by the Court from time to time on application made in this behalf, to take such measures as may be so specified for remedying the matter in respect of which the offence is committed, seems to me to furnish a complete answer to this line of reasoning. In my judgment, if a date had to be specified for the construction of the pithead bath or of a creche, it was only to give the owner a reasonable period during which he could construct the pithead bath or the creche. It does not seem to me to mean that once the date expires the duty ceases to exist because, as I have already said, the only reason why these rules require pithead baths and creches to be installed is to provide certain amenities to the miners for the preservation of their health and for the proper care of the children of the female miners and if without these amenities the miners cannot be expected to preserve their health and the children of

female miners cannot be properly looked after while the mothers are engaged, the non-performance of the duty, which the law imposes on the owner, will result in the absence of the amenities required for the preservation of the health of the miners and for the proper care of the children of the female miners during a part of the day when the mothers are engaged and the evils. which these rules seek to combat will still be there. The mere fact, therefore, that the specified date within which the baths and the creches were required under the rules to be constructed expired cannot possibly mean that the duty of the owner ended with the expiry of the date. That duty still remains. It continues till the pithead baths and the creches are constructed as required by the rules. A continuing wrong or a continuing offence is, after all, a continuing breach of a duty which itself is continuing. If a duty continues from day to day the non-performance of that duty from day to day is a continuing wrong. From that point of view the illegal omission of the owner by not performing the duties cast upon him by the rules must be held to be a continuing wrong.

11. The second branch of the argument of Mr Mukherjee on this point arises from the second part of Section 73 of the Mines Act and it is this that the continuing offence comes into existence only after there has been a conviction and not till then and in support of this argument he relies on the cases of *The State v. Harish Chandra Mahanty*<sup>1</sup>, *Corporation of Calcutta v. Sri Sri Iswar Lakshmi Janardan Thakur Jew*<sup>2</sup>, and *Messrs. Badruddin and Sons v. Corporation of Calcutta*<sup>3</sup>, The first of these cases arose out of a conviction under Section 5 of the Bengal Highways Act. Section 5 of the Bengal Highways Act provides that in making any rule under this Act, the Provincial Government may direct that a breach thereof shall be punishable with a fine which may extend to ten rupees, and when the breach is a continuing one, with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. Rule 31(2) of the Rules framed under the Act is such a rule The Magistrate imposed a fine for causing obstruction on or near a public highway and in the same order he gave the accused the direction to remove forthwith the obstruction of the unauthorized structure failing which he was to pay a daily fine of Re. 1/- for every day during which the breach was continued. This his Lordship found fault with for he pointed out that unless the Magistrate had before him a specific charge of continuance of the offence for a specific number of days which must be proved to his satisfaction he was not competent to pass an order imposing a daily fine in anticipation of the continuance of the offence.

12. In the second case the opposite parties had been running a private market for which they had no licence and although they applied for one it was refused on the 24th September, 1949 and on the 22nd February, 1950 a prosecution was launched and the question of limitation was raised at the trial and the prosecution sought to meet it by arguing that the case was one of a continuing offence and therefore the prosecution had a fresh starting point of limitation for each of such offences. His Lordship after referring to Section 488 (2) which says that "whoever after having been convicted of any offence referred to.....continues to commit such offence shall be punished ....." says that a continuing offence is after a conviction for the original offence and not before it and if an offence is committed and the Corporation takes no steps it cannot come to Court for punishment for continuing offence and as in the present case there was no previous conviction there was no case for continuing offence.

13. In the third case the point decided was that the first conviction was a wrong conviction so that in the eye of law it was no conviction at all and that being so a conviction under Section 488(2)

of the Calcutta Municipal Act, 1923 cannot be maintained. This throws no light whatever on the question of limitation.

14. With due reference to their Lordships I must say that the view expressed in the first

<sup>1</sup>56 Cal WN 163 : ( AIR 1952 Cal 576)

<sup>3</sup> AIR 1950 Cal147

<sup>2</sup>57 Cal WN 907 : ( AIR 1954 Cal 47)

two cases does not seem to me to represent the correct position. The question whether an offence is a continuing one or not arises in various contexts, the most important of which are first whether a person can abet the commission of such an offence after the offence is once committed, secondly whether the continuance of the offence after a conviction requires an enhanced punishment or the imposition of the daily fine and thirdly whether the prosecution was within time because of a fresh starting point of limitation every day when the offence continues de die in diem. The question which arises under Section 488(2) of the Calcutta Municipal Act, 1923 is a question whether a particular person continues to commit the offence after having been convicted and if so, whether he is liable to a daily fine such as is mentioned in the section. Section 488(2) of the Calcutta Municipal Act, 1923 has nothing whatever to do with the question of limitation. In my judgment, therefore, the omissions in these three cases, which were omissions to carry out positive duties imposed by certain rules made under the Indian Mines Act, were illegal and punishable under the law so long as the duties or obligations imposed remained undercharged or in other words, the offence continues so long as what the owner is required to do under the law is left undone. From this point of view the offences in all the three cases must be held to be continuing offences, but in order to entitle the Magistrate to impose a daily fine, it is not enough that the offence is continuing but it will have to be proved that it continued after a conviction.

