

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

+ **Crl.M.C. No.2900/2009**

% **Judgment reserved on 13th May, 2010**
Judgment delivered on 26th May, 2010

DHARAM CHAND KHATTER

.....PETITIONER

! Through: Mr. G.D. Gandhi, Advocate.

VERSUS

\$ **STATE (NCT OF DELHI) & ANOTHER**

..RESPONDENTS

^ Through: Mr. R.N. Vats, Additional Public Prosecutor,
for the state along with SI Reena Kumar,
CAW Cell, North.
Ms. Madhulika Sarin for the complainant.

CORAM:
HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of impugned orders dated 04.05.2009 and 03.07.2007 passed by the court below summoning him in a complaint case filed by respondent No. 2 for offence under Section 500 IPC.

2 Briefly stated that the facts of the case giving rise to this petition are as follows:-

The petitioner at one time was the father in law of respondent No. 2

who had married his son on 10.02.2000 after death of her earlier husband Mr. Rajiv Dutta who had died in a road accident on 01.06.1999. There were irreconcilable differences between the complainant and her husband (petitioner's son) which ultimately ended in their divorce by mutual consent granted by the competent court on 11.11.2003. Prior to death of her first husband Mr Rajiv Dutta in road accident on 01.06.1999, they had adopted a child Master Shivam on 31.03.1999.

3 Respondent No. 2 had filed a private complaint against the petitioner on 09.02.2004 with allegations against him that right from the beginning he was irked with her marriage with his son and they both were slogging out each other on their differences in different proceedings. Respondent No. 2 has alleged in her complaint that the petitioner had met one of her friend Ms. Poonam at Nagpur in a training camp for Civil Defence Course in February, 2003 and inquired from her about the parentage of Master Shivam and when she expressed her ignorance, he started spreading rumours that the child was from some illicit relationships and levelled allegations against her chastity. It is also alleged that the petitioner paid visits to the school of her son and inquired about the parentage of the child Master Shivam due to which she was put to considerable embarrassment in front of the teachers besides humiliation. She then received summons of a complaint case around 25th December, 2003 from the Court of Mr. Ajay Goel, Metropolitan Magistrate, Delhi instituted by the petitioner against her and her family members. Even in the said complaint, he is alleged to have levelled derogatory remarks against respondent No. 2 and her son imputing that child was fruit of some illicit relation. It is also alleged in the complaint filed by respondent No. 2 on 09.02.2004 that on 16.01.2004, the petitioner had visited her office and insulted her in front

of her colleagues, used filthy language and tried to degrade her in the eyes of her colleagues. In pre-summoning evidence, the statement of respondent No. 2 being the complainant was recorded by the Magistrate as CW-1 on 11.02.2004 and the statements of two more witnesses Ms. Poonam and Mr. Ashwani who are colleagues of respondent No. 2 were recorded as CW-2 & CW-3 on 01.02.2005.

4 Learned Metropolitan Magistrate, on the basis of pre-summoning evidence produced by respondent No. 2, vide impugned order dated 03.07.2007 (at pages 45-46 of the paper book) took cognizance of the offence under Section 500 IPC and issued process against the petitioner.

5 The petitioner challenged the aforementioned summoning order by filing a revision being Crl. Revision No. 10/2008 under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. The said revision was dismissed by the court of Mr. Dharmesh Sharma, ASJ-II, North District, Delhi vide order dated 04.05.2009 (at pages 63-68 of the paper book).

6 The petitioner in this petition filed under Section 482 of the Code of Criminal Procedure, 1973 seeks to challenge the aforementioned summoning orders dated 03.07.2007 and 04.05.2009 only on the ground of jurisdiction and limitation.

