

institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the Court but on one of the parties. Thus, the offence committed by the person concerned is *qua* the party not *qua* the Court, and, therefore, the very foundation for proceeding for contempt of Court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the Court by the contemner or incorporated by the Court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking implied or expressly incorporated in the order impugned. Thus, there being no undertaking at all the question of breach of such an undertaking does not arise."

(7) I am, therefore, of the considered view that it is the act of the contemner which in one case results in wilful disobedience of the judgment and in the other wilful breach of the undertaking which can give rise to contempt of Court and not non-compliance of a judgment, decree or order simpliciter. As admittedly no express or implied undertaking was ever given by the respondent for the payment of the back wages, the simple non-compliance with the award by him would not amount to wilful disobedience of the award or to contempt of Court. This petition, therefore, must fail and the rule issued is accordingly discharged.

R.N.R.

Before Pritpal Singh, J.

SHIVALIK ICE FACTORY AND COLD STORAGE and others,—
Petitioners.

versus

REGISTRAR OF COMPANIES,—Respondent.

Criminal Misc. No. 7861-M of 1986.

May 28, 1987.

Companies Act (I of 1956)—Sections 159, 162 and 220—Code of Criminal Procedure (II of 1974)—Section 468—Offences under sections 159 and 220—Whether continuing offences—Cognizance thereof—Whether can be taken after expiry of limitation provided in Section 468 of the Code.

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Held, the non-compliance of provisions of Sections 159 and 220 of the Companies Act, 1956 does not render the initial default a continuous one. It cannot be said that the offence is repeated or committed from day to day after the initial default. Since the offences are not continuing one, the cognizance thereof after the expiry of the period of limitation provided in Section 468 of the Code of Criminal Procedure, 1974, could not be taken by the Trial Magistrate. (Paras 6 and 8).

Petition under Section 482 of the Criminal Procedure Code read with section 227 of the Constitution of India praying that the complaints, Annexures P-2 to P-9 may kindly be quashed.

It is further, respectfully prayed that pending the decision of this petition, further proceedings in the court of Chief Judicial Magistrate, Jalandhar City may kindly be stayed

J. L. Gupta, Sr. Advocate with Rajiv Atma Ram with Subhash Ahuja, Advocates, for the Petitioners.

H. S. Brar, Advocate, for the Respondent.

JUDGMENT

Pritpal Singh, J.

(1) In this petition the complaints (Annexures P.2 to P.9) filed by the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, against the petitioners, are sought to be quashed.

(2) The first petitioner is a private Limited Company. Petitioners Nos. 2 and 3 are its shareholders and directors. The Registrar of Companies instituted the aforesaid eight complaints against the petitioners in the Court of the Chief Judicial Magistrate, Jalandhar, on March 18, 1986. The allegations contained in these complaints are that the petitioners did not submit the annual returns and balance-sheets for the years 1981-82, 1982-83 and 1983-84 in accordance with Sections 159 and 220 of the Companies Act (hereinafter called 'the Act'). It is prayed that the petitioners be, therefore, punished under Section 162 of the Act.

(3) Section 159 provides that every Company, having a share capital shall, within sixty days from the day on which each of the annual general meeting is held, prepare and file with the Registrar a return containing the specified particulars. Section 220 lays down

that three copies of the balance-sheet and the profit and loss account shall be filed by the Company each year within a specified period. For non-compliance of Sections 159 and 220 of the Act, the Company and every officer of the Company who is in default is punishable with a fine which may extend to Rs. 60 for every day during which the default continues under Section 162 of the Act.

(4) The impugned complaints are sought to be quashed on the ground of being barred by limitation. It is contended that the offences under Sections 159 and 220 of the Act being punishable only with fine, no Court could take cognizance of the impugned complaints after six months of commission of the offence as provided in Section 468 of the Code of Criminal Procedure were committed during 1981-82 and 1983-84 but the complaints were filed on March 18, 1986. The contention on behalf of the petitioners, therefore, is that the complaints were manifestly barred by time and the same could not be entertained by the trial Court.

(5) The position taken up by the learned counsel for the respondent-Registrar of Companies is that the offences under Sections 159 and 220 of the Act are continuing offences. As such Section 468 of the Code of Criminal Procedure did not stand as a bar in the filing of the impugned complaints.