15. Where an offence is continuing, the argument on behalf of the prosecution is, as already indicated that there is a fresh starting point of limitation every day as the offence continues de die in diem and therefore there is no limitation at all so long as the duty is left undischarged. The soundness of this proposition has now to be examined. Section 79 of the Mines Act, which provides for limitation for a prosecution, clearly gives the prosecution the benefit of an extended limitation by providing that where the prosecution is not launched within six months of the date on which the offence is alleged to have been committed it can launch it within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. If the view that in the case of continuing offences there is a fresh starting point of limitation every day were to prevail, it will be a complete nullification of this provision, for in that case so long as the duty is left undischarged the prosecution will have the benefit of a fresh starting point of limitation every day. The question to be considered here is whether such a nullification of the provision of limitation was intended by the legislature. The prosecution in arguing this way really invoked the aid of the principles laid down in Section 23 of the Limitation Act without actually referring to it. That section is in the following terms :

"Section 23.- In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues". A continuing offence is certainly a continuing wrong independently of contract so that if this section were applicable to the present cases the prosecution would undoubtedly be right in

saying that there will practically be no limitation of a prosecution under Section 79 of the Mines Act so long as the duty imposed by the rules under the Mines Act was left undischarged. Section 29(2), however, of the Limitation Act itself provides as follows :

"29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

Mr. Banerjee on behalf of the State argues that the two sentences in sub-section (2) of Section 29 must be read together and that the second sentence thereof is really dependent on the first; in other words, his contention is that the second sentence covers only those cases which are covered by the first and does not go beyond that. There is, however, nothing in the second part of the section even to suggest that it is limited to only those classes of cases which are covered by the first part. On the other hand, the second part of sub-section (2) is couched in such general terms that it will be nothing short of doing violence to the language of the section to hold that the second part of sub-section (2) is restricted to cases where a special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule. As a matter of fact it is well-known that some of the general provisions of the Limitation Act are always applied even to cases for which the limitation is prescribed in special or local Acts and if the second part of sub-section (2) were not of such general application, those provisions would not really be available for determining or computing the period of limitation in such cases. I have, therefore, no manner of doubt that Mr. Banerjee's contention as regards the construction of sub-section (2) of Section 29 is not correct and I am clearly of opinion that the second part of sub-section (2) of Section 29 is of general application and is not limited to cases where any special or local Act prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule. If that is so, Section 23 of the Limitation Act is clearly made inapplicable to cases where the period of limitation is laid down in special or local Acts. The Mines Act is certainly a special Act dealing with mines, so that section 23 of the Limitation Act is expressly made inapplicable to cases under the Mines Act. That being so, the question arises whether the Court will be entitled to invoke the aid of the principles laid down in Section 23 of the Indian Limitation Act although that section is in express terms made inapplicable to such cases. Although the Limitation Act has made it inapplicable to certain cases, a special or local Act may, therefore, very well either make it applicable or may incorporate the principles enunciated there so as to make it applicable but that has not been done in the Mines Act. If a principle similar to the point enunciated in Section 23 of the Indian Limitation Act existed apart from and independently of Section 23 of the Indian Limitation Act, there is hardly any sense in incorporating such a principle in Section 23 of the Indian Limitation Act and it is still more meaningless to provide by Section 29(2) of the Limitation Act that the principle of Section 23 would be inapplicable in certain cases for even if Section 23 is expressly made inapplicable, the principle existing independently and apart from Section 23 would still be

applicable.

16. In these circumstances I find it extremely difficult to hold that even though Section 23 of the Indian Limitation Act was expressly made inapplicable to cases of prosecution under the Mines Act because the limitation for such prosecution is prescribed in the Mines Act, the principle of that section can still be invoked for the purpose of extending the period of limitation laid down in Section 79 of the Mines Act, thereby, in fact, nullifying the provisions of that section. I do not know of any principle of law or authority under which this can be done, nor could any be shown to me.

17. Mr. Banerjee on behalf of the State relies on the Full Bench decision of the Patna High Court for the proposition that in the case of continuing offences there is a fresh start of limitation every day so that practically there is no question of limitation. This case is *The State v. Kunja Behari Chandra*<sup>4</sup>, This was a case which arose from the contravention of Rule 3 of the Coal Mines Pithead Bath Rules, 1946 and Rule 3 of the Mines Creche Rules, 1946. Their Lordships dealt with this question at page 375 of the report :

"The expression 'continuing offence' means that, if an act or omission on the part of an accused constitutes an offence, and if that act or omission continues from day to day, then a fresh offence is committed on every day on which the act or omission continues. Not to have constructed the creche as required within the time allowed was a contravention of the rule, and to carry on mining operations without the creche is surely a continuing contravention of the same rule. Section 39, Indian Mines Act, provides for punishment for continuing contravention as well." Then after reproducing the section in full the judgment goes on to say as follows :

"The section clearly contemplates a continuing contravention as well. I have no doubt in my mind that the contravention of Rule 3(a) of the Mines Creche Rules by the petitioners was a continuing one, and there can be no question of the prosecution being barred under Section 42 of the Mines Act."

