

PUBLIC PROSECUTOR, MADRAS

v.

R. RAJU & ANR. ETC.

August 8, 1972

[S. M. SIKRI, C.J., A. N. RAY, P. JAGANMOHAN REDDY,
K. K. MATHEW, JJ.]

Central Excises and Salt Act, 1944, s. 40(2)—Bar of limitation on certain suits, proceedings, prosecutions, when applicable—Whether applies in case of Government servants only—Whether not applicable when acts complained of are malicious—Words “anything done or ordered to be done” in section whether include acts in violation of the Act.

Section 40(2) of the Central Excises and Salt Act, 1944 provides that no suit prosecution or other legal proceeding shall be instituted or anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of. The respondents in the present appeals were prosecuted for violations of Central Excise Rules, punishable under s. 9(b) and (d) of the Act and also under s. 420 read with section 511 of the Indian Penal Code and Section 109 of the Indian Penal Code. The High Court found that the prosecution in both the cases was barred by the rule of limitation in section 40 of the Act because the prosecutions were instituted subsequent to the expiry of six months from the date of the alleged offences.

In appeals before this Court by special leave it was contended on behalf of the appellant that (i) the section applies only to government servants; (ii) the protection given to Government servants under the section is for actions done inadvertently or mistakenly but not for acts done deliberately and maliciously; and (iii) the words “anything done or ordered to be done” under this Act in the section do not mean any act in violation of the provisions of the Act.

HELD : (i) The provisions contained in section 40 of the Act show that the first sub-section speaks of bar of suits against the Central Government or any officer of the Central Government in respect of orders passed in good faith or act in good faith done or ordered to be done. The second sub-section of section 40 provides bar of limitation of time in respect of suits, prosecutions or other legal proceedings without any qualifying words as to persons against whom suit proceeding and prosecution shall be instituted. The contention of the appellant that sub-section (2) is confined only against the Government officers is not warranted by the words of the statute and is repelled by reference to other comparable statutes which have indicated in clear words when the statute contemplates bar of suits, proceedings or prosecution against Government servants only. The words in section 40(2) of the Act in the present case are of wide amplitude to apply to the prosecution which was commenced against respondents in the present case. [817H-818B]

(ii) The contention that “anything done” would not include a malicious act or an act done in bad faith could not be accepted. Sub-section (2) of section 40 does not introduce the test of good faith in relation to act done. Good faith is one of the aspects in section 40(1). The present appeals did not turn on sub-section (1) of section 40. [818D-E]

- A (iii) The decisions of this Court in the light of the definition of the word "act" in the General Clauses Act establish that non-compliance with the provisions of the statute by omitting to do what the Act enjoins will be "anything done or ordered to be done" under the Act. The complaint against the respondents was that they wanted to evade payment of duty. Evasion was by using and affixing cut and torn banderols. Books of account were not correctly maintained. There was shortage of banderol in stocks. Unbanderolled matches were found. These were all infraction of the provisions in respect of things done or ordered to be done under the Act. [820B]

The High Court was therefore right in its conclusion that the prosecution was barred by the provisions of section 40 of the Act. [821D]

- C *Pritam Singh v. State of Haryana*, [1971] 1 S.C.C. 653, *Maulad Ahmad v. State of Uttar Pradesh*, [1963] Supp. 2 S.C.R. 38, *Sitaram v. State of Madhya Pradesh*, [1962] Supp. 3 S.C.R. 21 and *Amalgamated Electricity Co. v. Municipal Committee Ajmer*, [1969] 1 S.C.R. 430, relied on and applied.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 194 and 195 of 1969.

- D Appeals by special leave from the judgment and order dated November 21, 1968 of the Madras High Court in Criminal Appeals Nos. 211 and 232 of 1966 and Criminal E.C. No. 1643 of 1966.

Gobind Das and *S. P. Nayar*, for the appellant.

