

(1978) 08 BOM CK 0043

Bombay High Court**Case No:** Criminal Revision Application No. 40 of 1978

State of Maharashtra

APPELLANT

Vs

Ajit Maneklal Choksey

RESPONDENT

Date of Decision: Aug. 7, 1978**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 468(1), 468(2), 469
- Industrial Disputes Act, 1947 - Section 17, 17(2), 17A, 29, 33C

Citation: (1979) 39 FLR 4 : (1979) 1 LLJ 423**Hon'ble Judges:** R.A. Jahagirdar, J**Bench:** Single Bench

Judgement

1. The State seeks to challenge the order passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Bombay, on 16th July, 1977 dismissing the complaint preferred by the Assistant Commissioner of Labour, Bombay, under S. 29 of the Industrial Disputes Act, 1947. This is a prosecution of a type which is not usually found. The learned Magistrate, however, is seen to be fully acquainted with the provisions of law and has passed an order dismissing the complaint as barred by limitation. Naturally the dates involved must now be narrated.

2. One Mansukhlal was working with the respondent (hereinafter referred to as "the accused") and his services were terminated some time prior to 1973. An industrial dispute involving his dismissal and demanding is reinstatement was referred at the instance of the Deputy Commissioner of Labour to the Labour Court. That reference was heard as (IDA) No. 69D of 1973 and by an award dated 26th November, 1974, the Labour Court at Bombay directed the accused to reinstate the workmen with continuity of service and to pay back wages at the rate of Rs. 100 per month for the period from 5th April, 1973 till the end of November, 1974. This award was published on or about 17th December, 1974. Somewhere it is also mentioned that it was published on 2nd January, 1975. Since the question of limitation is involved, I

would give benefit to the prosecution and hold that the award was published on 2nd January, 1975. Thereafter some correspondence is said to have taken place between the Deputy Commissioner of Labour and the accused on the question of reinstatement of Mansukhlal. Subsequently on 26th June, 1976 a complaint was filed by the Assistant Commissioner of Labour, Bombay, charging the accused with an offence punishable under S. 29 of the Industrial Disputes Act. This complaint was heard as Court Case No. 106/S of 1976 by the learned Magistrate of the 19th Court, Bombay. As already mentioned above, considering the provisions both under the Industrial Disputes Act and under the Criminal Procedure Code, 1973, the learned trial Magistrate came to the conclusion that the complaint was barred by limitation and, therefore, he dismissed the same.

3. It is this order that is challenged by the State in the present petition which has been supported before me by the learned Public Prosecutor Mr. Solkar and before I proceed to examine the contentions raised on behalf of the State, it would be appropriate to refer to the relevant provisions of law. Whenever an adjudication authority under the Industrial Disputes Act decides in industrial dispute, it makes an award which is required to be in writing and is required to be signed by the Presiding Officer of the Labour Court or the Tribunal, as the case may be. An award thus made is required to be published, under S. 17 of the Industrial Disputes Act, within period of 30 days from the date of its receipt by the appropriate Government. Sub-section (2) of S. 17 lays down that subject to the provisions of S. 17A, the award published shall be final and shall not be called in question by any Court in any manner whatsoever. The provisions of S. 17A mention that the award shall become enforceable on the expiry of 30 days from the date of its publication under S. 17 subject to certain provisos in that section with which we are not immediately concerned. In the instant case, therefore, if the award is held to have been published on 2nd January, 1975, it became enforceable on 1st February, 1975.

4. It is well-known that any monetary benefits arising out of any award or settlement under the Industrial Disputes Act can be obtained under the provisions of S. 33C of the Act. But there is another provision, namely, S. 29, which lays down that any person who commits a breach of any term of an award which is binding upon him under the Act shall be punishable with imprisonment for a term which may extend to six months or with fine or both. The prosecution of a party alleged to be guilty under S. 29 of the Act, however, can be lodged only on a complaint made by or under the authority of the appropriate Government. It is so provided under S. 34 of the Act. That explains why the Assistant Commissioner preferred the complaint in the instant case. Prior to the enactment of the Criminal Procedure Code, 1973, there was no period of limitation for prosecutions excepting in the case of prosecutions under some statutes. With the coming into force of the Code of Criminal Procedure, 1973, with effect from 1st April, 1974, Chapter XXXVI of the Code has got to be considered in every case of criminal prosecution. That Chapter provides for limitation for taking cognisance of certain offences. Section 468(1) lays down that no

