

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No.726 of 2015

With

CRAN 1 of 2015 (Old No. CRAN 749 of 2015)

Binit Kumar Jain & Anr.

Vs.

Asok Kumar Saha

For the Petitioner

: Mr. Suman De,
: Mr. Abhinaba Mukherjee.

For the State

: Mr. Narayan Prasad Agarwala,
: Mr. Pratick Bose.

Hearing on : 16/01/2023

Judgment in Court on : 16/01/2023

Rai Chattopadhyay,J.

1. The very short point involved in this revision is the consideration as to what period would constitute the period of 'three months' in accordance with Section 106 of the Factories Act, 1948.

2. Petitioner has challenged the order and judgment of the Trial Court dated 12.11.2014 passed by Additional District and Sessions Judge at Haldia, Purba Medinipur in Criminal Revision Case No. 7/14. By dint of the same the Trial Court has affirmed the order of the Magistrate dated 05.05.2014 passed in C.R. Case No. 539 of 2012. Petitioner prayed before the Trial Court for his discharge, which was rejected by the said two courts by dint of the respective orders as mentioned above. As such petitioner was aggrieved and came up before this Court to espouse its jurisdiction under Section 482, Cr.P.C, 1973.

3. The petitioner's case in a nutshell would be stated as below:-

The petitioner is the owner of the factory and business namely "Rohit Ferro-Tech Limited". Against the petitioner, a complaint was lodged in the Court of the Magistrate at Haldia on 10.12.2012 contending *inter alia* that the petitioner has contravened provisions of Rule 63 K (1) (c) of the West Bengal Factories Rules, 1958, framed under Sections 41B, 41C and 112 of the Factories Act, 1948. Precisely, the following were the contraventions:

That your petitioner submits that during the aforesaid inspection, it was ascertained and noted that the factory:

(a) Were having five (5) furnaces running and around 450 (four hundred fifty) workers were engaged in manipulation (manual chromium cake breaking, furnace and material handling etc.) of chromium/chromium compounds etc but:

(i) Every worker employed in any chromium process was never produced for examination by the Certifying Surgeon within 15 days of his (worker) first employment along with tests for detection of chromium in urine;

(ii) Every worker employed in any chromium process was never produced for examination by the Certifying Surgeon at least once in every six (6) calendar months along with tests as mentioned above (if required);

(iii) No such aforesaid medical examinations, for all such workers, were done/undertaken by the occupier/manager.

4. The complainant has stated that he conducted inspection in the factory premises on 12.09.2012 at about 11:30 hours and accordingly upon finding the contravention of the statutory mandates by the factory owner as mentioned above, he filed the complaint on 10.12.2012 in the Trial Court.

5. Petitioner has pleaded in the Trial Court for his discharge on the ground that the complaint was lodged by the complainant beyond the statutory period of limitation and thus the said complaint dated 10.12.2012 would

not be maintainable against him, and he should be discharged from the said case.

6. Both the Magistrate and the Sessions Judge have denied such prayer of the petitioner. Petitioner is now before this court with the similar prayer that since the complaint would not be maintainable in law, in view of the fact that the same has been filed beyond the statutory period of limitation, the proceedings against him on the basis of the same would not be tenable in the eye of law and also would be abuse process of court which should be remedied by this court it is exercise of its jurisdiction under Section 482 Cr.P.C, 1973.
7. The State has been represented by Mr. Agarwala, being with Mr. Bose. It has been submitted that the State that the impugned judgment and order is proper and legal, within the period of statutory limitation and would require no interference by this Court. For the rest, the matter has been left to the discretion of the court.
8. The governing provision Section 106 of the Factories Act, 1948, which may be extracted as below:-

“106. Limitation of prosecutions.—No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector: Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within

six months of the date on which the offence is alleged to have been committed.

