

17.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1344/2007

Date of decision: 15th September, 2010

RAMESH LAMBA Petitioner
Through Mr. Vishwendra Verma, Advocate.

Versus

STATE Respondent
Through ASI Premvir Singh, P.S. Sultanpuri
in person.
Mr. Usman Choudhary, Advocate for the
respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER

1. FIR No. 1218/2002 was registered in Police Station Sultanpuri on 1st September, 2002 on a complaint made by Moinuddin Khan that three persons including Narender Kumar and Ramesh Lamba had trespassed into the property C-8, 401, Sultanpuri and have taken away his employee Zinder Ali. Thereafter, the said three persons locked the property with their lock. Initially, the FIR was registered under Section 448 of the Indian Penal Code, 1860 (IPC, for short) and investigation was

undertaken.

2. During investigation, Section 420 IPC was added. Charge sheet was filed under Sections 420 and 448 IPC.

3. Learned Metropolitan Magistrate by order dated 5th June, 2006 took cognizance and summoned the accused only under Section 448 IPC. Section 448 IPC is punishable with maximum imprisonment of one year. In these circumstances, learned trial court examined the question whether delay in filing of the charge sheet /police report should be condoned. The said power is given under Section 473 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code, for short) and stipulates that the court may take cognizance of an offence after expiry of the period of limitation if it is satisfied that the delay has been properly explained and it was necessary in the interest of justice to do so.

4. Learned trial court has examined the allegations in the charge sheet. It was noticed that Moinuddin Khan had purchased the property/plot in question from one Vijay Kumar on 31st July, 2002. Vijay Kumar had entered into a agreement with one Aarif, the original allottee in 1978 for purchase of plot for Rs.2,000/-. Vijay Kumar had paid Rs.1,000/- against due receipt and was given possession of the plot. Thereafter, Aarif did not initiate any proceedings or demand the balance Rs.1,000/-. However, as per the police investigation, Vijay Kumar continued to enjoy uninterrupted peaceful possession of the property from 1978 upto 31st July, 2002, when the property was sold to the complainant Moinuddin Khan by Vijay Kumar. As per the prosecution case, in 1984 Aarif executed a set of documents in favour of one Jaswant. The said Jaswant in turn on 27th August, 2002 executed a set of documents for sale of the property in favour of Narender. However, as per the charge sheet, actual physical possession was never transferred and given to either Jaswant or Narender. Narender on the basis of the said documents tried to dispossess and forcibly take physical possession

of the property by trespassing the same. The trial court has noticed that the police had investigated whether a case for cheating under Section 420 IPC was made out. The trial court has also noticed that there was delay of nearly four years on the part of the police to complete the investigation but this was also occasioned due to the fact that finger prints and specimen signatures were required to be sent to various laboratories for forensic results. Looking at the nature of the allegations and the explanation given by the police, the delay was condoned and accordingly Narender Kumar and Ramesh Lamba were summoned to appear as accused.

5. Ramesh Lamba filed a revision petition before the learned Additional Sessions Judge challenging the order condoning the delay. The said revision petition has been dismissed by the impugned order dated 9th February, 2007 and it was observed that the learned Metropolitan Magistrate committed no error in condoning the delay even if no formal application was moved. It is recorded that the learned Metropolitan Magistrate has given detailed reasons for condoning the said delay.

6. This has now prompted the petitioner to file the present petition under Section 482 of the Code to question and challenge both the orders passed by the learned Metropolitan Magistrate and the Additional Sessions Judge. Learned counsel for the petitioner states that the reports from the laboratories are dated 5th August, 2003 and 4th August, 2003 and therefore the delay in filing of the charge sheet is not fully explained. Learned counsel for the petitioner has also relied upon *Lokesh Tokas and Another versus State*, 2002 IV AD (DELHI) 941 and *Yukub Ali Saranj and Others versus The State of West Bengal*, 1995 CRL.L.J. 4077. In *Lokesh Tokas* (supra) a single Judge of this Court has observed that the State had not sought benefit of Section 473 of the Code, which permits extension of time and, therefore, Section 468(1) of the Code,

which prohibits the court from taking cognizance of an offence as specified in sub-section 2 after expiry of the period of limitation was applicable. In *Yukub Ali Saranj* (supra) it has been observed that the learned Metropolitan Magistrate had erred in taking cognizance without recording to his satisfaction on the on the explanation for the delay as embodied in Section 473 of the Code. The Magistrate in the said case had not considered the materials on record for condonation of delay and had not even assigned any special reason for condoning delay. It was emphasized by the Hon'ble Court that the satisfaction of the trial court and the reasons why the delay was condoned should be apparent from the order itself.