Court shall take cognisance of an offence of the category specified in sub-s. (2) after the expiry of the period of limitation. The period of limitation itself has been provided in sub-s (2). In the case of offences punishable with fine only, the period of limitation is six months; in the case of offences punishable with imprisonment for a term not exceeding one year, the period of limitation is one year; and in the case of offences punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation prescribed is three years. In the case before me since under the provisions of S. 29 of the Industrial Disputes Act the offence is punishable with imprisonment for six months, the period of limitation will be obviously one year as provided in S. 468(2)(b) of the Code. The starting point of the period of limitation, however, is to be considered in the light of the provisions contained in S. 469 of the Code. The period of limitation in relation to an offender shall commence, says the said section, on the date of the offence. Provisions have also been made for reckoning the day on which the period of limitation shall be deemed to commence in those cases where the commission of the offence is not known or the name of the offender is not known. Here, however, we are not concerned with those cases and must proceed on the basis that the period of limitation shall commence on the date of the offence and that it is one year from that date.

5. An award directing the employer to reinstate a workman who had been earlier dismissed, as any other award, becomes enforceable under the provisions of S. 17A on the expiry of 30 days from the date of its publication under S. 17. The act of reinstatement is to be made at one time and it is not a liability imposed upon the employer which is to be carried on his shoulder from day-to-day. If, for example, a workman who is directed to be reinstated on a particular day and is reinstated on that day and thereafter the workman is again discharged or dismissed, there is no breach of the direction of the reinstatement, because that direction has been complied with. The subsequent discharge or dismissal may give rise to a fresh industrial dispute. In other words, the act of reinstatement has to be performed only once and not to be repeated from day-to-day. The question now is when this act of reinstatement is to be performed by the employer.

6. I have already mentioned above that an award becomes enforceable on the expiry of 30 days from the date of its publication under S. 17. In other words, on the 31st day after the publication of the award, the award becomes enforceable. That is the day on which the duty imposed upon the employer has to be performed. In the case of an award directing a reinstatement of a workman the act of reinstatement has to be performed on the 31st day after the publication of the award under S. 17. In the instant case the award was published on 2nd of January, 1975 and it became enforceable on the 1st February, 1975 and, therefore, the reinstatement ought to have been made by the employer on that particular day. If in the instant case, such reinstatement was not made by the employer, then the offence must be deemed to have been committed on that particular day. The period of limitation of one year

must start running from the 1st of February, 1975 and that one year of the period of limitation expires on 1st of November, 1976. The complaint filed here on 26th June, 1976 was, therefore, undoubtedly barred by time and, therefore, was rightly dismissed by the learned trial Magistrate.

7. A view somewhat different from the one I have taken is to be found in the judgment of the Madras High Court in [Public Prosecutor Vs. Mettur Industrials Ltd. and Others](#). A single Judge of the Madras High Court has taken the view that the expression "the award becomes enforceable on the expiry of 30 days" in S. 17A read with S. 29 means that the reinstatement, on the dismissal being found to be wrongful, must be given effect to by the time the award becomes enforceable, i.e. within 30 days of the publication of the award. I have read the judgment with all the care possible, but find myself unable to agree with the view taken by the learned, single Judge of the Madras High Court. That judgment has overlooked the provisos contained in S. 17A of the Industrial Disputes Act. Before the expiry of the 30 days, the appropriate Government has been given the power to declare in certain cases that the award shall not become enforceable on the expiry of the said period of 30 days. This declaration of course has to be made before the expiry of 30 days. In other words, the enforceability of the award may be postponed beyond thirty days under certain circumstances by the appropriate Government - No award, therefore, is enforceable before the expiry of 30 days and, therefore, no obligation is to be discharged before the expiry of the said period. There is no obligation at all on the employer to implement the award before the expiry of the 30 days from its publication and if he does not implement the award, it cannot be said that he has committed an offence under S. 29 of the Industrial Disputes Act. In my opinion, therefore, no offence could be committed by an employer within 30 days after the publication of the award if he does not implement within that time.