

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 30th January, 2008

CRL.M.C. 47/2000

INSPECTOR RAN SINGH Petitioner
Through Mr. K.B. Andley, Senior Advocate with
Mr. M.L. Yadav & Mr. M. Shamikh, Advocates

versus

STATE OF DELHI & ANR Respondents
Through Mr. P.K. Behl & Mr. M.N. Dudeja, APPs.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of an order dated 19th July, 1996 passed by the learned Metropolitan Magistrate (MM), Delhi. By the said impugned order, the learned MM dismissed an application filed by the Petitioner seeking dismissal of the complaint case titled “*Zahid Hussain Qureshi v. SI Ran*”

Singh” registered at Police Station Jama Masjid, New Delhi under Section 323 IPC, on the ground of non-compliance of the statutory requirement of obtaining prior sanction under Section 197 CrPC read with Section 140 of the Delhi Police Act (DP Act).

2. The Petitioner also challenges an order dated 18th November, 1999 passed by the Additional Sessions Judge (ASJ) Delhi dismissing the revision petition filed by the Petitioner against the aforementioned order dated 19th July, 1996 passed by the learned MM.

3. This Court while directing notice to issue in this petition on 12th January, 2000 stayed further proceedings in the complaint case No. 48/1/94 and that stay has continued till date.

4. Mr. K.B. Andley, the learned Senior Counsel, appearing for the Petitioner assailed the impugned orders essentially on three grounds. First, he submitted that the learned MM took cognisance of the offence beyond the statutory period of limitation as contemplated in Section 468 CrPC. According to him, the complaint was filed on 12th May, 1987 whereas the order summoning the Petitioner was passed on 27th January, 1990. Relying

on the judgment of the Supreme Court in *Krishna Pillai v. T.A. Rajendran & Another* 1990 SCC (Crl) 646, it is contended that it is not the date of the filing of the complaint which is to be taken as the date of taking cognisance but the date of issuing the process. Secondly, it is submitted that the benefit of Section 473 CrPC is not available to save the order passed by the learned MM since no such plea was put forth by the prosecution before the learned MM. Thirdly, it is submitted that the Petitioner who was at the relevant point of time a Sub-Inspector in the Delhi Police, was performing his official functions and the offence complained of was an act performed in the course of his official duties. Therefore, prior sanction under Section 197 CrPC read with Section 140 DP Act was mandatory before the learned MM could take cognisance.

5. Mr. Dudeja, the learned APP, appearing for the State, on the other hand points out that the power under Section 473 CrPC is available to the Court essentially to prevent any miscarriage of justice. There could not be a situation where for reasons not attributable to a complainant, the Court is unable to take cognisance of the offence soon after the complaint is filed. If one went only by the summoning order, then the complainant would suffer for the fault of the Court. That could not have been the intention behind the

insertion of the Section 473 CrPC. He submits that the learned MM rightly observed that the act complained of in the complaint could not be said to have been performed by the petitioner in the course of his official duties, and there was no question of obtaining prior sanction. In any event, he submits that this defence can always be taken by the petitioner at the appropriate stage before the trial court.

6. The facts are that a FIR No. 56/87 under Section 420/120-B IPC read with Section 24/25 Emigration Act was registered at P.S. - Saraswati Vihar against one Shri Zahid Hussain Qureshi. It is stated that the Petitioner who was posted as Sub-Inspector (SI) with the Crime Branch in the Anti Forgery Section, was entrusted with the investigation of that case. In that case, non-bailable warrants were issued against Shri Qureshi on 28th April, 1987. However, anticipatory bail was granted by this Court and, therefore, he could not be arrested. It is stated that he was formally arrested on 22nd June, 1987 and released on bail on the spot. Ultimately Shri Qureshi was acquitted of the charges in the said case in view of the compromise reached with the complainant. The order of acquittal was passed on 13th October, 1998.

