

1951
 CHIEF
 CONTROLL-
 ING
 REVENUE
 AUTHORITY
 v.
 TRUSTEES
 OF THE PORT
 OF BOMBAY

Chagla
 C. J.

Turning to the questions, on the first question there is no dispute between Mr. Palkhiwalla and Mr. Joshi that the document of August 24, 1948, falls under art. 5 (c), being an agreement for lease not effecting a present demise, and that it also falls under art. 40 (a) because it is a mortgage within the meaning of that expression as used in the Stamp Act. Therefore, we answer the first question in the affirmative.

Question (2) does not arise.

Question (3) does not arise, because there is no application for refund by the parties to the lease.

Question (4):—The answer is in the negative by reason of the proviso to art. 35.

Question (5):—The answer is, Annas 12.

Question (6):—The answer is, Annas 12.

Question (7) does not arise.

We might point out that this reference has been argued and our answers to the questions have been given on the basis, which has not been seriously controverted by the Stamp Authorities, that full *ad valorem* duty was paid on the first document as required by art. 35. As a matter of fact, the Stamp Authorities held that the first document had been over-stamped.

No order as to costs.

Order set aside.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

THE STATE OF BOMBAY *v.* MESSRS. DEVRAJ TULSI (ORIGINAL ACCUSED).*

Bombay Municipal Corporation Act (III of 1888), ss. 354, 507 (3), 514 (c) and 417—Non-compliance with the requirements of s. 507 (3), whether a continuing offence—Period for filing complaint prescribed by s. 514 (c)—Whether time begins to run from the first commission of the offence.

1951
 Sept. 17

* Criminal Appeal No. 498 of 1951 with Criminal Appeals Nos. 499, 500, 501, 503, 504, 505 and 506 of 1951.

Section 507 of the Bombay Municipal Corporation Act, 1888, contemplates a continuous refusal by the occupier to afford all reasonable facilities to the owner and in the nature of it the offence (if any) committed by the occupier would be a continuing offence.

In respect of a continuing offence a complaint filed within three months of a day on which the offence continued to be committed is not barred under s. 514 (c) of the Bombay Municipal Corporation Act, 1888, though it may be more than three months after the first commission of the offence.

State v. Babu Gulam Mohamed,⁽¹⁾ relied upon.

Emperor v. Becharadas Narotamdas Munshi,⁽²⁾ dissented from.

Emperor v. Karsandas Govindji,⁽³⁾ referred to.

Appeals against the orders of acquittal passed by B. D. Belvi, Presidency Magistrate, 8th Court, Bombay.

The accused in the several Appeals were tenants in the premises situated at Shaikh Memon Street, Bombay. The Bombay Municipality had issued a requisition to the landlord under s. 354 of the Bombay Municipal Corporation Act, 1888, to remove the structures which were in ruins and likely to fall. The landlord, being unable to comply with the requisition of the Municipality on account of the tenants not vacating the premises, approached the Chief Judge of the Court of Small Causes, Bombay, for the requisite order under s. 507 of the Bombay Municipal Corporation Act, 1888. The Chief Judge made an order on March 16, 1950, directing the tenants to hand over vacant possession to the landlord on or before April 16, 1950. The tenants failed to comply with this order. On September 19, 1950, the Municipality filed a complaint against each of the accused under s. 471 of the Act charging each of them with having on July 3, 1950 failed to afford to the owner of the premises facilities as ordered by the Chief Judge of Small Causes Court for enabling him to comply with Municipal requisition under s. 354 of the Act and thereby having contravened s. 507 (3) of the said Act.

The Presidency Magistrate, 8th Court, Girgaon, Bombay acquitted the accused on the ground that the prosecution was barred under s. 514 (c) of the Bombay Municipal Corporation Act, 1888.

⁽¹⁾ (1951) Criminal Revision Application No. 114 of 1951, decided by Rajadhyaksha and Dixit JJ. on April 4, 1951 (Unrep.).

⁽²⁾ (1930) 32 Bom. L. R. 768.

⁽³⁾ (1942) 44 Bom. L. R. 756.

1951

STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI

1951

STATE OF
BOMBAY
v.MESSRS.
DEVRAJ
TULSI

Bhagwati J.