With due respect to their Lordships of the Patna High Court I must say that the mere fact that an offence is a continuing offence does not solve the question whether there is a fresh start of limitation on every day of the continuance of the offence unless We invoke the aid of the principle enunciated in Section 23 of the Indian Limitation Act and unless although that section has been expressly made inapplicable by Section 29(2), the Courts are still empowered to call in aid the principle of that section. Their Lordships do not appear to have considered this aspect of the matter at all with the result that they have not pointed out any principle or any authority that even though Section 23 of the Limitation Act has been made inapplicable to such cases the principle is still available for application thereto. In the absence of any such principle or authority I find it impossible to say that the principles enunciated in Section 23 of the Indian Limitation Act can be applied to such cases. The fact that the continued contravention even after a conviction has been made punishable with a daily fine being imposed, has nothing to do with the question of limitation and, as I had occasion to point out already, that is an aspect of the matter which is completely different from the question of limitation. In this view I must say that the prosecutions in these cases were barred by limitation for they were admittedly launched long after six months from the date of the knowledge of the Inspector of these contraventions had

expired.

<sup>4</sup> AIR 1954 Patna 371 (FB)

18. As Mr. Mukherjee has raised a number of other points which also are of considerable importance, I think I should deal with them as briefly as possible. The first of these points is that the agent or the manager is not liable because the duty imposed of constructing pithead baths as well as mines creches are duties imposed on the owner and not on the agent or the manager. Mr. Mukherjee points out in support of this argument that the rules had to be amended subsequently in 1956 by S. R. O. 2465 dated the 22nd February, 1956 published in Gazette of India dated the 26th October, 1956, in which the words 'agents or the managers' are added after the words 'owners' in the rules. From this Mr. Mukherjee argues that if the rules, as they stood at the time when these prosecutions were embarked upon, really intended that the liability was not merely the liability of the owners but also of the managers and the agents, there was really no need for the amendment. The rules as they stood at the time of the prosecutions undoubtedly cast a duty only on the owners alone but there is Section 18 of the Mines Act which runs as follows :

"18. Duties and responsibilities of owners, agents and managers.

(1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whosoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention :

Provided that the owner or agent shall not be so deemed if he proves -

(a) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine; and

(b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(c) that the offence was committed without his knowledge, consent or connivance.

(3) Save as hereinbefore Provided it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act." The first sub-section of Section 18 makes the owner, the agent or the manager of every mine responsible for all operations carried on in connection therewith and conducted in accordance with the provisions of the Act and of the regulations, rules or by-laws and of any orders made thereunder. Then the second sub-section provides that in the event of any contravention of any such provision by any person whosoever, the owner, agent and manager of mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing those provisions to prevent such contravention. Then there follows a proviso and then there is a third sub-section. When sub-section (1) of Section 18 provides that the owner, agent and manager of every mine shall be responsible for all operations in connection with a mine

being conducted in accordance with the provisions of the Act and of the regulations, rules and bye-laws and of any orders made thereunder, it clearly means that they shall be responsible for seeing that such operations as are carried on in the mines are conducted as required by the Act, the regulations, rules and bye-laws and by any orders made thereunder. The Coal Mines Pithead Bath Rules and the Mines Creche Rules require construction of pithead baths and of creches in order to provide certain amenities for the miners which were considered by the Legislature essential for the preservation of their health and welfare and of the health and welfare of the children of the female miners. If, therefore, the operations in a mine are carried on without a pithead bath or a creche, which the relevant rules require the owner to construct in a mine, it cannot be said that the operations in connection with the mine are carried on in accordance with the provisions of the Act and of the regulations, rules and bye-laws and of any orders made thereunder for the operations are carried on in clear violation of the Coal Mines Pithead Bath Rules and Mines Creche Rules.

19. As I read the sections it seems to me to be clear that sub-section (1) clearly makes the owner, agent or the manager responsible for seeing that all operations carried on in connection with the mines are conducted in accordance with the provisions of the Act and of the regulations, rules and bye-laws and of any orders made thereunder. Is this a mere pious wish on the part of the legislature that the owner, agent or the manager should be responsible for all operations being carried on in accordance with the provisions of the Act and of regulations, rules and bye-laws and of any orders made thereunder? The answer is provided by sub-section (2), which, to my mind, enunciates a principle of constructive liability for the owner, the agent and the manager even for offences not committed by themselves, Mr. Mukherjee argues that the meaning of this section is that when a contravention is by any person other than the owner, the agent and the manager, the owner, the agent and the manager shall be deemed also to be guilty. To my mind this is not quite correct. If the owner is guilty of the contravention independently of the provisions of Section 18 then of course in his case there is no question of constructive liability but in the case of the agent and the manager there will be that question so that 'any person whosoever' does not necessarily exclude the owner, the agent and the manager. If the contravention is by the owner he will be liable even apart from the provisions of Section 18(2). If the contravention is by the manager he will be liable independently of this provision and if the contravention is by the agent he will be liable apart from this provision but if any of these three is liable for the contravention apart from this provision the other two will be constructively liable so that the expression 'any person whosoever' cannot be taken to exclude the owner, the agent and the manager. Of course sub-section (2) itself provides for this defense on the part of the owner, the agent or the manager that he had taken all reasonable means by publishing and to the best of his power enforcing those provisions to prevent such contravention. The proviso then provides another defense for the owner or the agent but not for the manager. The defense, which is available to the owner or the agent under the proviso is that he was not in the habit of taking and did not in respect of the matter in question take any part in the management of the mine and that he had made all the financial and other provisions necessary to enable the manager to carry out his duties and that the offence was committed without his knowledge, consent or connivance. Mr. Mukherjee argues in this connection that Clause (b) of the proviso suggests that where the owners have not made financial and other provisions necessary to enable the manager to carry