7. In the meanwhile on 12th May, 1987 according to Shri Qureshi, he was summoned to the office of the Crime Branch. There he asked the police officials, including the petitioner and one Shri S.K. Chaudhary, IPS, whether there was any warrant for the arrest of Shri Qureshi. It is stated that on hearing this, the petitioner started abusing Shri Qureshi, and gave him beatings.

8. Arising out of the above incident a complaint was filed by Shri Qureshi on 12th May, 1987 against the Petitioner and Shri S.K. Chaudhary IPS under Section 323/504/427/34 IPC. It is stated that a summoning order was passed by the learned MM on 27th January, 1990 summoning the present petitioner for the offence under Section 323 IPC. Thereafter the Petitioner filed the aforementioned application which was dismissed by the learned MM by the first impugned order dated 19th July, 1986. This was affirmed by the learned ASJ by the second impugned order dated 18th November, 1999 dismissing the revision petition filed by the petitioner.

9. Section 473 CrPC speaks of a situation where a court may take cognisance of an offence after the expiry of the limitation period under Section 468 CrPC. The said provision reads as under:

“473 - Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, 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.”

10. In the instant case, it is not the contention of the Petitioner that the complainant was responsible in any manner for the delay, if any, in the learned MM taking cognisance of the offence complained of. Section 473 CrPC has not been adverted to by the Supreme Court in the judgment in *Krishna Pillai*. Even if one were to go by the judgment in *Krishna Pillai* then it would mean that the date of taking cognisance should be construed as 27th January, 1990 and not the date of the filing of the complaint which is 12th May, 1987. That would in turn mean that there is a delay in the learned MM taking cognisance. Given that this is a case of statutory offence involving a police officer in which the complainant, has without unnecessary delay, lodged a complaint, there is no reason why the complainant should suffer the fate of dismissal of the complaint on a technical plea of limitation brought about not by any conscious act of the complainant but for the failure of the court to take the steps to issue the summoning order. The act of court can do no wrong, and this is perhaps what is encapsulated in the phrase in Section 473 CrPC which permits a court to condone the delay if it is of the view that

“....it is necessary so to do in the interests of justice”. That must be a interpreted as a residuary catch all phrase to account for contingencies where the delay may occur not on account of any omission by a party but due to the court itself. The power to condone delay, in such circumstances, should be exercised to ensure that there is no miscarriage of justice. If the plea of the Petitioner here were to be accepted, and the complaint is dismissed on the ground of limitation, there would certainly be a miscarriage of justice since the complaint would then have to remain without a remedy for the injury suffered by him, and for no fault of his. This result cannot be permitted to come about, and therefore, the plea of the Petitioner in this regard is hereby rejected.

11. This Court is also not impressed with the submission that the plea regarding Section 473 CrPC should have been specifically raised before the learned MM or the learned ASJ by the prosecution. Since the learned MM was not dismissing the complaint the ground of limitation, and the only question raised before him by the Petitioner here was regarding the non-grant of prior sanction, there was no occasion for the prosecution to argue the point regarding Section 473 CrPC before either the learned MM or the learned ASJ. In any event, given the language of Section 473 CrPC, this Court does not

consider it necessary that (in the circumstances such as those obtaining in the present case) there should be a specific plea raised on its applicability.

12. Coming to the point regarding grant of sanction, the learned MM, has in the order dated 19th July, 1996, given very cogent reasons to explain why the violence to which a person is subjected to in custody by a police officer, cannot be considered to be the performance by the police officer of his official duties. This Court is unable to find anything perverse or illegal in the conclusion reached by the trial court that the provisions of Section 197 CrPC or the Section 140 DP Act are not attracted to the facts of the present case.

13. For the aforementioned reasons, there is no merit in this petition, and it is dismissed as such. The interim order dated 12th January, 2000 stands vacated. The trial court record, if summoned, be returned immediately. The proceedings pending in the trial court will resume without delay and the trial court may ensure that it proceeds to conclusion without undue delay.

14. The petition is disposed of accordingly.

30th January, 2008
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S. Muralidhar, J.