(6) Thus, the important point for consideration in this case is whether the offences under Sections 159 and 220 of the Act are continuing offences or not. It was held by the Calcutta High Court in *Ajit Kumar Sarkar v. Assistant Registrar of Companies* (1), that failure to file annual returns under Section 159 is a continuing offence. This view was followed by the Kerala High Court in *Sudarsan Chits (India) Ltd. and others v. Registrar of Companies, Kerala* (2). However, a Division Bench of the Calcutta High Court overruled the judgment in the case of *Ajit Kumar Sarkar* (supra) in *National Cotton Mills and others v. Assistant Registrar of Companies, West Bengal, and another* (3). The learned Judges held that in order to constitute a continuing offence, it must arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is

(1) (1979) 49 Company Cases 909.

(2) (1986) 59 Company Cases 261.

(3) (1984) 56 Company Cases 222.

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obeyed or complied with. It was observed that Section 159 of the Act, which requires every company to file with the Registrar the particulars specified in the Section in the form of a return within sixty days from the date on which the annual general meeting is held, does not impose any liability which so continues. The offence on the breach thereof is complete with the failure to furnish the return in the manner or within the time stipulated. Such an offence is committed once and for all as and when one commits the default. The provision does not contemplate that the obligation to submit the returns continues from day to day until the return is actually submitted nor does it provide that continuance of business without filing of such returns is prohibited so that non-fulfilment of a continuing obligation or continuing business without filing of such returns becomes a continuing offence. It was further held that when Section 162 of the Act prescribed the penalty of fine "which may extend to fifty rupees for every day during which the default continues," it merely prescribes the measures of penalty. Such a prescription being made with the object of enforcing strict compliance with the requirement of Section 159 under the threat of enhanced penalty and getting relief from such penalty on enhancing scale by early submission of returns even after the default. That does not render the initial default a continuous one. It cannot be said that the offence is repeated or committed from day to day after the initial default. It was clarified that it is only where the offence is committed from day to day or repeated from day to day that it can be called a continuing offence. This view was reiterated by the Calcutta High Court subsequently in *Nripendra Kumar Ghosh v. Registrar of Companies, West Bengal, and others* (4).

(7) Similar penalty being provided for the non-fulfilment of the requirement of Section 220 of the Act in Section 162, the failure of file balance-sheet and accounts was not considered to be a continuing offence on the same reasoning in *Central Manbhum Coal Co. P. Ltd. and others v. Assistant Registrar of Companies, West Bengal, and others* (5).

(8) Agreeing with the Division Bench judgment of the Calcutta High Court in the case of *National Cotton Mills* (supra), I am not

(4) (1985) 58 Company Cases 672.

(5) (1986) 59 Company Cases 176.

inclined to accept the contention of the learned respondent's counsel that the petitioners had committed continuing offences. Since the offences were not continuing one, the cognizance thereof after the expiry of the period of limitation provided in Section 468 of the Code of Criminal Procedure could not be taken by the trial Magistrate. Hence the impugned complaints and the proceedings taken by the trial Court are hereby quashed.

R.N.R.

Before D. V. Sehgal, J.

JAGDISH SINGH,—Petitioner.

versus

CAPT. RANBIR SINGH JOLLY and others,—Respondents.

Civil Revision No. 1039 of 1986.

July 28, 1987.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13-A—Landlord taking voluntary premature retirement from the defence services on completion of minimum length of service under the Rules—Voluntary premature retirement—Whether amounts to resignation from service or is comprehended within the term 'retirement' in Section 13-A—Specified landlord retiring prematurely—Whether can maintain petition under Section 13-A—Specified landlord as co-owner—Whether can seek eviction for his own personal need and occupation in the face of other co-owners impleaded as respondents and who support the eviction petition.

Held, that the right of premature retirement of the government servant vested in the Government on the one hand and the government servant on the other is mutual and reciprocal. Whether it is compulsory retirement, premature retirement or retirement on superannuation the Government servant is entitled to the retirement benefits in the shape of pension, death-cum-retirement gratuity and payment in lieu of unavailed of leave etc. The Explanation to Section 13-A of East Punjab Urban Rent Restriction Act, 1949, is in fact much wider in scope. It provides that the expression retirement for the purposes of the said Section means termination of service of a specified landlord otherwise than resignation. Thus the only eventuality of cessation of appointment to any public service of the specified landlord which is excluded from the