7. In the present case, as noticed above, learned trial court has gone into the question of condonation of delay under Section 473 of the Code and has given reasons why the delay should be condoned. As noticed above, the FIR was being investigated both under Sections 420 and 448 IPC. Later on even charge sheet was filed under both the Sections but the case was made out and cognizance was taken under Section 448 IPC only. The delay was also occasioned atleast till August, 2003 when forensic result became available. Learned Magistrate has mentioned that the facts justify condonation of delay and this order has been upheld on challenge in a revision petition before the Learned Sessions Judge. There is limited scope for interference in this petition under section 482 of the Code. This power is to be exercised sparingly to prevent abuse of process of any court or otherwise to secure ends of justice. In *Arun Vyas and Another versus Anita Vyas*, (1999) 4 SCC 690, the Supreme Court has examined Section 473 of the Code and has observed:

“14. It may be noted here that Section 473 Cr.P.C. which extends the period of limitation is in two parts. The first part contains non obstante clause and gives overriding effect to that section over Sections 468 to 472. The

second part has two limbs. The first limb confers power on every competent court to take cognizance of an offence after 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 and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'. The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. This is only illustrative not exhaustive.

15. Any finding recorded by a Magistrate holding that the complaint to be barred by limitation without considering the provisions of Section 473 Cr.P.C. will be a deficient and defective finding, vulnerable to challenge by the aggrieved party. In this case the complaint was clearly barred by limitation and no explanation was offered for inordinate delay; this is what the learned Magistrate took note of and concluded that the complaint was barred by limitation. This is correct insofar as the

offence under Section 406 is concerned. Therefore, in regard to Section 406 the order of the learned Magistrate discharging the appellants cannot be faulted with. But regarding offence under Section 498-A the learned Magistrate did not advert to the second limb of the second part in Section 473 Cr.P.C. referred to above. The order of the learned Magistrate on this aspect was unsustainable so the High Court has committed no illegality in setting aside that part of the order of the learned Magistrate.”

8. The expression ‘in the interest of justice’ used in Section 473 of the Code has been interpreted and it has been observed that it cannot mean in the interest of prosecution but the said expression demands that the court should protect the oppressed and punish the oppressor/offender. It has been also observed that in appropriate cases, the court can construe Section 473 of the Code liberally giving benefit of the said rule so that the provision does not result in unfair advantage or result in miscarriage of justice. In *State of H.P. versus Tara Dutt and Another*, (2000) 1 SCC 230 Sections 468 and 473 of the Code were examined and it was observed that the court can condone delay where it has been explained and it is in the interest of justice to do so. This discretion has to be exercised judiciously on well recognized principle and should be by a speaking order indicating satisfaction of the court. It was accordingly observed as under:

“8. We have already indicated in the earlier part of this judgment as to the true import and construction of Section 473 of the Code of Criminal Procedure. The said provision being an enabling provision, whenever a Magistrate invokes the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied on the facts and circumstances of the case that the delay has been properly explained and that it is necessary in the

interest of justice to condone the delay. But without such an order being there or in the absence of such positive order, it cannot (sic) be said that the Magistrate has failed to exercise jurisdiction vested in law. It is no doubt true that in view of the fact that an offence under Section 498-A is an offence against the society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be satisfied, in case of period of limitation for taking cognizance under Section 468(2)(C) having expired that the circumstances of the case require delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Code of Criminal Procedure."

9. In view of the aforesaid, I do not see any reason to interfere with the impugned orders. The petition is accordingly dismissed.

SANJIV KHANNA, J.

SEPTEMBER 15, 2010
VKR/NA