The State filed appeals against the orders of acquittal.

B. G. Thakor, Additional Assistant Government Pleader, for the State.

K. J. Khandalawalla with *Messrs. Haridas and Co.*, for the accused.

BHAGWATI J. These are eight criminal appeals against the orders passed by the learned Presidency Magistrate, 8th Court, Girgaum, Bombay, acquitting the accused in each case. The eight accused were charged with having committed offences punishable under s. 471 of the City of Bombay Municipal Act, III of 1888, in so far as they failed to afford to the owner of the premises facilities as ordered by the Chief Judge of the Court of Small Causes for enabling the landlord to comply with municipal requisitions under s. 354 of the Act and thereby contravened s. 507 (3) of the Act. The eight accused were the tenants of the owner of the building and the Municipality had issued to the landlord a requisition under s. 354 of the Act to remove the structures etc. which were in ruins or likely to fall. The tenants apparently did not hand over possession of the premises to the landlord, with the result that the landlord was unable to comply with the requisition of the Municipality. He, therefore, approached the Chief Judge of the Court of Small Causes for the requisite order under s. 507 of the Act and the Chief Judge made an order on March 16, 1950, ordering each of the accused to hand over to the landlord vacant possession of the premises on or before April 16, 1950. This again the tenants would not do, with the result that the tenants were guilty of having contravened the orders under s. 507 (3) of the Act. This default on the part of the tenants was taken by the Municipality to be a continuing offence, and in so far as on July 3, 1950, and thereafter the default continued, the Municipality took July 3, 1950, as the date of the commission of the offence and filed the complaints against each of the accused under s. 471 of the Act in the terms noted above. The learned Presidency Magistrate before whom all these eight cases came for hearing was of the opinion that the prosecutions were barred under s. 514 (c) of the Act which lays down that:

“No person shall be liable to punishment for any offence made punishable by this Act, unless complaint of such offence is made before

a Presidency Magistrate within the time hereinafter prescribed in that behalf, namely:—

(c) if the offence be against any other provision of this Act, within ~~three~~ months next after the commission of such offence.”

He was of the opinion that the date given by the Chief Judge of the Court of Small Causes to vacate was April 16, 1950, and the prosecutions were barred, having been filed more than three months after the commission of the offence, the date of the commission, according to him, being April 16, 1950. He rejected the plea which was urged before him by the learned advocate for the Municipality that the offences committed by the accused were continuing offences, that therefore the period of limitation did not commence from April 16, 1950, and that the offence was just as well committed on July 3, 1950, as on any other date, and therefore the prosecutions which were launched on September 19, 1950, were well within time. Accepting the plea of the learned advocate for the defence, he, therefore, acquitted the accused in each case. These criminal appeals have been filed by the Government of Bombay against these orders of acquittal.

The point which arises before us is covered by the decision of Mr. Justice Rajadhyaksha and Mr. Justice Dixit in *State v. Babu Gulam Mohamed*.⁽¹⁾ The case there was, so far as the point of limitation was concerned, on all fours with the case before us. In that case a requisition had been made by the Municipality on the landlord and on an application made by the landlord to the Chief Judge of the Court of Small Causes an order had been made on August 14, 1950, directing the applicant and the other tenants to afford all reasonable facilities to the owner of the premises for complying with the requisition contained in the Municipal notice and August 21, 1950, was fixed as the date within which the tenants had to vacate in order to enable the landlord to carry out the requisition. The prosecution was, however, launched on November 23, 1950, and the question that arose for consideration of their Lordships was whether the prosecution was beyond time having regard to the provisions of s. 507 (3) of the Act. The learned Judges there came to the conclusion that if limitation commenced on August 22, 1950, the effect of s. 514 read with s. 523 of the Act was that the prosecution was obviously time-barred. They however proceeded to

⁽¹⁾ (1951) Crim. Rev. Appln. No. 114 of 1951, decided by Rajadhyaksha and Dixit JJ, on April 4, 1951 (unrep.).

1951

STATE OF
BOMBAY

v.

