PETITIONER:
P. D. JAMBEKAR

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT25/10/1972

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
KHANNA, HANS RAJ

CITATION:
1973 AIR 309 1973 SCR (2) 714
1973 SCC (3) 524

ACT:
Factories Act, 1948, s. 106--Knowledge of accident without ingredients of offence--If 'Knowledge of commission of offence'.

HEADNOTE:
On February 27, 1968, a worker in the appellant's factory sustained an injury and a report of the accident was sent to the Inspector of Factories on February 28. The report indicated that the accident took place when the worker was cleaning a dangerous part of machinery and that, that part of the machinery was moved by mechanical power. But the report did not state that the dangerous parts of the machinery were not in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, nor was it stated that dangerous parts of the machinery were not securely fenced by safeguards of substantial construction or that they were not kept in position while the parts of the machinery they were fencing, were in motion or in use. The Inspector inquired into the accident on July 30, 1968 and filed a complaint for an offence under s. 21 (iv) (c) of the Factories Act, 1948. The appellant contended that the prosecution was barred by time under s. 106 of the Act, which provides that no Court shall take cognizance of any offence punishable under the Act unless the complaint thereof is made within 3 months of the date on which the alleged commission of the offence came to the knowledge of the Inspector. The Magistrate dismissed the complaint, but the High Court set aside the order, on the ground that the Inspector got knowledge of the commission of Pin offence only on the date of the enquiry and not from the report.
Dismissing the appeal to this Court,
HELD : (1) It would be difficult for any. one reading the report of the accident to come to the conclusion that an offence under s. 21 (i) (iv) (c) had been committed, as it did not reveal the necessary elements that constitute the offence. Knowledge of the accident is not knowledge of an offence, and the Inspector gained knowledge of the commission of the offence only on July 30, 1968 when he made the enquiry. [717C-E]
(2)In interpreting a provision in a statute prescribing a

period of limitation for instituting a proceeding, questions of equity and hardship are out of place. As s. 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, it is difficult to read the section so as to make the date on which the Inspector would or ought to have acquired knowledge of the commission of the offence, bad he been diligent, the starting point of limitation especially when the statute does not provide for an inquiry into the accident or the period within which the inquiry has to be made. [718A-B; 719-D-E]

Nagendra Nath v. Suresh Chandra, (1932) 60 Cal. 1, 6 (PC), Magbul Ahmed v. Pratap Narain (1935) 57 All. 242 (PC) and State v. Keshavlal. A.I.R. 1958 Bombay 243 referred to.

JUDGMENT:

CRIMINAI, APPELLATE JURISDICTION : Cr. A. No. 91 of 1970.

715

Appeal by special leave from the judgment and order dated August 25, 1969 of the Gujarat High Court at Ahmedabad in Cr. R. A. No. 244 of 1969.

S.T. Desai and N. N. Keswani, for the appellant.

S. K. Dholakia and B. D. Sharma, for the respondent.

The Judgment of the Court was delivered

MATHEW, J.-This is an appeal by Special Leave from the judgment of the High Court of Gujarat at Ahmedabad in Criminal Revision Application No. 244 of 1969. By the judgment the High Court set aside the order of the Chief City Magistrate,, Ahmedabad, dismissing the complaint filed by the Inspector of Factories against the Manager of Arun Mills Ltd., the appellant here, on the ground that the prosecution was barred by time.

