

P. K. Banerjee and another *vs.* State of Punjab (M. M. Punchhi, J.)

death of the tenant when the tenant leaves no male lineal descendant or mother or widow.

(6) The contention that this question be left open and need not be decided at this stage has also no merits. The judgment relied upon in this behalf i.e., *Hari Chand and another's case* (supra), has absolutely no applicability to the facts of this case. It is a suit for pre-emption and the moment the pre-emptor dies, it being personal right, it dies with him. In this view of the matter this petition fails and is dismissed with costs.

H. S. B.

Before M. M. Punchhi, J.

P. K. BANERJEE AND ANOTHER,—*Petitioners.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 1-M of 1985

August 29, 1985.

Code of Criminal Procedure (II of 1974)—Section 468—Essential Commodities Act (X of 1955)—Sections 7 and 12 AA—Fertilizer Control Order, 1957—Clause 13—Section 7 making offences under the Act punishable with imprisonment extending upto 7 years—Section 12 AA making the offences triable summarily and enabling Special Courts to pass a sentence not exceeding 2 years—Limitation for the trial of such offences—Bar of limitation under Section 468 of the Code prohibiting trial after three years—Whether applicable.

Held, that Section 468 of the Code of Criminal Procedure, (1974, prescribes period of limitation and specifically says that if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, limitation for its trial is three years. Now the word 'punishable' as used in Section 468 is meaningful. It cannot be read as 'punished'. Offences under Section 7 of the Essential Commodities Act, 1955, are punishable with imprisonment which may extend to seven years. Limitation has no place merely because the Court is to impose a lesser punishment or, even if, the Magistrate trying as a warrant case such an offence, is only empowered to inflict punishment upto three years. Powers of particular courts to impose sentence lesser than the one for which the

offence is punishable is not the governing factor. What has to be seen is, what is punishable for the offence, in order to determine the question of limitation. The mere fact that under Section 12 AA of the Act, the offence is triable in a summary way does not *ipso facto* mean that it is to be tried in a summary way or that it is to attract a punishment not exceeding two years. All these provisions are enabling for the Court to determine the course it would adopt in a particular case. No hard and fast rules can be laid down. Thus, the bar of limitation contained in section 468 of the Code would not be applicable to offences triable under the Act.

(Para 3).

Petition Under Section 482 Cr. P. C. praying that the proceedings initiated by the Chief Agricultural Officer, Sangrur under the Essential Commodities Act read with Clause 13(1) (a) etc. and the Fertilizer Control Order, 1957 and the order dated 21st November, 1984 passed by the C.J.M., Sangrur may be quashed.

It is further prayed that further proceedings before the Additional Chief Judicial Magistrate, Sangrur may be stayed during the pendency of the present petition.

R. N. Narula, Advocate, for the Petitioner.

Nemo, for the Respondent.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) In one of the prosecutions under section 7 of the Essential Commodities Act read with Clause 13 of the Fertilizer Control Order, 1957, the petitioners P. K. Banerjee and T. Singh, Managers of National Fertilizers Limited, Nangal, were arraigned as accused. The prosecution case was that the other accused were found selling fertilizer manufactured by National Fertilizers Limited and the sample taken by the Fertilizer Inspector from the godowns of the dealer, when analysed, was found to be sub-standard. The petitioners attempted to have the prosecution thwarted on the plea of limitation. Their plea having been turned down has given rise to this petition.

(2) The sole contention of Mr. R. N. Narula, learned counsel for the petitioners, is that in view of section 12 AA of the Essential Commodities Act, all offences under the Act have to be tried only by a Special Court constituted for the area in which the offence has

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been committed. And when the trial can be summary as conceived of in the proviso to sub-clause (f) of clause (1) of section 12 AA and the maximum imprisonment in that case not exceeding two years, the trial against the petitioners offended section 468 of the Code of Criminal Procedure, being beyond time. And further he states that the learned Magistrate was, when confronted with the proposition, in error in extending the period of limitation.

(3) I have heard the learned counsel in support of the contention, but it seems to me that it is totally fallacious. Section 468 of the Code of Criminal Procedure prescribes period of limitation and specifically says that if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, limitation for its trial is three years. Further such period of limitation is extendable under section 473 of the Code if the Court is satisfied on the fact and in the circumstances of the case that the delay has been properly explained or that it was necessary so to do in the interest of justice. Now the word 'punishable' as used in section 468 is meaningful and gives the pointer on which the contention raised is to be negated. It cannot be read as 'punished'. It is conceded by Mr. Narula that the offence under section 7 of the Essential Commodities Act is punishable with an imprisonment which may extend to seven years. Limitation has no place merely because the Court is to impose a lesser punishment or, even if, the Magistrate trying as a warrant case such an offence, is only empowered to inflict punishment upto three years. Powers of particular Courts to impose sentence lesser than the one for which the offence is punishable is not the governing factor. What has to be seen is, what is punishable for the offence, in order to determine the question of limitation. The mere fact that under section 12 AA of the Essential Commodities Act, the offence is triable in a summary way does not ipso facto mean that it has to be tried in a summary way or that it is to attract a punishment not exceeding two years. All these provisions are enabling for the Court to determine the course it would adopt in a particular case. No hard and fast rules can be laid down. Thus, on the question of limitation the petitioners are on slender ground. Even if the Court has extended the period of limitation, for, what has been stated earlier, that is a surplusage in the circumstances ignorable in the instance.

(4) Mr. Narula attempted to scuttle the prosecution contending that the petitioners were public servants within the meaning of section 21 of the Indian Penal Code, on ostensible plea that they were in the service or pay of a government company as defined in section

617 of the Companies Act, 1956, and, therefore, without the sanction of the Central Government their prosecution was not possible. This plea, I am afraid, cannot be entertained here at this stage for, no such question was raised before the Court below. The question being a mixed question of law, fact and jurisdiction has, in the first instance, to be raised, if at all, before the trial Magistrate. The petitioners may, if so advised, do so now.

(5) For the foregoing reasons, this petition fails and is hereby dismissed.

N.K.S.

Before J. V. Gupta, J.

NEW INDIA ASSURANCE CO.,—*Petitioner.*

Versus

IND KAUR AND OTHERS,—*Respondents.*

Civil Revision, No. 933 of 1985

September 2, 1985.

Motor Vehicles Act (IV of 1939)—Section 92—A & B—Compensation under Section 92(A) paid to the heirs of the deceased—Subsequent award of the Tribunal granting additional compensation to the heirs—Compensation already paid under Section 92(A)—whether liable to be adjusted against the total compensation awarded.

Held, that sub-section 3(a) of section 92-B of the Motor Vehicles Act, 1939, clearly provides that if the amount of the first mentioned compensation is less than the amount of the second mentioned compensation, the person liable has to pay in addition to the first mentioned compensation only so much of the second mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation. The 'Objects and Reasons' in relation to Chapter VII—A also provide that "the compensation payable by an owner on the basis of wrongful act or negligence on his part would be reduced by the compensation already paid to him under this Chapter". In this view of the matter the compensation already paid under Section 92(A) of the Act is liable to be adjusted against the total compensation payable to the heirs of the deceased.

(Paras 4 and 5).