

THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI

CRIMINAL REVISION CASE No.468 of 2020

ORDER:-

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') assailing the order dated 11.11.2020 passed in CrI.M.P.No.809 of 2020 in C.C.No.5275 of 2018 by I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District wherein the petition filed by the petitioner under Sections 258 and 468 Cr.P.C. seeking discharge was dismissed.

2. The facts of the case in brief are:

The petitioner/accused is a political leader of Congress party who contested from Vijayawada Parliament Constituency in the general elections held in 2014. On 29.04.2015 at about 5:00 P.M. while the Police were conducting patrolling from Ramvarappadu ring to Padavala Revu Junction, they noticed that the petitioner has organized a bike rally on the eve of greeting the National Youth Congress President and other senior congress leaders and when the rally reached Mary Matha Church on Eluru road, the petitioner herein along with other accused created traffic disturbance to the public by putting their bikes across the road and violated the conditions of the permission obtained for bike rally and also conducted the bike rally out of time which resulted in causing traffic problem to the public at large and also created heavy sound pollution. Basing on that crime No.265 of 2015 is registered for the offences punishable under Sections 341, 188 and 290 read with 149 of the Indian Penal Code, 1860.

3. The petitioner who is accused No.1 has filed an application under Sections 258 and 468 I.P.C. seeking his discharge from the above said offences alleging that the offence occurred on 29.04.2015 but the charge sheet was filed on 08.08.2018, cognizance was taken on 06.10.2018 and taking cognizance of the above offence after one year from the date of offence is not maintainable without there being a petition seeking condonation of delay. The Court below dismissed the said application observing that once the Court has taken cognizance of the offence, it has to be construed that the delay has been condoned and also observed that if the petitioner is aggrieved by the decision of taking cognizance the only forum available to him is the revisional Court and it cannot review its own order of taking cognizance of the offence and issuance of the process. Aggrieved by the same, the petitioner is before this Court by way of this revision.

4. Heard Sri Ch. Bhanu Prasad, learned counsel for the petitioner and learned Assistant Public Prosecutor, Sri K.Anand kumar for the respondents.

5. Learned counsel for the petitioner submits that without taking into consideration, the contention of the petitioner that without their being any petition to condone the delay in taking cognizance, cognizance has been taken and no opportunity was also given to the petitioner before taking cognizance which is mandatory and no special order was passed by the trial Court at the time of taking cognizance which is contrary to the settled law and the petitioner is entitled to be discharged under Section 258 Cr.P.C.

6. Learned counsel for the petitioner placed reliance on A.R. **Antulay v. Ramdas Srinivas Nayak**¹ and submits that interpreting a statutory provision, the court should read the Section as it is and cannot rewrite it to suit its convenience, nor does any canon of construction permit the Court to read the Section in such a manner as to render it to some extent otiose.

7. Learned counsel for the petitioner also submits that under Sections 251 and 258 Cr.P.C. the trial court has got the power to discharge the accused when there is no material or when there is abuse of process of law. He also placed reliance on **State of Punjab v. Sarvan Singh**² and submits that the prosecution of an accused beyond the prescribed period of limitation makes all the proceedings non-est and due to the negligence of the prosecution the victim cannot be made to suffer and the said decision is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India.

8. He submits that the present prosecution is hit by limitation under Section 468 Cr.P.C. as the Police failed to file charge sheet within one year from the date of the report and the charge sheet is filed after three years without there being any petition for condoning the delay specifying the reasons, cognizance was taken by the court below.

9. Learned Assistant Public Prosecutor, Sri K.Anand Kumar advanced arguments in support of the impugned order and submits that the Court below has rightly dismissed the petition.

¹ (1984) 2 SCC 500

² AIR 1981 SC 1054

10. Having heard the learned counsel on either side, before dealing with the respective contentions it is appropriate to have a look at Sections 468, 469 and 473 Cr.P.C. which read thus:

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing

provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

11. Section 468 Cr.P.C. envisages the bar for taking cognizance of the offence after the lapse of the period of limitation and specifies different periods for different offences/punishments, Section 469 Cr.P.C. deals with the commencement of the period of limitation and Section 473 Cr.P.C. gives power to the Court to take cognizance after expiry of the period of limitation if it is satisfied on the facts of the case.

12. Earlier the Limitation Act, 1963 had no application to the Criminal proceedings except for filing appeals or revision for which express provisions are made under Article 114, 115, 131 and 132. The Law Commission of India felt the necessity for providing provision of limitation for criminal prosecution. The Law Commission of India has recommended that the principle of limitation should be introduced for less serious offences under the Code and also suggested that for the present, offences punishable with fine only or with imprisonment up to 3 years should be made subject to the law of limitation. The question of extending the law to grave offence may be taken up later in the light of the experience actually gained. In the recommendation the Law Commission of India has also quoted the judgment of the Hon'ble Apex Court with reference to Section 15 of the Merchandise Marks Act, 1889 and stated that the period of limitation is intended to operate against the complainant and to ensure diligence on his part in prosecuting his right and not against the court.