out his duties the manager was entitled to take the defense that as it was not possible for him to carry out his duties under the rules he could not construct the pithead baths or the mines creches. In this connection he also refers to certain observations of Chief Justice Rankin in the case of *Emperor v. B. N. Sasmal*<sup>5</sup>, which arose out of an order by a Magistrate under Section 144 of the Code of Criminal Procedure directing Mr. B. N. Sasmal to abstain from, staying in the town of Midnapore or any part of the district and to leave the district by the next available train and also to abstain from returning to any place within the district with effect from the date of the order for the statutory period of two months. The observations in question are as follows :

"I am quite clear that it was never intended by Section 144 of the Code of Criminal Procedure that a man might be ordered to remove himself not only from his own house but also from his own district and to do so by the next available train. If the statute had intended that people were to be ordered to do these things by the next available train, I should have expected the sub-section to go on dealing with questions of railway fare and taking some other steps to make it reasonable. The very reason why the section uses the language "abstain from a certain act" is just because it is not intended to empower Magistrates to make positive orders requiring people to do particular things."

These observations do not appear to me to have any relevancy in the present context, having been made in an utterly different context. To construe Section 18 it is necessary to refer to Section 17 also, which runs as follows :

"17. Managers-Save as may be otherwise prescribed every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person having such qualifications, to be such manager."

That the manager under Section 17 of the Mines Act is made responsible for the control, management and direction of the mines indicates sufficiently well that even for offences other than those committed by the manager himself, he would be responsible under the Principle of constructive liability enunciated in sub-section (2) of Section 18 and as the proviso makes a particular defense available to the owner or the agent and makes it expressly unavailable to the manager the reason for that must be that the manager can escape his liability only if he proves that he had taken all reasonable, means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention and an additional defense which is thrown open by the proviso to the owner or the agent will not be open to the manager. That the subsequent amendment of the relevant rules of the Pithead Bath Rules and the Mines Creche Rules included the agent and the manager in the rule is, to my mind, nothing more than a clarification of the law as it already stood at the date of that amendment of the rules. Of course the rules, as now amended, would make even the agent or the manager responsible for the construction of the pithead baths or the mines creches, so that now even apart from Section 18 they would be liable for a contravention of the rules in question under Section 73 of the Mines Act. But even without such an amendment, to my mind, the manager would be liable under the proviso to Section 18(2) of the Mines Act. In this connection Mr. Mukherjee refers to a decision of the Nagpur High

Court in the case of *State Government M. P. v. Deodatta Diddi*<sup>6</sup>, in which it was held that sub-rule (1) of Rule 3 of

<sup>5</sup>53 Cal LJ 175 : ( AIR 1931 Cal 263)

<sup>6</sup> AIR 1956 Nag 71

the Pithead Bath Rules makes the owner alone liable and not the agent and the person made liable under Section 39 for the disobedience of the rules is one who contravenes the rules and where a rule such as Rule 3 (1) does impose a positive obligation on the owner, it is the owner alone who will be deemed to have contravened that rule by failing to perform that duty. Undoubtedly it took the view that the manager was not liable because there was no duty cast upon the manager for constructing the pithead baths or the mines creches but their Lordships do not appear to have taken into consideration Section 16 of the Indian Mines Act, 1923 which corresponded to Section 18 of the Mines Act of 1952. Section 16 of the Act of 1923 agrees word for word with Section 18 of the Act of 1952. As their Lordships do not appear to have considered Section 16 which lays down a rule of constructive liability for the owner, agent or the manager, it is impossible to agree with the view taken by their Lordships in that case.