The facts of the case lie in a narrow compass. One Chandra-kant Jethalal was a worker in the factory in question of which the appellant was the Manager. On February 27, 1968, the worker while cleaning the clip stentering machine with a rag near the delivery-side slipped when the machine was in motion, and while trying to save himself, his right hand was trapped into the bevel gears of the stentering machine. The bevel gears were at a height of three feet from the ground floor and are dangerous parts of the stentering machine and were not safe by position and construction. As a result of the injury his fingers had to be amputated. In respect of this accident, the Inspector of factories received a report from the concerned authority on February 28, 1968. The Inspector visited the factory on 30-7-68 and made an enquiry into the accident. Thereafter he filed the complaint on 20-9-68 for an offence punishable under s. 92 of the Factories Act. 1948 (hereinafter called the Act). On behalf of the accused a preliminary objection was taken that the prosecution was barred by time in view of- the provisions of s.106 of the Act which provides that no Court shall take cognizance of any offence punishable under the Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector. The Magistrate found that the report conveyed knowledge of the commission of an offence and that the Inspector came to know about the commission of the offence on the date the report was received by him and therefore the complaint was barred by time. It was against this order that the revision application was filed before the High Court. The High Court came to the conclusion that the Inspector did not get any knowledge of the commission of

an offence under the Act from the report, and as he got the knowledge of the commission of the offence only on the date of the enquiry, the complaint was filed within time.

716

So, the main question in this case is whether the facts mentioned in the report were sufficient to convey the knowledge of the commission of an offence under the Act. There is no controversy here that the offence committed if any, is one under clause (iv)(c) of sub-section (1) of Section 21 of the Act. Section 21(1)(iv)(c) reads as follows:--

> "Unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,--
> (a) every part of an electric generator, a motor or rotary convertor;
> (b) every part of transmission machinery; and
> (c) every dangerous part of any other machinery,
>
> shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use:"

A plain reading of section 21 (1) (iv) (c) would indicate that every dangerous part of any other machinery shall be securely fenced by safeguard of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use and that is to be done unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced. In other words, if those dangerous parts are in such position or are of such construction as to be safe to every person employed, the question of securely fencing by safeguard of substantial construction and of keeping them in position while the parts of machinery they are fencing are in motion or in use will not arise. The question is whether the report revealed all the necessary elements that go to constitute the offence.

The report was in Form No. 21, as prescribed under Rule 103 of the Act. In column 9(a) of the report which is the column regarding "cause or nature of accident of dangerous occurrence", the facts stated in answer are, "While cleaning the clip stenter machine with a rag in his right hand near the bevel gears the rag and the right palm slipped inside the gear and crushed the whole palm with five fingers." In column 9(b)(i) which is the column headed "If caused by machinery, give name of machine and part causing the accident", the facts stated are, "bevel gear of clip stenter driving the chain." In column 9(b)(ii) which is the column "State whet-her it was moved by mechanical power at the time" the fact stated was, 'mechanical" and in column 9(c) which states "state exactly what injured person was doing at the time." the answer given was, "cleaning the clip stenter machine".

717

The statements in the report only indicated that an accident has taken place to the Worker who was cleaning the clip stenter machine with a rag in his right hand near the level gear, which is a dangerous part of machinery and the rag and the right palm slipped inside the gear and whole palm with five fingers was crushed. It also indicated that the part of the machinery was moved by mechanical power and the

accident took place when the worker was cleaning the clip stentering machine. The report did not state that the dangerous parts of the machinery were not in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced. Nor was it stated that dangerous parts of this machinery were not securely fenced by safeguards of substantial construction or that they were not kept in position while the parts of the machinery they were fencing, were in motion or in use. It would be difficult for any one reading the report to come to the conclusion that an offence under s. 21 (1) (iv) (c) has been committed. When the Inspector was examined in the case, he categorically stated that the report did not convey to him any knowledge as regards the commission of the offence. We do not, say that the statement of the Inspector in his evidence that he did not acquire knowledge of the commission of the offence till he made the inquiry is conclusive. But we think that his evidence read in the light of the report can only lead to the conclusion that the Inspector did not acquire the knowledge of the commission of the offence when the received the report. We, therefore, accept the finding of the High Court that the Inspector did not acquire knowledge of the commission of the offence from the report and that he gained the knowledge of the commission of the offence only on 30th July 1968.