MESSRS.
DEVRAJ
TULSI

Bhagwati J.

consider an argument which was advanced before them that the offence was a continuing offence, that the offence consisted in the refusal of the tenant in complying with the order made by the learned Chief Judge and the order made by the learned Chief Judge was that the tenant, viz., the present applicant, should vacate the premises and that therefore there was after the period of eight days a refusal on the part of the applicant to vacate the premises and the refusal continued because the order was not complied with. The learned Judges, therefore, held that there was as much on August 22, 1950, a refusal on the part of the applicant to vacate the premises as it was on August 23, 1950, and on the following days and the prosecution was filed by the Municipality on November 23, 1950, and it was clear therefore that the prosecution was well within time. The learned Judges, therefore, held that the offence being a continuing offence, the period of three months within which the prosecution should have been launched was to be calculated with reference to the date or dates during which the offence was continuing.

This ratio without anything more would have been determinative of the appeals before us. The learned advocates, however, who appeared for the respondents in the appeals before us sought to distinguish this case and also attempted to argue that the ratio of the decision of Mr. Justice Rajadhyaksha and Mr. Justice Dixit was wrong, particularly, having regard to the two decisions of our appellate Court reported in *Emperor v. Bechardas*⁽¹⁾ and *Emperor v. Karsandas Govindji*⁽²⁾. We, therefore, listened to the arguments which were advanced before us, which, if accepted, would either make us differ from the ratio of the decision of Mr. Justice Rajadhyaksha and Mr. Justice Dixit or refer these criminal appeals to a full bench.

The relevant sections of the City of Bombay Municipal Act III of 1888 which fall to be considered by us are as under: Section 507 gives the remedy to the owner of building or land against the occupier who prevents his complying with any provisions of the Act, and it lays down that if the owner of any building or land is prevented by the occupier thereof from complying with any provision of the Act or of any regulation or by-law made thereunder, the owner may apply to the Chief Judge of the Small Cause

⁽¹⁾ (1930) 32 Bom. L. R. 768.⁽²⁾ (1942) 44 Bom. L. R. 756.

Court and the Chief Judge on receipt of any such application may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provision or requisition. It further provides that after eight days from the date of any such order it shall be incumbent on the said occupier to afford all such reasonable facilities to the owner for the purpose aforesaid as shall be prescribed in the said order, and in the event of his continued refusal so to do, the owner shall be discharged, during the continuance of such refusal, from any liability which he would otherwise incur by reason of his failure to comply with the said provision or requisition. It may be noted that the default of the occupier with which the Chief Judge of the Small Causes Court would be concerned in this section would be the default on his part to afford all reasonable facilities to the owner for complying with the provision or requisition of the Municipality. If within the time which is prescribed by the Chief Judge in this behalf the occupier affords such reasonable facilities, the terms of the order would be complied with and there would be no default on his part. If, however, he, the occupier, refuses so to do, and continues to do so, the owner is absolved from all liability by reason of the non-compliance by him of the provision or requisition made upon him by the Municipality. The section, therefore, in terms provides for the result of a continued refusal by the occupier to afford all reasonable facilities to the owner for the purpose therein mentioned and absolves the owner from any liability which he would otherwise incur during the continuance of such refusal. By the very terms of that section therefore a continuous refusal by the occupier to afford all reasonable facilities to the owner is contemplated and in the nature of it the offence, if any, which would be committed by the occupier would be a continuing offence. It would not be merely the non-compliance on the date or dates specified. It would be non-compliance which would, though it commenced on the date or dates specified, continue all throughout the period of such refusal by him, and it would certainly be a continuing offence committed by him.

That this non-compliance is an offence is provided by s. 471 of the Act which says that:

“Whoever.....

1951

STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI

Bhagwati J

1951

STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI

Bhagwati J

(b) fails to comply with any requisition lawfully made upon him under any of the said sections, sub-sections, or clauses, shall be punished, for each such offence, with fine which may extend to the amount mentioned in that behalf in the third column of the said table."