20. The next point argued by Mr. Mukherjee arises from the fact that the rules, which are said to have been contravened are rules under the old Mines Act, namely the Act of 1923 and not rules under the new Mines Act, that is the Act of 1952. The prosecution's answer to this was that under Section 10 (Sic-S. 24) of the General Clauses Act the rules framed under the repealed Act will be deemed to be rules framed under the new Act and the point raised by Mr. Mukherjee is that a law which really did not exist and which came into existence by means of a legislative fiction introduced by Section 10 (Sic-S. 24) of the General Clauses Act, would not be treated as a living piece of legislation the contravention of which would be an offence. In support of this contention he has relied in the first place on a Supreme Court decision in the case of *Shiv Bahadur Singh v. State of Vindhya Pradesh*<sup>7</sup>, and secondly on a decision of the Andhra High Court in the case of *Re. Lingareddi Venkatareddy*, AIR 1956 Andhra 24. In the case before the Supreme Court the case for the prosecution appears to have been that the accused entered into a conspiracy about the beginning of February, 1949 at Rewa within the United State of Vindhya Pradesh to obtain an illegal gratification for the purpose of revoking the previous order of stoppage of mining work and in pursuance of the said conspiracy one of them demanded on the 8th March, 1949 at Rewa illegal gratification from one, Nagindas Mehta, and that later on on the 11th April, 1949 another accused received a sum of Rs. 25,000/- towards it at the Constitution House in New Delhi and forged certain documents purporting to be orders passed in official capacity and intended to confer some advantages or benefits on the Panna Diamond Mining Syndicate. The accused were charged under Sections 161, 465 and 466 of the Indian Penal Code as adapted by the Vindhya Pradesh Ordinance No. 48 of 1949. The validity of the convictions and sentences was challenged before the Supreme Court on the ground that there was an infringement of Articles 14 and 20 of the Constitution. Their Lordships negatived the challenge on the ground of infringement of Article 14 and while dealing with the question of infringement of Article 20(1) of the Constitution pointed out that the phrase "law in force", as used in Article 20, must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. It is clear from the decision that the facts of the case before the Supreme Court were that although the offence was committed between February, 1949 and April, 1949 the Ordinance by which the Indian Penal Code, as adapted in the United State of Vindhya Pradesh, was not passed till the 11th September, 1949, about five

<sup>7</sup> AIR 1953 SC 394

months after the alleged commission of the offence in question. Their Lordships were considering in the case before them the question whether such 'ex post facto' legislation could be said to be law in force within the meaning of the expression used in Article 20 where, in fact, there was no such law at the time of the alleged commission of the offence but the law was detected to have become operative by virtue of the power of the legislature to pass retrospective laws. The Supreme Court case, therefore, can be distinguished on facts from the cases we are concerned with now. The case before the Andhra High Court, which applied the principle laid down by the Supreme Court in the case referred to was somewhat different. That case arose out of certain prosecutions under Sections 73 and 66 of the Indian Mines Act, 1952 and there the point was raised that the rules and regulations framed under the old Act were no longer in force because of the repeal of that Act and punishment under the provisions of the new Act for violation of the rules made under the old Act was not permissible and their Lordships of the Andhra High Court after referring to Section 24 of the General Clauses Act under which any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation shall so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted, ultimately hold that the phrase 'law in force' as interpreted by the Supreme Court in AIR 1953 Supreme Court 394 is conclusive against the prosecution of the case before them, although their Lordships were not oblivious of the fact that the Supreme Court case referred to ex post facto legislation and ex post facto legislation only. In the case before the Andhra High Court as well as in the cases before us there is no question as to ex post facto legislation. When the Mines Act of 1923 was repealed in 1952 and replaced by the Act of 1952 under Section 24 of the General Clauses Act the rules framed under the repealed Act of 1923 were deemed to be rules made under the new Act of 1952 so as to be perfectly valid and as the prosecution was launched long thereafter the rules framed under the repealed Act must be held to have been perfectly valid and part of the law in force within the meaning of the expression in Article 20 of the Constitution. With all respect to their Lordships of the Andhra High Court I must say that they appear to have misapplied the dictum of the Supreme Court in AIR 1953 Supreme Court 394. In my opinion, there is no substance in this point.

21. The only other point which Mr. Mukherjee argues in the second and the third cases is that the previous acquittal of some of the petitioners of offences of the same nature would be a bar to their present prosecution. In view of my conclusion that these offences continue de die in diem so long as the duty cast upon the owner is left undischarged the previous acquittal cannot be a bar to the present prosecutions because the present prosecutions are really for offences different from the offences of which some of the petitioners were acquitted on the previous occasion although the offences were of a similar nature. My answer, therefore, to this contention of Mr. Mukherjee must be in the negative, namely that the previous acquittals are not a bar to the present prosecution but in the view I have taken on the question of limitation the rules must be made absolute, the convictions must be set aside together with the sentences and the petitioners acquitted and the fines, if recovered, must be refunded.

22. It is unfortunate that the order passed by the learned Magistrate under Section 78 of the Mines Act has to be set aside with the result that one of the two mines has to go without a pithead bath and a creche and the other two mines have to go without a creche, but in the view I have

taken on the question of limitation this can hardly be helped. The order under Section 78 of the Mines Act must also be set aside.

**Renupada Mukherjee, J.**

23. I agree with my learned brother that these three Rules should be made absolute and the convictions of the petitioners set aside but I should like to say a few things on my own account on two questions raised in these Rules, viz., the question of limitation which is also linked with the question of maintainability of these prosecutions and the question of liability of the agent and manager of a coal mine in respect of contravention of Rules regarding construction of creche and pithead baths prescribed respectively, in Mines Creche Rules, 1946 and Coal Mines Pithead Bath Rules, 1946. I shall take up these two questions one after another. On the other questions raised in these Rules I am in agreement with the views expressed by my learned brother.