M. S. Narasimhan, for the respondents.

- E The Judgment of the Court was delivered

Ray, J. These two appeals are by special leave from the judgment dated 21 November, 1968 of the High Court at Madras dismissing the appeals filed by the appellant against the order of the Sub-Divisional Magistrate dated 30 November, 1965 and the order of the Sessions Judge dated 16 November, 1965 acquitting the respondents.

The question which falls for consideration in these appeals is the interpretation of section 40(2) of the Central Excises and Salt Act, 1944 hereinafter referred to for brevity as the Section and the Act. The section is as follows :—

- G "No suit, prosecution or other legal proceedings shall be instituted for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of"

- H The respondents in both the appeals were prosecuted for violation of rules 9, 53, 64, 67, 68, 70, 71, 66 and 226 of the Central Excise Rules punishable under section 9(b) and (d) of the Act and also under section 420 read with section 511 of

the Indian Penal Code and section 109 of the Indian Penal Code. The High Court found that the prosecution in both the cases was barred by the rule of limitation in section 40 of the Act. The acts complained of in Criminal Appeal No. 194 of 1969 occurred on 25 July, 1964 and the complaint was filed on 18 May, 1965. In Criminal Appeal No. 195 of 1969 the acts complained of occurred on 20 June 1964 and the complaint was filed on 15 January, 1965.

The appellant's contentions are three-fold. First, the section applies only to Government servants. Second, the words "anything done or ordered to be done under this Act" in the section do not mean any act in violation of the provisions of the Act. Third, the protection given to Government servants under the section is for actions done inadvertently or mistakenly but not for acts done deliberately and maliciously. It was therefore said that the prosecution of the respondents was not within the mischief of the section.

The respondents' contention on the other hand is that the section applies to prosecution of the respondents for violation of the provisions of the Rules and the Act. It is further said on behalf of the respondents that they were rightly acquitted by the High Court because the prosecution was instituted subsequent to the expiry of six months from the date of the alleged offences.

In Criminal Appeal No. 194 of 1969 the complaint was filed on 18 May, 1965. The complaint was filed against accused No. 1 who was the licensee of Paulraj Match Works, Nallichatram and accused No. 2 who was the accountant in the factory and who had assisted accused No. 1 in the manufacture of matches and maintenance of accounts and records of the factory. The complaint against the accused who are respondents in this appeal was that on 25 July, 1964 the accused being proprietor and accountant respectively of Paulraj Match Works at Nallichatram were found to have affixed cut banderols and torn banderols to the matches manufactured in the said Match Factory with a view to evade the payment of excise duty payable to the Government and that the accused also attempted to deprive the Central Government of Rs. 577.42 by their acts. The complaint against the accused was for violation of Rules 53, 64, 67, 68, 70, 71, 66 and 226 of the Central Excise Rules punishable under section 9(b) and (d) of the Central Excises and Salt Act, 1944 and also under section 420 of the Indian Penal Code read with section 511 of the Indian Penal Code and section 109 of the Indian Penal Code. The further details of the complaint were that the register R.G.I. was not written out from 2 July, 1964 and R.G. 3 register was not correctly maintained. There was also a shortage of 50 leaves of banderols in stock.

A In Criminal Appeal No. 195 of 1969 the complaint was against accused No. 1 the licensee of Meenachi Match Works and accused No. 2 husband of accused No. 1 who was running the factory and maintaining accounts. The complaint against the accused was that on 20 June, 1964 the Central Excise staff visited the factory and found that the factory was working at night. On inspection it was found that cut banderols instead of full banderols had been pasted on certain quantities of match boxes with a view to evade payment of excise duty in violation of rules 64, 68 and 70 of the Central Excise Rules. The further allegations in the complaint were that on inspection of lorry despatches and clearances of the factory, it was found that during 1963-64 and 1964-65 upto 20 June, 1964 the licensee had actually cleared without entry in the official Central Excise Records and without payment of duty a quantity of matches in excess of the quantity shown in the records. The complaint was that the accused had attempted to deprive the Central Government of Rs. 2437.50 being the Excise duty calculated at the standard rate. The accused were alleged to have committed violation of Rules 9, 53, 64, 66, 67, 68, 70 and 226 of the Central Excise Rules punishable under section 9(b) and (d) of the Central Excises and Salt Act. 1944 and also under section 420 of the Indian Penal Code read with sections 511 and 109 of the Indian Penal Code.