It was argued on behalf of the appellant that when the report conveyed the information about the accident, the Inspector should have enquired into it with reasonable promptness and as s. 106 prescribes a period of only three months, from the date of the knowledge of the commission of the offence, for filing a complaint, the Inspector ought not have waited for a period of 6 months for making the inquiry. It was argued that if an Inspector were to come to know of an accident, he cannot wait till such time as he choose to make the inquiry and then say that he came to know of the commission of an offence under the Act as a result of the inquiry and thus postpone at his whim the starting point of limitation. There can be no doubt that it the Inspector had conducted the inquiry earlier, he would have come to know of the commission of the offence earlier. But our attention was not drawn to any provision in the Act or the rules framed under the Act which obliged the Inspector to conduct an inquiry within any specified

718

period after the receipt of the report into the cause 'of accident. And in interpreting a provision in a statute prescribing a period of limitation for institution of a proceeding, questions of equity and hardship are out of place. See the decisions of the Privy Council in Nagendra Nath v. Suresh Chandra(1) and Magbul Ahmed v. Pratap Narain (2) We have to go by the clear wording of the section, and the date of knowledge of the commission of the alleged offence alone is made the starting point of limitation.

In State v. Keshavlal,(3) Mudholkar, J. had to deal with a similar question. No doubt, he was concerned with the interpretation of section 23(2) and section 79 of the Mining Act, 1952. Section 79 of the Mining Act provides:-

> "No court shall take cognizance of any offence under this Act, unless complaint thereof has been made.
> (i).....
> (ii) within six months of the date on which alleged commission of the offence came to the knowledge of the Inspector."

Section 23(2) states that when a notice given under sub-section (1) relates to an accident causing loss of life, the authority shall make an inquiry into the occurrence within two months of the receipt of the notice. It was contended on behalf of the State in that case that the commission of the offence came to the knowledge of the Inspector only after the completion of the inquiry and that the complaint having been made within, six months of the completion of the inquiry, was within time. On the other hand, it was contended for the accused that where the knowledge of the commission of an offence was dependent upon the result of an inquiry, such inquiry must necessarily be commenced within two months of the date of intimation of the accident and that the period of two months cannot be extended by delaying the inquiry. 'Dealing with the question, the learned Judge. said :-

> "It was then said that had an inquiry be instituted earlier, the Inspector would have come to know of the breach in question earlier and so limitation must be deemed to have started running from the date of the notice of the accident or at most from the expiry of two months of the giving of the notice. It is common ground that the knowledge of an accident is not the same thing as the knowledge of an "offence", that is of a breach which is made penal. Therefore, the date of notice of the accident can in no circumstance be regarded as a starting
> (1) 1932, 60 Cal. 1 (6 PC) (2) 1935, 57 All. 242 (PC).
> (3) A.I.R. 1958 Bombay 243.,
> 719
> point for the commencement of limitation. The expiry of two months from the date of notice cannot, for the same reason be regarded as a starting point of limitation."
> "No doubt, had the inquiry been made earlier the fact of the commission of the breach or offence would have come to the knowledge of the Inspector earlier. But section 79 (ii) does not say that the date on which an Inspector would or ought to have acquired knowledge of the commission of an offence had he been diligent or had he complied faithfully with the provisions of the Act, would also be a starting point of limitation. In the circumstances, therefore, the delay in making the inquiry however irregular or deplorable cannot affect the question of limitation."

As Section 106 makes the date of knowledge of the commission of the offence the starting point of the period of limitation, we find it difficult to read the section so as to make the date on which the Inspector would or ought to have acquired knowledge of the commission of the offence had he been diligent, the starting point of limitation especially where, as here, the statute does not provide for an inquiry into the accident, much less the period within which the inquiry has to be made. It is only in the jurisprudence of Humpty Dumpty that we can equate the "date on which the alleged offence came to the knowledge of an Inspector" with the date on which the alleged offence ought to have come to his knowledge. We think that the High Court was right in its conclusion.

We therefore, dismiss the appeal.

V.P.S. Appeal dismissed.
11-L499Sup.C.I./73
720