In the table we find the last offence provided, viz. the non-compliance of the terms of any order passed under s. 507 (3), the subject being defined as the "occupier of building or land to afford owner facilities for complying with provisions of this Act, etc., after eight days from issue of order by Chief Judge of Small Causes Court", the fine which may be imposed being prescribed as Rs. 200. This is the offence as laid down in s. 471 of the Act. In so far, however, as some of the offences which are laid down in this section may as well be continuing offences, a provision is further made in s. 472 providing for the punishment of such continuing offences and s. 472 lays down that:

"Whoever, after having been convicted of.....

(b) failing to comply with any requisition lawfully made upon him under any of the said sections, sub-sections or clauses, continues to contravene the said provision or to neglect to comply with the said requisition, or fails to remove or rectify any work or thing done in contravention of the said provision, as the case may be, shall be punished, for each day that he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the third column of the said table."

The table again has reference in the last item thereof to s. 507 (3), the subject being the same as mentioned above, the daily fine which may be imposed being Rs. 50. The last section which we need refer to in this connection is s. 514 which prescribes the period of limitation within which complaints of the offences punishable under the Act shall be entertained, and it lays down that:

"No person shall be liable to punishment for any offence made punishable by this Act, unless complaint of such offence is made before a Presidency Magistrate within the time hereinafter prescribed in that behalf, namely:—.....

(c) if the offence be against any other provision of this Act, within three months next after the commission of such offence."

The argument which has been advanced before us is that the period of three months which is prescribed in s. 514 of the Act should be calculated from the point of time next after the commission of the offence. It has been strenuously urged before us that the moment the order made by the

Chief Judge of the Small Causes Court is disobeyed the offence is complete. Once the offence is complete, it is committed. If the offence is committed, the period of three months next after the commission of the offence can only be calculated from the point of time when the offence is committed. The argument, therefore, which has been advanced before us is that on the expiration of the period of eight days from the order of the Chief Judge, Small Causes Court, or in any event after the expiration of eight days from April 16, 1950, i.e. from April 24, 1950, the period of limitation commenced to run against the Municipality and the prosecutions which were launched in the appeals before us on September 19, 1950, were certainly beyond time. Reliance was placed in support of this argument on a decision of our appellate Court reached by a division bench constituted by Mr. Justice Mirza and Mr. Justice Broomfield in *Emperor v. Bechardas*.⁽¹⁾ Two points were involved in the case before the learned Judges: (1) whether failure to remove a building in respect of which a person has been convicted under s. 123 (7) or 118 (4) of the Bombay City Municipalities Act is not a "continuing contravention" within the meaning of those sections and (2) whether limitation for a prosecution for a continuing offence runs from the time when the offence is first committed. The learned Judges held that failure to remove the building under those circumstances was not a continuing contravention. But in so far as the point of limitation was concerned, they were of the opinion that limitation for a prosecution for a continuing offence runs from the time when the offence is first committed. The grounds given by Mr. Justice Broomfield at page 781 are clear and categorical in this behalf, and he observes:

"In this connection I may refer again to s. 158 of the English Public Health Act of 1875, which was enacted in consequence of the decision in *Marshall v. Smith*.⁽²⁾ I have quoted the section already; it is given in *Welsh & Son v. West Ham Corporation*.⁽³⁾ It seems to me worth noting that, though this provision was expressly enacted in order to make the mere existence of a work or building a continuing offence, it was also enacted at the same time that a penalty should not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the by-law was broken. I do not think it can be doubted that those words mean that time runs from the first commission of the offence, and does not begin to run from day to day as long as the work or building is in existence."

⁽¹⁾ (1930) 32 Bom. L. R. 768.

⁽²⁾ (1873) L. R. 8 C. P. 416.

⁽³⁾ [1900] 1 Q. B. 324.

1951

STATE OF
BOMBAY

v.
MESSRS.
DEVRAJ
TULSI

Bhagwati J.

1951

STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI

Bhagwati J.