24. The facts leading up to the present Rules have been stated elaborately by my learned brother and I need not recapitulate them here. Petitioners Nos. 1 to 4 of these Rules are admittedly owners of two collieries known as Kalipahari Colliery and Muslia Colliery. Petitioner No. 5, M. L. Daga, of the three Rules is the agent of the owners in respect of the above collieries. Petitioner No. 6, K. N. Nag of Revision Cases Nos. 297 and 304 is the manager of Kalipahari Colliery and petitioner No. 6 K. P. Chatterjee of Revision Case No. 303 is the manager of Muslia Colliery. It is an admitted fact that no pithead bath or creche was constructed in Kalipahari Colliery as required by the Rules to which I have already referred and no creche was constructed in the Muslia Colliery at least till the time of the launching of these three prosecutions in March and April 1955. The prosecutions were started at the instance of the Inspector of Mines with the sanction of the Inspector of Mines and the learned Magistrate who tried the cases fined each of the petitioners in certain sums and the convictions and sentences were affirmed in appeals. A direction was also given by the trying Magistrate upon the petitioners to construct the wanting pithead baths and creche within a certain time fixed by the Court. These Rules are directed against the legality and propriety of the above convictions.

25. The question of limitation has arisen in the following way. Section 79 of the Mines Act, 1952 prescribes a period of limitation for filing a complaint under the Mines Act for contravention of any provision of the Act or any Rule or regulation or bye-law or order made thereunder. The section runs as follows :

"Section 79. No court shall take cognizance of any offence under this Act, unless complaint thereof has been made -

(i) within six months of the date on which the offence is alleged to have been committed, or

(ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or

(iii) In any case where a Court of inquiry has been appointed by the Central Government under Section 24, within six months after the date of the publication of the report referred to in sub-section (4) of that section. whichever is later."

26. In the present case we are concerned with clauses (i) and (ii) and not with clause (iii). It is an admitted fact that the complaints in these cases were made neither within six months of the date when the offences became complete by reason of non-construction of pithead bath or creche within the time allowed by the relevant Rules nor within 6 months of the date or dates on which the offences came to the knowledge of the Inspector of Mines. There is no question that the owners failed to provide pithead bath or creche in these cases within the period allowed by Rule 3 of the Mines Creche Rules or Rule 3 of the Coal Mines Pithead Bath Rules and that these prosecutions were started long after these contraventions came to the knowledge of the Inspector. The present prosecutions, however, purport to have been based upon three reports - one of which is dated 7-12-1954 and the other two are dated 6-12-1954-all the reports being within six months of the starting of the prosecution. Mr. Mukherjee appearing on behalf of the petitioners, however, satisfied us from the records that the Inspector had knowledge of these contraventions long before six months of the date of filing of the complaints and Mr. Banerjee appearing on behalf of the State was not in a position to controvert the correctness of that statement. The question is whether under such circumstances it should be held that the prosecutions are barred by limitation.

27. The lower appellate Court held on the authority of a Full Bench decision of Patna High Court reported in AIR 1954 Patna 371 that the prosecutions are not time-barred inasmuch as the contraventions which are the subject-matter for our consideration in these cases are in the nature of continuing offences, and as such offences continue from day to day a fresh offence is committed every day on which the act or omission continues and a fresh cause for complaint arises de die in diem and so no question of the prosecution being barred arises in such cases. The decision in the Patna Full Bench case was given under the old Mines Act of 1923, Section 39 of which creates the offence and Section 42 of which provides the period of limitation. The corresponding sections of the Act of 1952 are Sections 73 and 79, respectively. I shall have to say something about Section 39 of the old Act and Section 73 of the new Act presently.

28. Mr. Mukherjee appearing on behalf of the petitioners challenged the correctness of the decision of the Patna High Court on several grounds. In my opinion, the decision in the Patna Case, with great respect to the learned Judges, cannot be regarded as correct, and that for two reasons; in the first place, the learned Judges failed to take note of the fact that if the prosecution were allowed to pick and choose any particular date within a period of six months preceding the date of filing of the complaint as being the date of commission or continuance of the offence, then the period of six months' limitation prescribed by Section 42 of the Act of 1923 would be rendered completely nugatory. Section 42 of the Act of 1923 runs in the following terms. :

"Section 42. No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed".

29. The second ground on which the decision in the Patna case cannot be supported is that the learned Judges were evidently applying Section 23 of the Indian Limitation Act when they observed in paragraph 12 of the report as follows :-

"The section (section 39 of the old Act) clearly contemplates a continuing contravention as well. I have no doubt in my mind that the contravention of Rule 3(a) of the Mines Creche Rules by the petitioners was a continuing one, and there can be no question of the

prosecution being barred under Section 42 of the Mines Act".

In making the above observation the learned Judges probably lost sight of the fact that where limitation has been prescribed by a special statute, viz., the Mines Act of 1923, it would not be permissible to apply the provisions of Section 23 of the Limitation Act because sub-section (2) of section 29 of the Limitation Act would stand in the way. This point has been dealt with exhaustively by my learned brother and I need not dilate on it. I need only say that consciously or unconsciously the learned Judges of the Patna High Court were availing themselves of the provisions of Section 23 of the Limitation Act in holding that the prosecution was not time-barred but they were not entitled to do this in view of sub-section (2) of Section 29 of the above Act.

