

Balram Singh v. Sukhwant Kaur and another (A. P. Chowdhri, J.)

(9) For the reasons stated above, we hold that an order granting interim maintenance is not an interlocutory order and revision there-against is not barred under section 397(2) of the Code. We, therefore, quash and set aside the order dated 28th April, 1990 passed by the learned Addl. Sessions Judge and direct that he shall enter the present revision petition against its original number and hear and dispose of the same on merits according to law within a period of three months. The parties through their counsel are directed to appear in the court of Addl. Sessions Judge, Chandigarh, on 3rd December, 1990.

P.C.G.

Before : H. S. Rai & A. P. Chowdhri, JJ.

BALRAM SINGH,—Petitioner.

versus

SUKHWANT KAUR AND ANOTHER,—Respondents.

Criminal Misc. No. 7923-M of 1989

9th January, 1991.

Criminal Procedure Code, 1973—Ss. 467 to 473 & 482—Indian Penal Code, 1860—S. 406—Offence of criminal breach of trust—Whether can be termed as a continuing offence.

Held, that having regard to the nature of the offence and the purpose which is intended to be achieved by constituting criminal breach of trust as an offence, we are of the view that the offence in question is a continuing one.

(Para 14)

Held, that the definition of 'stolen property' under S. 410 of the Indian Penal Code is broad enough to include within its sweep property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed and it continues to be so till it comes into possession of a person legally entitled thereto. In other words, once a property is criminally misappropriated or in respect of which criminal breach of trust has been committed the same continues to be stolen property till it is restored to the person entitled to its possession. The above provision furnishes a key to the understanding of the nature of the offence of criminal misappropriation and criminal breach of trust. On principle, therefore, we are of the considered view that the offence under S. 406 of the Indian Penal Code is continuing offence.

(Para 15)

(Hon'ble Mr. Justice J. S. Sekhon, dated 3rd May, 1990 referred the matter to a larger bench because keeping in view that the controversy being of vital nature and likely to crop up in so many other matters. The Division Bench consisting of Hon'ble Mr. Justice H. S. Rai and Hon'ble Mr. Justice A. P. Chowdhri, dated 9th January, 1991 decided the Law Point and returned the case back to the Single Judge for its decision on its merits. The Single Judge finally disposed of the matter,—vide Judgment dated 21st March, 1991.).

Application under Section 482 Cr.P.C. praying that the present petition may be allowed and the impugned summoning order and the proceedings based thereon be quashed. In case criminal complaint filed by respondent No. 1, under Section 406 I.P.C.

G. S. Dhillon, Advocate, for the Petitioner.

Malkeet Singh, Advocate, for Respondent No. 1.

S. K. Sharma, D.A.G. Punjab.

JUDGMENT

A. P. Chowdhri, J.

(1) The short significant question for our decision is—whether the offence of criminal breach of trust punishable under section 406 of the Indian Penal Code is a continuing offence L.

(2) While hearing CrI. Misc. No. 7923-M of 1989 J. S. Sekhon, J. noticed a conflict of views on the point. In CrI. Misc. No. 2985-M of 1989 (*Renu and others v. The State of Haryana and another*) decided by J. S. Sekhon, J. on February 12, 1990, and in *Hakam Singh and others v. The State of Punjab and another*, 1989(2) Recent C.R. 442, decided by one of us (A. P. Chowdhri, J.), it was held that the offence under section 406 was a continuing offence. In *Gurvel Singh v. Rajinder Singh*, 1990 Marriage Law Journal 131, S. D. Bajaj, J., on the other hand, held that section 406 did not amount to a continuing offence.

(3) By order dated May 3, 1990, the learned Judge referred the aforesaid question for decision by a larger Bench. This is how the case has been heard by us.

(4) Chapter XXXVI (Sections 467 to 473) relating to limitation for taking cognizance of certain offences was added in the Code of Criminal Procedure, 1973, for the first time. Section 467 relates to

definitions. Section 468 prescribes the period of limitation for various offences, a smaller period of limitation having been prescribed for offences punishable with smaller imprisonment and larger period of limitation being prescribed for offences punishable with greater imprisonment. The period of limitation for offences punishable upto three years, is three years. The offence under section 406 would fall in this category unless it was held to be a continuing offence. Section 469 relates to commencement of the period of limitation. Sections 470 and 471 deal with exclusion of time in certain cases. Section 472 lays down that in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. And lastly section 473 empowers the Court to take cognizance of an offence after the expiry of period of limitation if it is satisfied, on the facts and circumstances of the case, that the delay has been properly explained or that it was necessary so to do in the interest of justice.