E In Criminal Appeal No. 194 of 1969 the Sub-Divisional Magistrate on 30 November, 1965 acquitted the accused of the charges and held that the bar of limitation under the section applied to the prosecution by the State. The complaint was received in the Court of the Sub-Divisional Magistrate on 18 May, 1965. The inspection of factory by the Central Excise staff was on 25 July, 1964. The Sub-Divisional Magistrate therefore held that computing the period of six months from the date, the last date within which the complaint should have been laid would be 25 January, 1965. The State preferred an appeal to the High Court of Madras. The High Court held that the prosecution must fail as it was barred by limitation. The present appeal is from the judgment of the High Court.

G In Criminal Appeal No. 195 of 1969 the Sub-Divisional Magistrate on 6 July, 1965 found the respondents guilty. The respondents preferred an appeal to the Sessions Court at Ramana-thapuram. The Sessions Judge on 16 November, 1965 set aside the conviction and sentence and acquitted the respondents. The Sessions Judge held that the bar of limitation under the section operated against the State because the prosecution was commenced after the expiry of prescribed period of limitation. The State preferred an appeal to the High Court. The High

Court maintained the judgment of the Sessions Judge. The appeal is from the decision of the High Court. A

Counsel on behalf of the appellant contended that the provisions of the section did not apply to prosecution for offences committed by individuals in contravention of the Act and the Rules made thereunder. It was said that the section was intended for prescribing limitation in respect of prosecution only against departmental officers or Government servants. B

The section consists of two sub-sections. The first sub-section speaks of bar of suits against the Central Government or against any officer of the Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under the Act. The second sub-section speaks of limitation of suits, prosecution or other legal proceeding for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of. The two sub-sections operate in different fields. The first sub-section contemplates bar of suits against the Central Government or against the officers by protecting them in respect of orders passed in good faith or acts done in good faith. It is manifest that the second sub-section does not have any words of restriction or limitation of class of persons unlike sub-section (1). Sub-section (2) does not have any words of qualification as to persons. Therefore, sub-section (2) is applicable to any individual or person. C
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Reference may be made to some statutes to indicate as to how the Legislature places bar against any class of person in respect of suits, proceedings, prosecutions for anything done or ordered to be done under the relevant statute.

Section 20 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) containing two sub-sections is a type. The first sub-section there speaks of bar of suits or other legal proceedings against the collecting Government or against any officers in respect of any order passed in good faith or any action in good faith done or ordered to be done under the Act. The second sub-section there speaks of bar of suit, prosecution or other legal proceeding against the collecting Government or against any officer for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of. These provisions illustrate the manner in which the legislature has by appropriate words placed bar of suits or prosecution or other legal proceedings only against the Government or any officer. There is no bar in that statute of suits, prosecutions against individuals. In the present case, sub-section (2) of F
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A section 40 of the Act does not contain any bar of suit, prosecution or legal proceeding by confining the same only to Government servants.

B The Madras General Sales Tax Act, 1959 affords another illustration. Section 50 of the Madras Act, 1959 enacts that no suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under the Act unless the suit, prosecution or other proceeding is instituted within six months from the date of that act complained of. The Madras General Sales Tax Act provides yet another instance of limitation for suits and prosecution against specified class of persons, namely, Government and Government servants.

C The Bombay (District) Tobacco Act, 1953 deals in section 24(1) of the Act with protection of persons acting in good faith and limitation of suits and prosecutions against them. Limitation of suits and prosecutions in section 24(2) of the Bombay Act is provided by enacting that no suit shall be instituted against the Government and no prosecution or suit shall lie against any Tobacco Officer in respect of anything done or alleged to have been done, in pursuance of the Act, unless the suit or prosecution has been instituted within four months from the date of the act complained of. The Bombay statute typifies in section 24(2) limitation of suit and prosecution by restricting the operation of the provisions only against the Government and Tobacco Officers.

