

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C.NO.2972/2007

BAL KRISHAN SHARMA Petitioner
 Through : Mr.K.B. Andley, Sr. Advocate with
 Mr.Vinod Khanna, Advocates

Versus

STATE & ANR. Respondents
 Through : Mr.M.P.Singh, APP for the State.
 Mr.Ritesh Kumar Bahri and
 Mr.Vinay Kumar Gupta, Adv. for R-2

ORDER
02.03.2009

CORAM:**HON'BLE MR. JUSTICE G.S. SISTANI**

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 the Digest? Yes

G.S. SISTANI, J. (ORAL):

1. This is a petition under section 482 Cr.P.C. for quashing the order dated 10.3.2006 passed by learned Metropolitan Magistrate, Karkardooma Courts, Delhi and order dated 19.5.2006 passed by learned Additional Sessions Judge, Karkardooma Court, Delhi.
2. The brief facts which have led to filing of this petition are that respondent no.2 had made a complaint against the petitioner under section 324 read with section 109 IPC. Petitioner was

summoned by order dated 6.12.1993 for appearance and was granted bail.

3. The grievance of the petitioner is that cognizance has been taken by learned Metropolitan Magistrate after the expiry of the period of limitation. Counsel for the petitioner relies on Section 468 of the Cr.P.C., which is reproduced below:

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.

1. 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 a term exceeding one year but not exceeding three years.

2. For the purpose 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."

4. Learned senior counsel for the petitioner submits that the case of the petitioner would be covered by Sub-section 2(b) of Section 468 of the Cr.P.C. He also submits that delay of 34 days has been condoned by the Metropolitan Magistrate without there being any prayer or any application on behalf of

complainant (respondent no.2 herein). He further submits that the case of the petitioner is covered by the decision of the Apex Court in the case of **Krishna Pillai Vs. T.A. Rajenderan & Anr.** 1990 SCC (Cri.) 646 and he relies on paragraphs 3 and 4 of the same, which are reproduced below:

“3. It is not disputed that cognizance has been taken by the court more than a year after the offence was committed. Counsel for the respondents has stated that since the complaint had been filed within a year from the commission of the offence it must be taken that the court has taken cognizance on the date when the complaint was filed. In that view of the matter there would be no limitation.

4. Taking cognizance has assumed a special meaning in our criminal jurisprudence. We may refer to the view taken by a five Judge bench of this Court in *A.R. Antulay v. Ramdas Srinivas Nayak*. At p. 530 (para 31) of the reports this Court indicated:

“When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the Court.”

The extract from the Constitution Bench judgment clearly indicates that filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Since the magisterial action in this case

was beyond the period of one year from the date of the commission of the offence the Magistrate was not competent to take cognizance when he did in view of the bar under section 9 of the Act. We accordingly allow the appeal and quash the prosecution. The writ petition is permitted to be withdrawn as not pressed.”

5. Learned counsel for the respondent, submits that there is no quarrel with the proposition as to what is the date which is to be treated as the date when the cognizance is taken which admittedly is not the date when the complaint is filed, but when the process is issued. He however, submits that learned Metropolitan Magistrate has taken into consideration the fact that the delay has occurred not on account of any reason which can be attributed to the complainant, but on account of the fact that there was lawyers’ strike on one date of hearing and on another date learned Presiding Officer was on leave. He also submits that this case is duly covered in facts and law by a decision of the Supreme Court in the case of **Smt.Vanka Radhamanohari Vs. Vanka Venkata Reddy & Ors.** 1993 (2) SCC 275, relevant portion of which reads as under:

5. Earlier there was no period of limitation for launching a prosecution against the accused. But delay in initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the  7 prosecution story. But, then a court could not throw out a complaint or a police report solely on the ground of delay. The Code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony of

witnesses becomes weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired, if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the Code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The framers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed on a par with the provisions in respect of civil disputes. So far cause of action accruing in connection with civil dispute is concerned, under Section 3 of the Limitation Act, it has been specifically said that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 5 of that Act enables any court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the court that he had "sufficient cause for not preferring the appeal or making the application within such period". So far Section 473 of the Code is concerned, the scope of that section is different. Section 473 of the Code provides:

"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."

In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non-obstante clause which means that said section has

an overriding effect on Section 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the  8 requirement of satisfying the court that there was sufficient cause for condonation of delay under Section 5 of that Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim.....

6. In this case, admittedly, the date of incident is 03.11.1992 and the complaint was filed on 30.01.1993. It has been noticed by learned Metropolitan Magistrate that the complainant, respondent no.2 herein, remained present on each and every date of hearing and was pursuing his complaint diligently and no reason for delay has been attributed to the complainant. Taking this into consideration the learned Metropolitan Magistrate has also observed that as per the order sheets after passing of the summoning order on each and every date

complainant was present before the Court and matter was adjourned either on the ground that the Presiding Officer was on leave or lawyers were on strike.

1. The Apex Court in the case of **Smt. Vanka Radhamanohari (Supra)** has held that in view of Section 473 of the Cr.P.C. a Court can take cognizance of offence if it is satisfied on the facts and circumstances of this case that the delay has been properly explained. Even in case the delay has not been properly explained, if the Court is satisfied that delay should be condoned in the interest of justice, the Court would be well within its right to do so. It is for this reason that it has been held that Section 473 has a non-obstante clause which means that Section 473 has an overriding effect on Section 468. Accordingly, I find no merit in the submission of learned counsel for the petitioner that it was imperative and mandatory for the complainant to have moved an application for extension of period of limitation. Reading of the Order dated 10.03.2006 passed by the learned Metropolitan Magistrate would show complete application of mind and not only reasons for delay have been explained but it is also in the interest of justice that the complainant should not be made to suffer for acts for which he is neither responsible and acts which were beyond his control. The learned Metropolitan Magistrate in his order dated 10.3.2006 has considered the rival contention of the parties and has passed a reasoned order which has been upheld by the

learned ASJ vide his order dated 19.05.2006, I find no infirmity in the orders dated 10.03.1996 and 19.05.2006. Accordingly, the present petition is dismissed.

2. Trial court record be sent back immediately.

G.S. SISTANI, J.

March 02, 2009

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