13. The Joint Parliamentary Committee accepted the recommendation of the Law Commission of India and the provisions were incorporated. Looking at the report of the Joint Parliamentary Committee it is clear that the object of Chapter XXXVI is to ensure detection and punishment of the crime quickly.

14. The learned counsel for the petitioner relying on the decision reported in **State of Punjab v. Sarvan Singh** (referred supra) submits that the prosecution of an accused beyond the prescribed period of limitation makes all the proceedings non-est and due to the negligence of the prosecution the victim cannot be made to suffer and the said decision is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India.

15. According to the learned counsel for the petitioner the limitation of one year has to be computed from the date of complaint to the date of cognizance and as in this case, without there being a petition for condonation of delay beyond the period of limitation of one year, cognizance has been taken, as such the complaint is clearly barred by limitation.

16. On the aspect of limitation whether limitation starts from the date of cause of action till filing of the report or the limitation starts from the date of complaint till the date of taking cognizance, there are divergent opinions expressed by different Benches of the Hon'ble Apex Court.

17. In **Bharat Damodar Kale & Anr vs. State of A.P.**³ the Hon'ble Apex Court held that for the purpose of computing the period of limitation the relevant date is the date of filing the complaint and initiating proceedings and not the date of taking cognizance by the magistrate or issuance of process by the Court.

18. In **Japani Sahoo vs. Chandra Sekhar Mohanty**⁴ also the Hon'ble Supreme Court gave a similar finding while placing reliance on the Bharat Damodar Kale's case (referred supra).

19. In **Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar**⁵ the Hon'ble Apex Court held that speedy trial is a part of fundamental right guaranteed under Article 21 of the Constitution of India and the Courts have an obligation to protect the accused from vindictive and vexatious time-barred prosecution.

20. In **Krishna Pillai v. T.A. Rajendran and Another**⁶ while dealing with Section 9 of the Child Marriage Resistant Act, 1929 the Hon'ble Supreme Court had discussed as to whether for the purposes of computing the period of limitation under Section 468 Cr.P.C. the relevant date is filling of the complaint or the institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence.

21. In view of the same the matter was referred to the five Judge Bench in **Sarah Mathew and Ors. Vs. Institute of Cardio Vascular Diseases by its Director K.M. Cherian and Ors.**⁷ and

³ Appeal (Crl.) 1251 of 2003

⁴ Appeal (Crl.) 942 of 2007

⁵ 1979 AIR 1369

⁶ 1990 (Supp) SCC 121

⁷ Crl.A.No.829 of 2005

the following issues fell for consideration before the Hon'ble Apex Court:

A. Whether for the purposes of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

B. Which of the two cases i.e. Krishna Pillai or Bharat Kale (which is followed in Japani Sahoo) lays down the correct law.

...

40. Having considered the questions which arise in this reference in light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C., primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 of the Cr.P.C. in that judgment. It does not refer to Sections 4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. This Court has not adverted to diverse aspects including the aspect that inaction

on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' Case, in our opinion, was not apt. In Antulay '1984' Case, this Court was dealing inter alia with the contention that a private complaint is not maintainable in the court of Special Judge set-up under Section 6 of the Criminal Law Amendment Act, 1952 ('the 1952 Act'). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 of the Cr.P.C. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 of the Cr.P.C. or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay '1984' Case: Since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 of the Cr.P.C. at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai while construing provisions of Chapter XXXVI of the Cr.P.C. For all these, we are unable to endorse the view taken in Krishna Pillai.

41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that

Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C.

22. The Hon'ble Apex Court in the above referred judgment has categorically held that for computing the limitation under Section 468 Cr.P.C. the relevant date is the date of filing complaint or the institution of prosecution and not the date on which cognizance is taken.

23. The above judgment of the Hon'ble Apex Court squarely applies to the facts of the case. There is no dispute about the fact that the report was given and the complaint was registered within one year from the date of cause of action. In such a scenario Section 468 Cr.P.C. has no application to the facts of the case. The contention of the petitioner that without filing a petition seeking condonation of delay, the delay is condoned, also has no legs to stand as there is no delay in the case on hand. As observed by the Hon'ble Apex Court the delay on the part of the Court should not affect the complainant.

24. In the light of the law laid down by the Hon'ble Apex Court in **Sarah Mathew's** case (referred supra), the present revision petition deserves to be dismissed.

Accordingly this Criminal Revision Petition is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE LALITHA KANNEGANTI

Date : 27.04.2021
IKN

THE HON'BLE SMT JUSTICE LALITHA KANNEGANTI

CRIMINAL REVISION CASE No.468 of 2020

Date : 27.04.2021

IKN

14. In **S.K. Sinha, Chief Enforcement ... vs Videocon International Ltd. And Ors.**⁸

12. In **U.P.Power Corpn. Ltd vs Ayodhya Pasad Mishra & Anr.**⁹

14. **Arun Vyas and Ors. Vs. Anita Vyas**¹⁰ it was held that :

⁸ Appeal (Crl.)175 of 2007

⁹ Civil Appeal No.670 of 2008

¹⁰ 1999 (2) ACR 1456 (SC)