30. On the grounds mentioned above I am of opinion that the decision of the Full Bench of the Patna High Court cannot be regarded as a correct decision.

31. Mr. Mukherjee on behalf of the petitioners challenged the correctness of the above decision on a third ground, viz., that the learned Judges were wrong in holding that an offence of the nature with which they were dealing and with which we are also concerned in the present Rules is a continuous offence. Mr. Mukherjee submitted that an offence of this nature can be regarded as a continuous offence only when there is some positive and fresh violation or infringement of any rule, or law from day to day. This point again has been considered elaborately by my learned brother who is of opinion that the offence in question is a continuous offence. I agree with this view of my learned brother and I should only like to point out that there are indications in Section 73 of the Mines Act itself which would show that a contravention of any provisions of the Mines Act or of any regulation, rule or bye-law or of any order made thereunder which continues after a conviction may be regarded as a continuous offence inasmuch as the section provides for further punishment if the contravention is continued after conviction. In these circumstances, I am of opinion that the correctness of the decision of the Patna High Court cannot be challenged on this particular ground. I have, however, already stated that the decision seems to me to be incorrect on two grounds which I have already stated. Even if the decision of the Patna High Court be regarded as correct on the question of limitation, the decision seems to be contrary to the Scheme and Scope of Section 39 of the old Act. The corresponding Section 73 of the new Act which has introduced imprisonment for a term of three months as a penalty over and above fine is not materially different from Section 39 of the old Act in any other way. I place both the Sections side by side. Section 39 of the Mines Act of 1923 runs in the following terms :

"Section 39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction."

The corresponding Section 73 of the new Act of 1952 runs as follows : Section 73. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made

thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees or with both, and, if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued."

32. I have already quoted Section 42 of the old Act and Section 79 of the New Act which provide a period of limitation for prosecution for contravention of any provision of the Mines Act or of any regulation, rule or bye-law or order made under that Act. Section 73 of the new Act read with Section 79 of the same makes it clear beyond doubt that after the contravention of any provision of the Mines Act or of any rule etc. prosecution must be launched against the offender or offenders within the period of limitation prescribed in Section 79. The contravention may certainly continue but it is not open to the prosecution to select any particular date following the contravention and launch a prosecution within 6 months of that date on the footing that there was a fresh contravention on that date and that earlier contraventions should be ignored. In my opinion, if this were allowed to be done, Section 79 of the new Act of 1952 which provides a specific period of limitation would lose all its meaning.

33. Both Section 73 of the Mines Act of 1952 and Section 39 of the previous Act make continued contravention punishable with a further fine extending upto Rs. 100/- per day for each day on which the contravention is continued after the previous conviction of the accused. Both the sections are thus divisible into two distinct parts. The first part provides for punishment of a contravention which evidently signifies what I may conveniently call the original or primary contravention. The second part makes continued contravention punishable after there has been a conviction for the original contravention. From the second portion of the sections it would be clear that if the original or primary contravention has become impossible by lapse of time, it would not be permissible to found a conviction for continuance of the contravention on a subsequent date or dates as that would not only nullify the provision about limitation but would defeat the scheme of Section 73 of the Act of 1952 and Section 39 of the old Act of 1923, because both the sections make a conviction for the original contravention a condition precedent to a conviction for a continued contravention. Although the present cases were not brought on the footing that the accused persons were guilty of continued contravention of some rules framed under the Mines Act, the charges against the petitioners were, in substance and effect, charges for continued contravention and nothing else, because admittedly the contraventions had been completed into offences long before the dates of the commission of the offences as given in the petitions of complaint. In my opinion, the charges being substantially charges for continued contravention they are not sustainable in view of the provisions of Section 73 of the Mines Act of 1952. The position was not in any way different in the Patna Full Bench case.

34. If, on the other hand, these complaints be regarded as complaints founded on independent contraventions without any reference to prior contraventions then it must be held that such contraventions had really come to the knowledge of the Inspector not at the time of his inspections held on the 6th and 7th of December, 1954 but long before six months of the date of filing of the complaints, although the prosecution had chosen to shift the dates of the knowledge of the Inspector to some date or dates within six months preceding the date of filing of the complaints. In these circumstances, the prosecutions must be deemed to have become time-barred. Thus, it is clear that whether these contraventions fall within the first part of Section 73 of

the Mines Act of 1952 or within the second part they must be regarded as incompetent because if they fall within the first part they must be held to be time-barred and if they fall under the second part they must be held as not maintainable.