The effect of this decision is that for the purpose of considering the starting point of limitation you have to consider the point of time which is *co terminus* with the first commission of the offence. Whereas s. 514 (c) of the Act talks of the period of three months next after the commission of the offence, the learned Judges there were of the opinion that the words "next after the commission of the offence" should be read as meaning "next after the first commission of such offence." With the utmost respect to the learned Judges, there was no warrant for introducing the words "the first" before "commission of such offence" and reading the section which was in express terms "within three months next after the commission of offence" as meaning "within three months next after the first commission of such offence." The phrase "continuing offence" has been the source of a great confusion of thought. An offence is committed the moment certain ingredients or conditions are fulfilled. The terms of an order may not be complied with and the moment these terms are not complied with within the period prescribed in this behalf, there would certainly arise the commission of an offence by the offending party. He has failed to comply with the terms of the order and he has committed the offence. In those cases, however, where the offence is a continuing offence, the question that may arise for consideration of the Court would be whether it is the same offence which is being continued for all the time or whether at each period of time denoted by a second or an hour or a day or a week or a fortnight or a month or a year, fresh offences are committed one after the other. To my mind it is a misnomer to say that fresh offences are committed at each period of time when particularly the non-compliance of the order which constitutes the offence is the omission to do an act which has been ordered to be done. It may be that where a positive act is ordered to be done, a case or cases may arise where by reason of the breach of the terms of the order you may have commission of a series of offences from day to day, just as it happened in the case before Chief Justice Beaumont and Mr. Justice Wasoodew in *Emperor v. Karsandas Govindji*⁽¹⁾ where the offence which the accused was charged with having committed was working a factory contrary to the provisions of the order. For each day that the factory was working there was a breach of the terms of the order, and therefore

⁽¹⁾ (1942) 44 Bom. L. R. 756.

it could be said in such a case that for each day that the factory was working, a distinct offence was committed. No offence would be committed if the factory was not working on a particular day, but in so far as the factory was working on any particular day in contravention of the order, a fresh offence would be committed. The learned Chief Justice there pointed out commenting on the decision of our appellate Court in *Emperor v. Bechardas*⁽¹⁾ (p. 760):

1951

STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI

Bhagwati J

".....If the expression 'the offence is first committed' refers to the date when the act constituting the offence first took place, the statement is obviously wrong, because it would abolish altogether the distinction which has been recognised over and over again between an act which constitutes an offence once and for all, and an act which continues, and, therefore, constitutes a fresh offence on every day on which it continues. Under s. 390 the establishing of a factory without permission is an offence committed once and for all when the factory is established, but the working of a factory without permission is an offence which arises on every day on which the factory is so worked; and as the prosecution in this case is for working the factory two days before the date of the summons, it is plain that s. 514 is no bar to the prosecution."

The learned Chief Justice therefore gave vent to the expression of his opinion to the effect following (p. 759):

".....the expression (continuing offence) has a well recognised meaning. It means that if an act of the accused constitutes an offence, and if that act continues from day to day, then a fresh offence is committed on every day on which the act continues. If the act prohibited is that of working a factory an offence is committed on every day on which the factory is worked. It may not strictly be a continuing offence, because the owner of the factory may cease to work it for a longer or a shorter period and then reopen it; but on any day on which he is shown to have worked the factory without the requisite permission, he has committed an offence, and it is immaterial to consider whether he committed an offence by working the factory on some previous occasion."

These remarks appear to throw some doubt on the position enunciated above in regard to the nature of the continuing offence. It is not necessary to comment any further on these remarks except to observe that these remarks must be taken in the context in which they have been made and they do not necessarily militate against the conclusion which we have reached and the opinion which we have above expressed in regard to the connotation of the term "continuing offence".

These are the only two cases which it is necessary to refer to out of the various cases which were cited at the bar. On

⁽¹⁾ (1930) 32 Bom. L. R. 768.

1951
 STATE OF
 BOMBAY
 v.
 MESSRS.
 DEVRAJ
 TULSI
 Vyas J.

a consideration of the whole position, therefore, we have come to the conclusion that the decision which was reached by the learned Judges Mr. Justice Rajadhyaksha and Mr. Justice Dixit in *State v. Babu Gulam Mohamed*⁽¹⁾ was correct and there is no reason to differ from the same or to refer the same to a full bench as urged before us.