[Explanation.—For the purposes of this section,—

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.] STATE AMENDMENT Uttar Pradesh.—After section 106, insert the following section.— "106A. Compounding in offences.—The Inspector may, subject to any general or special order of the State Government in this behalf, compound any offences punishable under this Act with fine only, and committed for the first time, either before or after the institution of the prosecution, on realisation of such amount of composition fee as he thinks fit not exceeding the maximum amount of fine fixed for the offence; and where the offence is so compounded,—

(i) before the institution of the prosecution, the offender shall not be liable to prosecution, for such offence and shall, if in custody, be set at liberty;

(ii) after the institution of the prosecution the composition shall amount to acquittal of the offender." [Vide Uttar Pradesh Act, 35 of 1979, sec. 4 (w.e.f. 21-12-1979)]. comments On visiting second time, Inspector discovered continuance of disobedience of a provision of the Factories Act, limitation for complaint can be said to start from

date of later visit of Inspector; State of Mysore v. M.R. Srinivasan, 1966 (2) LLJ 274.”

9. The question that has arisen in this revision is whether the period of “three months” prescribed in this provision of law would mean the period of 90 (ninety) days, as claimed by the petitioner here or it would denote a period dissimilar with that of 90 (ninety) days.

10. Before going into that question, it is the date of the court to look into the judgments referred to by the petitioner in this case. Those may be mentioned as hereinbelow:-

(i) An unreported Supreme Court judgment dated August 8, 2014, **J.J. Irani & Anr. vs. State of Jharkhand** in Criminal Appeal Nos. 1668-1670 of 2014.

(ii) An unreported Karnataka High Court judgment dated 16th December, 2022 in Criminal Petition No. 104099 of 2022 (482), **Shivappa & Anr. vs. The State of Karnataka vs. Anr.**

(iii) **Hemant Madhusudan Nerurkar & Anr. vs. State of Hnarkhand & Anr.** reported in **2021 SCC OnLine Jhar 624**,

(iv) **Rajesh Pandya & Anr. vs. State of H.P** in Cr. MMO No.26 of 2014 dated 28.04.2015.

11. By relying on all those judgments, Mr. Suman De appearing on behalf of the petitioner has tried to impress upon that the period of “three months” as envisaged in the said provision of law would be similar

to a period of 90 (ninety) days, as held by the Hon'ble Courts in the judgments referred to by him, for the petitioner. Mr. De would further submit that the Trial Court has been wrong in holding otherwise that statutory period of limitation of "three months" may vary in terms of the days, when expressed in days. Mr. De, would submit that considering the law propagated by the Hon'ble Courts in the judgments as mentioned above and the fact that the period of limitation as prescribed in Section 106 of the Factories Act, 1948, would mean and be similar to a period of 90 (ninety) days, the complaint in this case is found to have lodged beyond the said period of 90 (ninety) days time. According to him the Trial Court and the First Appellate Court both have erred in not considering this fact. Therefore it is submitted that the impugned judgment dated 12.11.2014 is suffering from not only irregularity but also illegality beyond scope of any rectification, which according to him entitles his client for an order of discharge in this trial.

- 12.** On consideration of the certified copy of the impugned judgment dated 12.11.2014, it is found that the Additional District and Sessions Judge has held that the period of limitation in each statute is prescribed depending upon the objective behind the statute. It has further held that a period of "three months" does not necessarily mean period of 90 (ninety) days but would mean a period of three congestive months in English calendar. According to the court this may 90 (ninety) days or

even period not more than 90 (ninety) days depending on which months of the year fall in between.

13. On this aspect it is interesting to note a vintage judgment of the Division Bench of Calcutta High Court reported in **(1872) Vol. 9 Lawrance's Bengal Law Reports, A-41, (Khasro Mandar & Anr. Vs. Prem Lal)**. The Bench comprising of Justice Bayley and Justice Mitter, held that in absence of any mention in the act VIII of 1869 (BC) for the institution of the suit within 1 (one) year of which calendar, the court consider it proper to refer to the previous act I of 1868 and held that the provisions there under in Section 2 (2) should be followed, i.e, 'years' and 'months' are to be calculated according to the British Calendar, unless the contrary to be expressed.