(5) As the question before us is not directly covered by any decided case, we have examined the question on principle as well as with the aid of precedents.

(6) The expression "continuing offence" occurring in section 472 of the Code of Criminal Procedure is not defined in the Code. In *State of Bihar v. Deokaran Kenshi and another* (1), which is a *locus classicus* on the subject, the concept of continuing offence was explained by the Supreme Court in these words:—

"Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises 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 obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient

(1) A.I.R. 1973 S.C. 908.

of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

(7) The question again came up for consideration in *Bhagirath Kanoria and others v. State of M.P.* (2). Their Lordships referred to the above passage in *Deokaran Nenshi's case* (supra) and observed that it was obviously difficult to explain the concept of continuing offence and in view of the said difficulty the apex Court gave a few illustrative cases to bring out the distinction between a ‘continuing offence’ and a ‘non-continuing offence’. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar.

(8) In *Best v. Butier and Pitzgibbon* (3), the English Trade Union Act, 1871, made it penal for an officer or a member of a Trade Union to wilfully withhold any money, books, etc., of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys were wilfully withheld, the offence was committed.

(9) In *Verney v. Mark Fletcher and Sons Ltd.* (4), Section 10(1) of the Factory and Workshop Act, 1901, provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Section 135 provided the penalty for non-compliance with Section 10(1), while Section 146 provided that information of the offence shall be laid within three months after the date on which the offence comes to the knowledge of the Inspector. It was held that the breach of Section 10(1) was a continuing breach and therefore, the information was in time. Every day that the fly-wheel remained unfenced, the factory was run otherwise than in conformity with the Act of 1901 and, therefore, the offence defined in Section 10 was a continuing offence.

(10) The third English case referred to is *The London County Council v. Worley* (5), in which Section 85 of the Metropolis Management Amendment Act, 1852, prohibited the erection of a building on

(2) A.I.R. 1984 S.C. 1688.

(3) 1932 2 KB 108.

(4) (1909) 1 K.B. 444.

(5) (1894) 2 QB 826.

Balram Singh v. Sukhwant Kaur and another (A. P. Chowdhri, J.)

the side of a new street in certain circumstances, without the consent of the London County Council. The Court construed section 85 as creating two offences: building to a prohibited height and continuing such a structure already built after receiving a notice from the County Council. The Court held that the latter offence was a continuing offence.

(11) In *Emperor v. Karsandas* (6), Section 390(1) of the Bombay City Municipal Act, 1988, provided that no person shall newly establish in any premises any factory of a certain description without the previous permission of the Commissioner nor shall any person work or allow to be worked any such factory without such permission. It was held by the High Court that establishing a new factory was an offence committed once and for all but, working it without permission was a continuing offence.

(12) In *State of Bombay v. Bhilwandiwalla* (7), it was held that the offence of using the premises as a factory without a licence is a continuing offence.

(13) In *State of Bihar v. J. P. Singh* (8), the High Court of Patna held that conducting a restaurant without having it registered and without maintaining proper registers were continuing offences.

(14) It was laid down in *Bhagriath Kanoria's case* (supra) that the question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and above all the purpose which is intended to be achieved by constituting the particular act as an offence. In the said case, the question was whether non-payment of contribution by the employer to provident fund in contravention of the Employees Provident Fund and Family Pension Fund Act, 1952, was a continuing offence or not. It was observed that the appellants were unquestionably liable to pay their contribution to the provident fund before the due date. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligations to pay their contribution to the Fund, they committed a fresh offence. It was

(6) A.I.R. 1942 Bombay 326.

(7) ILR (1955) Bombay 192.

(8) 1963 BLJR 782.

further observed by their Lordships that it was putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who had not paid his contribution to the Provident Fund could successfully evade the penal consequences of his act by pleading the law of limitation. It was, therefore, held that the offence was a continuing one. Having regard to the nature of the offence and the purpose which is intended to be achieved by constituting criminal breach of trust as an offence, we are of the view that the offence in question is a continuing one.

(15) The matter can be viewed from another angle. Section 410 of the Indian Penal Code defines 'stolen property'. The definition is broad enough to include within its sweep property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed and it continues to be so till it comes into possession of a person legally entitled thereto. In other words, once a property is criminally misappropriated or in respect of which criminal breach of trust has been committed the same continues to be stolen property till it is restored to the person entitled to its possession. The above provision furnishes a key to the understanding of the nature of the offence of criminal misappropriation and criminal breach of trust. On principle, therefore, we are of the considered view that the offence under section 406 of the Indian Penal Code is continuing offence.