35. In support of the above contention Mr. Mukherjee on behalf of the petitioners cited three cases before us, viz., AIR 1950 Calcutta 147; 56 Cal WN 163 : ( AIR 1952 Calcutta 576) and 57 Cal WN 907 : ( AIR 1954 Calcutta 47). I shall first of all deal with the last mentioned case. My learned brother does not think that this case is of much assistance to us. Unfortunately, I do not share this view. This case is relevant for our purpose not so much on the question of limitation as on the question whether in the absence of a previous conviction for the original or primary contravention, a prosecution can be launched outside the period of limitation on the ground of continued contravention of some statutory rules, where such continued contravention has been made punishable only after a conviction for original contravention of the rules. The case reported in 57 Cal WN 907 : ( AIR 1954 Calcutta 47), involved a prosecution under the Calcutta Municipal Act for running a private market without a license. In order to understand the scope and import of this judgment it is necessary to quote Section 534(1) and Section 488 (2) of the above Act. They run in the following terms :

"Section 534(1). No person shall be liable to punishment for any offence against this Act or against any rule or bye-law made there under, unless complaint of such offence is made before a Magistrate within three months, or, if the offence be against the provisions of Section 136, within six months, next after -

(a) the date of the commission of such offence,

(b) if such date is not known or the offence is continuous in its nature, the date on which the commission, or existence of such offence was first brought to the notice of the Corporation or the Executive Officer".

"Section 488 (2), Whoever, after having been convicted of any offence referred to in clauses (a), (b) or (c) of sub-section (1), continues to commit such offence shall be punished, for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table".

36. In view of the above provisions of the Calcutta Municipal Act it was held by Chunder, J., in the above case that if an offence is committed and the Corporation takes no step it cannot come to Court for punishment for continuing offences. As in the case of the accused there was no previous conviction there was no case for a continuing offence and the prosecution was held to be barred by limitation. The case reported in AIR 1950 Calcutta 147 goes a step further and lays down that in such a case a previous conviction must be a legal one. The third case reported in 56 Cal WN 163 : ( AIR 1952 Calcutta 576), is one under the Bengal Highways Act and is not of much importance for our purpose because the principal point decided therein was that under Section 5 of the above Act a Magistrate is not empowered to impose daily fines in anticipation of continuance of the offence. But I think the other two cases support my view that where, as in the present cases, an accused can only be convicted of continued contravention of a particular law or statutory rule after his conviction of the original contravention, no prosecution would lie if there has been no previous conviction; and if prosecution is started for the first time after the period of

limitation has run out when computed from the date of completion of the offence, the prosecution must be regarded as time barred.

37. On the above ground, I hold that the prosecution of the petitioners was not only time-barred but incompetent as well.

38. I now proceed to deal with the second question which I proposed to discuss separately, viz., where the agent and manager of a coal mine are liable for these contraventions along with the owner. Although it is not necessary to deal with this matter after our finding that the prosecutions are barred by limitation, yet I shall give my views on this question because this matter was argued by both sides and because my learned brother has expressed his views thereon which I am not in a position to share.

39. As to the guilt of the owner there cannot be any question because the Mines Creche Rules and Coal Mines Pithead Bath Rules enjoin on the owner to construct a creche and a pithead bath within a prescribed time and when that is not done, it must be held that the owner is guilty of contravention of the rules under Section 73 of the Mines Act 1952. The liability of the agent and of the manager may arise only constructively under Section 18 of the Act. Sub-section (1) and sub-section (2) minus the proviso of Section 18 are relevant for our consideration and they run in the following terms :

"Section 18(1). The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whatsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions to prevent such contravention".

40. Now these two sub-sections when read together make it clear that the owner, agent and manager will all be liable not for any and every offence which may be committed in the mines, but for contravention of the provisions of the Mines Act, regulations, rules and bye-laws and of any orders made there under and these contraventions must take place in conducting "all operations carried on in connection with the mine". The expression "all operations carried on in connection with the mine" is important; for example, if an owner beats a worker in the mine an agent or manager will not certainly be responsible because such beating is not done in conducting any "operations carried on in connection with the mine". Arguing on the same strain I may say that where a coal mine is not provided with a creche or a pithead bath from the very beginning it cannot be said that in managing such a mine any rule or law is violated or infringed by the manager or the agent regarding the construction of creche or pithead bath. A creche or a pithead bath is not an essential or integral part of a mine. They are meant only for providing amenities for workers. There may be a self-complete mine without these adjuncts and when such a mine is worked by a manager or an agent according to the provisions of the Mines Act and other rules and regulations it cannot be said that they have committed any offence simply

because the creche or pithead bath does not exist. The word 'mine' in sub-section (1) of Section 18 means a mine as it is and not as it should be in an ideal sense. The owner's liability is of course there because of the contravention of the Mines Creche Rules and Coal Mines Pithead Bath Rules which enjoin on him to construct these things within a particular period. But the same liability cannot be extended to an agent or a manager who runs a colliery without a creche or a pithead bath. For these reasons I am unable to agree with my learned brother's view, which is also the view of the learned Judges who decided the Patna Full Bench case, that in cases of such contravention the agent and the manager have got a co-liability with the owner. I prefer to accept the view expressed by the Nagpur High Court in AIR 1956 Nagpur 71, although on different grounds. I may also point out here that the Central Government thought it advisable to amend the Coal Mines Pithead Bath Rules of 1946 by expressly extending the liability of non-construction of a pithead bath to an agent and manager of a coal mine (vide notification No. S. R. O. 2465 published in the Gazette of India, D/d. 22-10-1956). The amendment seems to be deliberate. I would, therefore, have set aside the conviction of the agent and the manager involved in these Rules on this ground if I held that their conviction is otherwise good. With these observations, I agree with the final order passed by my learned brother.

Convictions and sentences set aside.