The result, therefore, is that even on July 3, 1950, which was the date mentioned as the date of the commission of the offences in the charges framed against the several accused, there was a continuing offence and the offence which had started on April 16, 1950, or in any event on April 24, 1950, was continuing and the charge as framed in respect of the offence which continued to be committed even on that date, July 3, 1950, was properly framed, that the prosecution which was launched in respect of the charge was well within time having regard to the provisions of s. 514 (c) of the Act as we have interpreted above, and that the learned Presidency Magistrate was wrong when he accepted the pleas put forward before him by the learned advocates for the accused and acquitted them.

The result, therefore, will be that the criminal appeals will be allowed and the cases will be remanded to the learned Presidency Magistrate for disposal according to law, having regard to the observations which we have made above.

VYAS J. There is no doubt that the offence in these cases under s. 471 (b) of the City of Bombay Municipal Act, 1888, was a continuing offence. The gravamen of it lay in failing to comply with the requisition of the Chief Judge, Small Causes Court which was made by the Chief Judge under s. 507 (2) of the City of Bombay Municipal Act, 1888, and therefore every day the respondents failed to comply with the requisition after April 16, 1950, which was the last date fixed by the Chief Judge for the vacating of the premises by the respondents, they committed a fresh offence under s. 471 (b) of the Act above mentioned. The offence was committed first on April 16, 1950, and thereafter every day a fresh offence was committed by the respondents who persisted in refusing to comply with the Chief Judge's requisition issued by him under s. 507 (2) of the Act. That

⁽¹⁾ (1957) Cri. Rev. Appn. No. 114 of 1951, decided by Rajadhyaksha and Dixit JJ., on April 4, 1951. (Unrep.).

being so a question at once arises as to what is the starting point of limitation for the purpose of s. 514 (c) of the Act. Section 514 (c) says:

"No person shall be liable to punishment for any offence made punishable by this Act, unless complaint of such offence is made before a Presidency Magistrate within the time hereinafter prescribed in that behalf, namely:—

"(c) if the offence be against any other provision of this Act, within three months next after the commission of such offence."

This raises a question as to the point of time from which the period of three months should be counted. The learned Magistrate took the view that the starting point of limitation would be April 16, 1950, the date on which the offence under s. 471 (b) of the City of Bombay Municipal Act, 1888, was committed, and held that the complaints which were filed on September 19, 1950, were time-barred. For the State of Bombay this finding is challenged.

Mr. Thakor appearing for the State of Bombay says that every day following April 16, 1950, would be a starting point for limitation, since the offence was first committed by the respondents on April 16, 1950, and thereafter a fresh offence was committed by them day after day. The learned advocates appearing for the respondents contend, on the other hand, that the starting point would be the date when the offence was first committed, viz., April 16, 1950, and accordingly the complaints which were filed more than three months after the above mentioned date would be time-barred.

Mr. Thakore relies on a decision of this Court in *State v. Babu Gulam Mohamed*⁽¹⁾ in which Mr. Justice Dixit delivering the judgment of the bench observed:

"The offence (which in that case also was an offence under s. 471 (b) of the City of Bombay Municipal Act, 1888) consists in the refusal of the tenant in complying with the order made by the learned Chief Judge and the order made by the learned Chief Judge was that the tenant, viz., the present applicant should vacate the premises. There was, therefore, after the period of eight days a refusal on the part of the applicant to vacate the premises and the refusal continued because the order was not complied with. It is clear, therefore, that there was as much on the August 22, 1950 a refusal on the part of the applicant to vacate the premises as it was on the August 23, 1950 and on the following days and the prosecution was filed by the Municipality on November 23, 1950. It is clear, therefore, that the prosecution is well within time."

⁽¹⁾ (1951) Crim. Rev. Appln. No. 114 of 1951, decided by Rajadhyaksha and Dixit JJ., on April 4, 1951 (Unrep.).

1951
STATE OF
BOMBAY
v.
MESSRS.
DEVRAJ
TULSI
Vyas J.

For the respondents it is contended that Mr. Justice Dixit's view is wrong and that we should refer the case to the full bench for clarification and decision.