14. The word "month" is not defined in the Factories Act, 1948. Accordingly one may resort to the definition as prescribed under Section 3 (35) of the General Clause Act, 1897 to find that the definition has been provided in the style as follows:-

"3(35) "month" shall mean a month reckoned according to the British calendar;"

15. In the case of **Bibi Salma Khatoon vs. State of Bihar** reported in **AIR 2001 SC 3596**, the Supreme Court has dealt with provisions of Section 16 (3) of the Bihar Land Reforms Act, 1961 which provided that

benefits under the said act could be availed of if an application is made within three months of the date of registration of the documents of transfer. Posing the question as to what was meant by the word 'month', Supreme Court held that British calendar would mean Gregorian calendar. It was held that when the period prescribed is a calendar month running from any arbitrary date, the period of one month would expire upon the day in the succeeding month corresponding to the date upon which the period starts.

16. Another case of the Supreme Court may be discussed, i.e, **State of H.P vs. M/s. Himachal Techno Engineer**, reported in **2010 AIR SCW 5088**, considered the period of limitation prescribed under sub-section (3) of section 34 of the Arbitration and Conciliation Act, 1996. While section 34 relates to application for setting aside arbitral award, sub-section (3) thereof prescribes the period of limitation for such application which is three months. In that context, Supreme Court examined the meaning of the word 'month' and held that month does not refer to a period of 30 days but refers to the actual period of a calendar month.

It was clarified that if the month is April, June, September or November, the period comprising the month will be 30 days; if the month is January, March, May, July, August, October or December, the month will comprise of 31 days; but if the month is February, the period will be 29 days or 28 days depending upon whether it is a leap year or not.

After referring to section 3 (35) of the General Clauses Act, 1897, it was held that the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of some months being longer than the rest.

Therefore, it was held that when the period prescribed is three months (as contrasted from 90 days) from a specific date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending on the months, it may mean 90 days or 91 days or 92 days or 89 days.

17. It would also be beneficial to mention a case of **In re: V.S. Metha**, reported in **AIR 1970 AP 234**, Andhra Pradesh High Court was considering the provisions of Section 106 of the Factories Act, 1948 as per which no court shall take cognizance of any offence punishable under the said act unless complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector. In that context, Andhra Pradesh High Court examined the meaning of the word 'month': whether it would mean 30 days in which case the complaint should be filed within 90 days from the date of knowledge. After referring to Section 3 (35) of the General Clauses Act, 1897, it was held that the word 'month' would mean a calendar month and by extension the term 'three months' as appearing

in Section 106 of the Factories Act, 1948 would only mean a period of three calendar months.

18. In view of the statutory provisions and the judgments as discussed above, this Court finds that interpretation and meaning of the words ‘three months’ occurring in Section 106 of the Factories Act, 1948 to be monosemously indicating to a period of three calendar months and nothing in terms of days. When the period prescribed is “three months” (as contrasted from 90 (ninety) days) from a specific date, the said period would expire in the 3rd month on the date corresponding to the date upon which the periods starts. As a result, depending on the month, it may mean 90 days or 91 days or 92 days or even 89 days, as the case may be.

19. The provisions of law, as discussed above would lead to the conclusion that the grounds pleaded by the petitioner in this case are not tenable. Accordingly his prayer is also not found to be maintainable. Instead the impugned judgment and order of the Sessions Judge is found to be based on proper appreciation of the settled law and thus in my considered opinion would require no manner interference to the same. Accordingly this revision case does not merit success.

20. On the discussion as above CRR 726 of 2015 is dismissed.

- 21.** Connected application being CRAN 1 of 2015 (Old No. CRAN 749 of 2015) is disposed of.
- 22.** Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)