7 Mr. G.D. Gandhi, learned counsel appearing on behalf of the petitioner, had argued that since the offence alleged against him in the complaint had taken place at Nagpur, the court at Delhi had no territorial jurisdiction to entertain the complaint of respondent No. 2. This objection of jurisdiction taken by him has been considered by the revisional court which did not find any merit in the said objection. In this regard para 5 of the impugned order dated 04.05.2009 passed by the revisional court is relevant and is extracted below:-

“In the present revision, the impugned order is assailed on the ground that the complaint is motivated to harass the petitioner / revisionist ; that Criminal Courts at Delhi have no jurisdiction since the offence took place at Nagpur; that the Court below failed to appreciate that no document is placed on record regarding the alleged meeting between CW-2 Poonam and the accused /petitioner in February 2003 and it is pointed out that petitioner attended National Civil Defence College at Nagpur from 03.03.2003 to 13.03.2003; that the court below failed to appreciate that CW-3 was not an independent witness and he was an interest witness; that the court has failed to appreciate that no teacher or person from the school of the child has been produced in evidence.”

8 A copy of the complaint of respondent No. 2 on the basis of which process has been issued by the court below against the petitioner is Annexure P-1 at pages 17-27 of the paper book. A perusal of the said complaint would show that respondent No. 2 has alleged three incidents, one that took place at Nagpur and the other two at Delhi in the jurisdiction of this Court. Respondent No. 2 has mentioned in her complaint that the petitioner had visited the school of her son Master Shivam at Delhi and had questioned his parentage from his teachers and also that he had visited her office at Delhi on 16.01.2004 and had tried to degrade her on that day in the eyes of her colleagues. The alleged visit of the petitioner to the school of the child Master Shivam as well as his visit to the office of respondent No. 2 are both incidents of Delhi and, therefore, it cannot be said that cause of action for filing of the complaint by respondent No. 2 did not arise in the jurisdiction of this Court. I thus do not find any merit in the objection of territorial jurisdiction taken on behalf of the petitioner.

9 Relying upon a judgment of the Hon'ble Supreme Court in **Krishna Pillai Vs. T.A. Rajendran & Another 1990 SCC (Crl.) 646**, Mr. G.D. Gandhi

learned counsel appearing on behalf of the petitioner had argued that the Magistrate could not have taken cognizance of the complaint of respondent No. 2 vide impugned order dated 03.07.2007 after expiry of two years of the date of the offence allegedly committed in 2003/2004. The submission of Mr Gandhi was that in view of the above judgment of the Hon'ble Supreme Court, date of filing of complaint was not relevant for the purpose of limitation for taking cognizance of the offence alleged against him.

10 Per contra, Ms. Madhulika Sarin learned counsel appearing on behalf of respondent No. 2 had argued that the judgment of the Hon'ble Supreme Court in Krishna Pillai's case (Supra) is not applicable to the facts of the present case as according to her in the present case the Magistrate had taken cognizance of complaint of respondent No. 2 on 11.02.2004 when it recorded the statement of the complainant as CW-1 as part of her pre-summoning evidence. The submission of learned counsel appearing on behalf of respondent No. 2 was that if any delay had occurred in issuing the process by the Court for summoning the petitioner then the said delay was on the part of the Court for which a litigant cannot be penalized. According to the learned counsel, the Magistrate had taken cognizance of the complaint the moment he decided on perusal of the contents of the complaint to proceed for recording the pre-summoning evidence, part of which was recorded on 11.02.2004 well within the two years limitation prescribed for taking cognizance for the said offence.

11 I have given my anxious thought to the above rival arguments advanced by the learned counsel for the parties on the point of objection to the limitation in taking of cognizance taken on behalf of the petitioner but I have not been able to persuade myself to agree with the

submissions on this point made on behalf of the petitioner for reasons to follow hereinafter.

12 In the present case it is not disputed that the offence of defamation for which the petitioner has been summoned by the court below had allegedly taken place in 2003/2004. The last incident mentioned in the complaint is of 16.01.2004. It is also not disputed that the complaint against the petitioner was filed by respondent No. 2 on 09.02.2004 and that her statement in pre-summoning evidence was recorded by the Magistrate on 11.02.2004 and the statements of other two witnesses namely CW-2 Ms. Poonam and CW-3 Mr. Ashwani were recorded on 01.02.2005. The entire pre-summoning evidence before the Magistrate was concluded by 01.02.2005 and this was well within the period of limitation of two years from the date of offence for filing of the complaint. Of course, the impugned summoning order by which the petitioner was summoned by the court below for offence under Section 500 IPC was passed by the Magistrate on 03.07.2007.