On their (respondents') behalf our attention is invited to the case of *Emperor v. Bechardas*⁽¹⁾ in which a reference was made to *Narain Chandra Chatterjee v. Corporation of Calcutta*⁽²⁾ and *Emperor v. Chhaganlal*.⁽³⁾ In *Narain Chandra Chatterjee v. Corporation of Calcutta* Jenkins C. J. observed (p. 548):

"Had the bye-law been correctly framed, it would have been a question whether limitation would not run from the time when the offence was first committed, for it is to be noticed that the words of the section are that the complaint must be made within three months next after the commission of such offence. There are authorities which bear on that point, but the question does not arise in the view I take of this case, and I, therefore, do no more now than guard myself against being taken to accede to the argument that has been addressed to us on that point."

In the course of his judgment in *Emperor v. Chhaganlal*.⁽³⁾ Mr. Justice Fawcett referred to the case of *Narain Chandra Chatterjee v. Corporation of Calcutta*⁽²⁾ and observed that Jenkins C. J. was inclined to take the view that the date for the starting point of limitation was the date when the offence was first committed. Mr. Justice Fawcett also was inclined to the same view. It is to be noted, however, that neither Jenkins C. J. nor Fawcett J. decided the point, and they disposed of the cases on other grounds.

But in *Emperor v. Bechardas*⁽¹⁾ Mirza and Broomfield JJ. expressed their views clearly. Mr. Justice Mirza observed (p. 773):—

"I would hold on this point that the period of six months within which a prosecution has to be brought under s. 200 of the Act is in the case of a continuing offence to be computed from the commencement of the offence when it came to the notice of the Municipality."

And Mr. Justice Broomfield in a concurring judgment said (p. 781):

".....But in the present case the point must be decided one way or the other, and in my opinion it should be decided in the sense that limitation for a prosecution for a continuing offence runs from the time when the offence was first committed, etc., etc."

The respondents rely on the above decision of Mirza and Broomfield JJ. and contend that limitation for a prosecution

⁽¹⁾ (1930) 32 Bom. L. R. 768.

⁽²⁾ (1909) 37 Cal. 545.

⁽³⁾ (1927) 29 Bom. L. R. 733.

even for a continuing offence must run from the time when the offence was first committed, and in that view we should hold that the complaints are time-barred.

There is a serious difficulty, however, in our accepting the view of Mr. Justice Mirza and Mr. Justice Broomfield in view of the decision of this Court in *Emperor v. Karsandas Govindji*⁽¹⁾ in which Beaumont C. J. said that the head-note in the case of *Emperor v. Bechardas* was a misleading one and observed:

“.....The head note in *Emperor v. Bechardas*⁽²⁾ (supra) says: ‘Limitation for a prosecution for a continuing offence runs from the time when the offence is first committed.’ If the expression ‘the offence is first committed’ refers to the date when the act constituting the offence first took place, the statement is obviously wrong, because it would abolish altogether the distinction which has been recognized over and over again between an act which constitutes an offence once and for all, and an act which continues, and, therefore, constitutes a fresh offence on every day on which it continues.”

Another distinction between *Emperor v. Bechardas*⁽²⁾ and our present case is that whereas in the former case the offence was not a continuing one, in the case before us it is a continuing offence. In other words, here there was an offence committed by the respondents every day after April 16, 1950. Therefore, in the light of the decision in *Emperor v. Karsandas Govindji*⁽¹⁾ it could be correctly said that on July 3, 1950, there was as much an offence under s. 471 (b) of the City of Bombay Municipal Act, 1888, committed as there was on April 16, 1950. In this view of the matter the judgment of Mr. Justice Rajadhyaksha and Mr. Justice Dixit in *State v. Babu Gulam Mohamed*⁽³⁾ is, with respect, correct, and there is no reason to refer the matter to the full bench. We must hold accordingly that the complaints against the various respondents were not time-barred.

The appeals are accordingly allowed, the Magistrate’s order in each case is set aside and the cases are remanded to the Magistrate for disposal according to law.

Appeals allowed: cases remanded.

K. B. S.

⁽¹⁾ (1942) 44 Bom. L. R. 756.

⁽²⁾ (1930) 32 Bom. L. R. 768.

⁽³⁾ (1951) Cri. Rev. Appln. No. 114 of 1951, decided by Rajadhyaksha and Dixit JJ., on April 4, 1951 (Unrep.).