D The Madhya Pradesh Motor Vehicles (Taxation of Goods) Act, 1962 has comparable provisions in section 25 thereof by providing that no suit or other proceeding shall be instituted against the State and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within one year from the date of the act complained of.

E These different statutes have been mentioned only to indicate that where the legislature intends to restrict the limitation of suits, proceedings or prosecutions against the Government servants only the legislature has chosen proper words of limitation to ensure the restricted operation of the provisions of the statute.

F The provisions contained in section 40 of the Act in the present case show that the first sub-section speaks of bar of suits against the Central Government or any officer of the Government in respect of orders passed in good faith or act in good faith done or ordered to be done. The second sub-section of section 40

provides bar of limitation of time in respect of suits, prosecutions or other legal proceedings without any qualifying words as to person against whom suit, proceeding and prosecution shall be instituted. The contention of the appellant that sub-section (2) is confined only against the Government officers is not warranted by the words of the statute and is repelled by reference to other comparable statutes which have indicated in clear words when the statute contemplates bar of suits, proceedings or prosecution against Government servant only. The words in section 40(2) of the Act in the present case are of wide amplitude to apply to the prosecution which was commenced against the respondents in the present appeals.

Section 40(2) of the Act cannot be said to be confined in its operation only to Government servants. The sub-section is applicable to any person against whom suits or proceedings or prosecution shall lie for anything done or ordered to be done under the Act.

The other contention on behalf of the appellant was that the words "anything done or ordered to be done" in the section would not mean anything done in violation of the provisions of the Act. It was also said that "anything done" would not include a malicious act or an act done in bad faith. Sub-section (2) of section 40 does not introduce the test of good faith in relation to act done. Good faith is one of the aspects in section 40(1). The present appeals do not turn on sub-section (1) of section 40.

Section 9 of the Act deals with offences and penalties. The offences mentioned in section 9 are mainly these. Evasion of payment of duty under the Act is an offence. Failure to supply any information required by Rules under the Act or supply of false information is also an offence. Contravention of provisions and of Rules under the Act is also an offence. Rules are made under section 37 of the Act. In the present case, the complaint was that Rules 9, 53, 64, 67, 68, 70, 71, 66 and 226 were violated. Rule 9 speaks of time and manner of payment of duty. No excisable goods shall be removed from any place where they are produced, unless the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules. If excisable goods are in contravention of sub-rule (1) of Rule 9 removed from any place the manufacturer shall pay duty leviable on such goods and shall also be liable to a penalty. Rule 53 deals with daily stock account. Every manufacturer shall maintain a stock account in the proper form and is required to enter in such account daily the weights, descriptions and ratings of all excisable goods. Matches are dealt with in Rules 58 to 82. Rule 64 requires that each box or booklet of matches shall bear

- A** banderol. Duty on matches is paid by affixing to each box or booklet a Government banderol of a value appropriate to the rate of duty. Rule 65 states that all banderols shall be procured from a Government Treasury. Rule 66 provides that banderols are to be kept in a secured place and are to be periodically inspected. Rule 67 requires the manufacturer to maintain account of banderols purchased and used. Rule 68 deals with the manner of affixing banderols. Every banderol shall be so affixed that the words and figures on the banderol specifying the maximum number of matches covered by the banderol are legible. The box or booklet cannot be opened without tearing the banderol, and where it is affixed to a box, the ends of the banderol are covered by the factory's label. Rule 70 states that as soon as possible after matches are finished they shall be banderolled and enclosed in packets and presented to the officers of the factory for assessment. Rule 71 deals with the method of packing. Rule 226 sets out that the entry books, stock account and warehouse register should be maintained. Reference to these rules is necessary to understand the requirements of the Act and the violations committed by the respondents. The complaint in the present appeals against the respondents was that the stock and accounts were examined and the banderols affixed to the unit box were also examined. The examination revealed that cut banderols have been affixed and full length torn banderols were affixed with a view to evade excise duty. Unbanderolled matches were also found in excess stock over and above the book value. The register was not correctly maintained. The complaint was that the respondents violated the provisions of the Rules. The respondents did not comply with the Rules.