(16) Coming to the precedents, a learned Single Judge of this Court in *Waryam Singh v. The State of Punjab* (9), took the view that the offence under section 406 is not a continuing offence. In coming to the above conclusion, it was noted by the learned Judge that the above proposition was conceded by the counsel appearing for the State and also the Supreme Court had proceeded on the same footing in *The State of Punjab v. Sarwan Singh* (10). In *Sarwan Singh's case* (supra), the question whether the offence under section 406 of the Indian Penal Code was continuing or non-continuing one was neither debated nor decided. Their Lordships proceeded on the footing that the said offence did not constitute a continuing offence. The above decision cannot, in our view, be taken as a binding precedent in support of the proposition that the offence under section 406 of the Indian Penal Code is not a continuing offence.

(9) 1982 CrL. L.J. NCC 137 (P&H).

(10) 1981 P.L.R. 451 (S.C.).

Balram Singh v. Sukhwant Kaur and another (A. P. Chowdhri, J.)

(17) In *Gurcharan Singh v. Lakhwinder Kaur* (11), [again reported as 1988(2) Recent C.R. 621] a learned Single Judge of this Court proceeded on the assumption that the offence under section 406 of the Indian Penal Code was not a continuing one. In fact, it was not disputed by learned counsel for the parties that the period of limitation prescribed for the offence under section 406 was three years.

(18) The next decision, to which reference may be made, is *Shivalik Ice Factory and Cold Storage and others v. Registrar of Companies* (12). The question which arose in that case was whether non-filing of returns in contravention of the provisions of sections 159, 162 and 220 of the Companies Act amounted to a continuing offence. It was held that the offence disclosed was a non-continuing one as the offence was committed once and for all, when a person liable to file the return failed to do so.

(19) In *Gurvel Singh's case* (supra), S. D. Bajaj, J. following *Sarwan Singh's case* (supra) and *Waryam Singh's case* (supra) held that the offence under section 406 of the Indian Penal Code was not a continuing one. Both the decisions relied on in *Gurvel Singh's case* have been dealt with above.

(20) J. S. Sekhon, J. in *Renu's case* (supra) had taken the view that the offence under section 406 of the Indian Penal Code was a continuing offence. To the same effect was decision in *Hakam Singh's case* (supra) taken by one of us (A.P. Chowdhri, J.), sitting singly.

(21) *Oriental Bank of Commerce and another v. Delhi Development Authority and others* (13), related to a prosecution for non-conforming user of premises in contravention of section 29(2) of the Delhi Development Act. It was held by a Division Bench of Delhi High Court that the offence was a continuing one and it clearly implied that the offence continued *de die in diem* so long as mis-user continued.

(22) We find an element of continuance in the offence of Criminal misappropriation in view of the extended definition of 'stolen property'. The offence continues until the property which has been criminally misappropriated is restored to the true owner. We further

(11) 1987 (1) Recent C.R. 424.

(12) 1988(2) Recent C.R. 24.

(13) 1982 Cri. L.J. 2230.

find that the case of criminal misappropriation comes very close to one of the illustrations in *Best's case* (supra) cited in *Deopkaran Nenshi's case* (supra) in which it was held that the offence of withholding the money was a continuing offence, the basis of the decision being that every day that the money is wilfully withheld, the offence was committed.

(23) In so far as precedents are concerned, therefore, we find that there is no binding precedent of the Supreme Court. There is no decision directly on the point of a Division Bench either of this Court or of any other High Court. The Single Bench decisions in which a contrary view has been taken have been explained and we, therefore, find that the question as to the nature of the offence under section 406 of the Indian Penal Code—whether it is continuing or a non-continuing offence—has not been gone into and for the foregoing reasons, we hold that the offence under section 406 of the Indian Penal Code is a continuing offence.

We answer the reference accordingly. The case will now be listed before the learned Single Judge for disposal according to law.

P.C.G.

Before : G. C. Mital & S. S. Grewal, JJ.

M/S JAGDISH CHANDER AGGARWAL,—*Petitioner.*

versus

THE ASSESSING AUTHORITY, EXCISE AND TAXATION
OFFICER, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 15165 of 1990.

27th February, 1991

Constitution of India, 1950—Arts. 226/227—Code of Civil Procedure, 1908—O. 2, rl. 2—Maintainability—Writ Jurisdiction—Second petition filed taking additional ground—Petition cannot be entertained—Proper remedy is to seek amendment of earlier petition.

Held, that general principles of law require that all points should be raised in one and the same writ petition and there can be no piecemeal consideration of points. Filing of the second writ petition with additional ground is not the remedy and, therefore, we decline