13 The only question that arises for consideration is on what date the Magistrate is deemed to have taken cognizance of the offence alleged against the petitioner, whether it is the date on which impugned summoning order dated 03.07.2007 was issued or the date when the Magistrate received the complaint and decided to take pre-summoning evidence in the matter.

14 The word 'cognizance' has not been defined in the Code of Criminal Procedure (hereinafter to be referred as the 'Code'). The dictionary meaning of the word 'cognizance' is — 'judicial hearing of a matter'. The meaning of the word 'cognizance' has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is **R.R. Chari v. State of U.P, AIR 1951**

SC 207 wherein it was held:-

“... ‘taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence”.

15 In **Darshan Singh Ram Kishan v. State of Maharashtra, AIR 1971 SC 2372** while considering Section 190 of the Code of 1898, it was observed that :

“[T]aking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes judicial notice of an offence on a complaint, or on a police report, or upon information of a person other than a police officer.”

16 In **Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118** it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter-proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression “taking cognizance” which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. It was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the

three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance.

17. Similar view was expressed in ***Kishun Singh v. State of Bihar, 1993 (2) SCC 16*** that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence.

18 In ***State of W.B. v. Mohd. Khalid, 1995 (1) SCC 684*** the Hon'ble Apex Court after taking note of the fact that the expression 'cognizance' has not been defined in the Code had held as under:

“In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word ‘cognizance’ indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons.”

19 In ***CREF Finance Ltd. Vs. Shree Shanthir Homes (P) Ltd. (2005) 7 SCC 467***, it was held by the Hon'ble Apex Court that taking cognizance of an offence is not the same thing as issuance of process. In the said case it was held that cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent

stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.

20 In ***Bharat Domadar Kale and Another Vs. State of A.P., (2003) 8 SCC 559***, it was held by the Hon'ble Apex Court that the limitation prescribed under the Code is only for filing of the complaint or initiation of the prosecution and not for taking cognizance. In that case, the complaint in question was lodged in the Court on 03.03.2000 which was within the period of limitation of one year. However, the Magistrate took cognizance of the offence on 25.03.2000. The High Court accepted the argument addressed on behalf of the State and had observed that since the complaint was filed within the period of one year of the detection of the offence, it was within the period of limitation though it did not give reasons for this finding. The appellants in that case had contended before the Hon'ble Supreme Court that the limitation prescribed under Chapter XXXVI of the Code applies to taking of cognizance by the court concerned, therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation, the same gets barred by limitation.

21 In the present case also, the same argument as was urged before the Supreme Court on the point of limitation has been taken before this Court on behalf of the petitioner. The Hon'ble Apex Court had rejected the above contention of the appellants and dismissing their appeal, it was held as under:-

“A cumulative reading of various provisions of Chapter XXXVI Cr.PC clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the

prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the Court after the expiry of period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicates that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code.

Apart from the statutory indication, the said view also gets support from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase “actus curiae neminem gravabit” which means an act of the court shall prejudice no man, or by a delay in the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant.”

22 The above judgment of the Hon'ble Supreme Court in Bharat Damodar Kale's case (Supra) is squarely applicable to the facts of the present case. The judgment of the Supreme Court in Krishna Pillai's case

(Supra) relied upon on behalf of the petitioner is not applicable to the facts of the present case because the said judgment is in the context of Section 9 of the Child Marriage Restraint Act, 1929. The judgment in Krishan Pillai's case does not deal with the procedure for taking cognizance under the Code. When there is a direct judgment of the Supreme Court which is later in point of time i.e. judgment in Bharat Damodar's case (Supra), I do not find any reason not to follow the said judgment for deciding the present case.

23 Since in the present case, learned Metropolitan Magistrate had taken the entire pre-summoning evidence by 01.02.2005 well within the limitation period of two years from the date of offence, it cannot be said that the process issued by him to summon the petitioner vide order dated 03.07.2007 was barred by limitation.

24 In view of the foregoing, I do not find any merit in this petition which fails and is hereby dismissed.

MAY 26, 2010
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S.N.AGGARWAL, J