The word 'act' is defined in the General Clauses Act, 1897. The definition is as follows :

- F** "act" used with reference to an offence or a civil wrong, shall include a series of acts and words which refer to acts done extend also to illegal omissions".

- G** The words "anything done or ordered to be done" under the Act in section 40(2) of the Act were therefore contended by counsel for the respondents to extent to illegal omissions and infraction of the requirements of the statute.

- H** *In Pritam Singh v. State of Haryana*⁽¹⁾ a Police Officer was Prosecuted for offences under section 29 of the Police Act. Section 42 of the Police Act enacted that "prosecution against any person which may be lawfully brought for anything done or intended to be done under the provisions of the Act shall be commenced within three months after the act complained

(1) [1971] 1, S.C.C. 653.

of shall have been committed and not otherwise." The appellant in that case was found absent from duty from the Police Line at the time of roll-call. Prosecution of the appellant in *Pritam Singh's* case (supra) was initiated for non-compliance with the requirements to be on duty as required under the Police Act. This was held to be prosecution for something done under the provisions of the Act.

This Court in *Maulud Ahmad v. State of Uttar Pradesh*⁽¹⁾ considered the case of prosecution of a head Constable. Section 42 of the Police Act was invoked as a bar to the prosecution in *Maulud Ahmad's*⁽¹⁾ case (supra) the question was whether Chauhan abetted Maulud Ahmad in making false entries in the General Diary of Police Station Mailani and whether Maulud Ahmad made false entries in the General Diary of Police Station Mailani with the intention to save or knowing it likely that he would thereby save the offenders from legal punishment. The Court in *Maulud Ahmad's*⁽¹⁾ case (supra) said that if the appellant did not discharge his duty in keeping a regular diary he has committed an offence under section 29 of the Act.

Sitaram v. State of Madhya Pradesh⁽²⁾ this Court examined a criminal trial in respect of the offence of filing false returns of sales tax. Section 26 of the C.P. and Berar Sales Tax Act, 1947 provided *inter alia*, that no prosecution shall be instituted against any person in respect of anything done or intended to be done under the Act unless the prosecution has been instituted within three months of the date of the act complained of. It was contended that the words "any person" showed the intention of the legislature to give protection to Government servants in regard to prosecution and not to persons other than Government servants. This Court did not accept that contention, because there were no words to restrict the meaning of the words "any person": Furthermore this Court held that when the appellant in that case submitted returns he did so under the provisions of the Act. When he produced the accounts he did so under the provisions of the Act. The filing of the returns and the production of accounts could not be said to be outside the provisions of the Act.

These decisions in the light of the definition of the words 'act' in the General Clauses Act establish that non-compliance with the provisions of the statute by omitting to do what the act enjoins will be anything done or ordered to be done under the Act. The complaint against the respondents was that they wanted to evade payment of duty. Evasion was by using and affixing cut and torn banderols. Books of account were not correctly maintained. There was shortage of banderol in stock. Unbanderolled

(1) [1963] Supp. 2 S.C.R. 38.

(2) [1962] Supp. 3 S.C.R. 21.

A matches were found. These are all infraction of the provisions in respect of things done or ordered to be done under the Act.

In *Amalgamated Electricity Co. v. Municipal Committee, Ajmer*⁽¹⁾ the meaning of 'omission' of a statutory duty was explained by this Court. Hegde, J. speaking for the Court said

B "The omission in question must have a positive content in it. In other words, the non-discharge of that duty must amount to an illegality". The positive aspect of omission in the present case is evasion of payment of duty. The provisions of the Act require proper affixing of banderols. Cut or torn banderols were used. Unbanderolled match boxes were found. These provisions about use of banderols are for collection and payment of excise duty. The respondents did not pay the lawful dues which are acts to be done or ordered to be done under the Act.

C The High Court was right in its conclusion that the prosecution was barred by the provisions of section 40 of the Act. The appeals therefore fail and are dismissed.

D G.C.

Appeals dismissed.