

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

+ **CRL. M.C. No.148/2012**

Reserved on: 01st April, 2014

% **Date of Decision: 02nd May, 2014**

SOMESH SHOKEEN

..... Petitioner
Through: Mr.S.P. Kaushal, Adv.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent
Through: Mr.O.P. Saxena, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C.') read with Article 227 of the Constitution of India, the petitioner assails order dated 31.10.2011 passed by learned Additional Sessions Judge, Dwarka Courts, New Delhi whereby the revision petition filed by the petitioner was dismissed.

2. Shorn of unnecessary details, the brief facts of the case are that during patrolling, beat staff of Police Station Najafgarh, Delhi found

that unauthorized construction was going on agriculture land forming part of Khasra No.9/6/1 (1-10), Village Revla, Khanpur, New Delhi was going on and a report was sent to SDM vide diary No.1032-1036/SHO-NG dated 05.05.2005. A restraint order under Section 81 of Delhi Land Reforms Act was passed by SDM, Najafgarh vide order Ref. SDM(NG) RA/2005 dated 21.05.2005 in case titled as 'Gaon Sabha Rewla Khanpur vs. Somesh Shokeen'. The restraint order was served on the petitioner by Head Constable Banwari and a report was sent to the SDM. Despite the restraint order, the petitioner continued unauthorized construction work and a complaint in this regard was sent to SDM, Najafgarh vide diary No.1477/SHO/NG dated 29.06.2005. Even thereafter, the construction work continued secretly. Again an information was sent to SDM vide diary No.2833/SHO/NG dated 31.08.2005. On the said report, SDM Najafgarh directed for registration of FIR under Section 188 IPC vide diary No.238/SDM/NG dated 30.09.2005. SI Surinder Dagar made an endorsement on the said order and FIR No.663/2005 under Section 188 IPC was registered on 08.10.2005. After completion of investigation, charge-sheet was filed on 06.10.2006. Vide order dated 13.10.2006, learned Metropolitan Magistrate, Delhi took cognizance and summoned the petitioner. Vide order dated 02.06.2008, order for framing notice for the offence under Section 188 IPC was passed by learned Metropolitan Magistrate.

3. The petitioner preferred criminal revision bearing No.33/11 against order dated 02.06.2008 which was dismissed by learned Additional Sessions Judge, Dwarka Courts, Delhi vide order dated 31.10.2011.

4. Feeling aggrieved by the said order, the petitioner has preferred the present petition.

5. The submission of learned counsel for the petitioner are two-fold. The first submission is that the cognizance was barred by limitation and the second is that there is no complaint under Section 195 of the Cr.P.C. According to him, information was given to the SDM on 05.05.2005 and the SDM passed a restraint order under Section 81 of the DLR Act dated 21.05.2005, again information was given to the SDM on 29.06.2005 and another information was sent on 31.08.2005, on which SDM directed for registration of FIR for the offence under Section 188 IPC on 30.09.2005. The cognizance was taken by the trial Court on 13.10.2006 which is barred by limitation.

6. Counsel for the petitioner has placed reliance on the judgments in **Shyam Sunder Bhatia & Anr. Vs. NCT of Delhi, 2007 II AD (Cr.) (DHC) 444; Vipin Kalra & Anr. Vs. State, 95 (2002) DLT 863; MCD vs. Ravindra Kumar Mahindra, 42 (1990) DLT 13; Vinod Kumar Jain vs. Registrar of Companies, Delhi & Haryana, (1985) DLT 474; M.L. Gulati & Ors. vs. J.L. Birmani, 28(1995) DLT 483; C. Muniappan & Ors. Vs. State of Tamil Nadu, 2010 IX AD (S.C) 317; Sukhendra Singh & Ors. vs. State of U.P. & Ors., 2010 IX AD (S.C) 343; Ashwani Garg vs. State of Punjab, 2010 LawSuit (P&H) 95; Gurinder Singh & Anr. Vs. State, 63 (1996) DLT 104.**

7. I have bestowed my thoughtful consideration to the submissions made by learned counsel for the petitioner and learned APP for the State and also perused the material on record.

8. Chapter XXXVI of the Cr.P.C. prescribes the period of limitation for taking cognizance of certain offences. Section 467 of Cr.P.C. defines the phrase 'period of limitation' as the period specified in Section 468 for taking cognizance of an offence. Sub Section (1) of Section 468 of Cr.P.C. bars a court from taking cognizance of certain offences of the category specified in Sub Section (2) after expiry of period of limitation. At this juncture, it is relevant to mention the provisions of Section 468 of the Cr.P.C. which deals as under:-

“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 a 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.”

9. Section 469 of Cr.P.C. declares as to when the period of limitation would commence. Section 470 and 471 of Cr.P.C. provide for exclusion of period of limitation in certain cases. Section 472 of the Cr.P.C. deals with ‘continuing offence’. Section 473 of the Cr.P.C. is an overriding provision and enables Courts to condone delay where such delay has been properly explained or whether the interest of justice demands extension of period of limitation.

10. The law commission considered the question in the light of legal system in other countries and prescribed the period of limitation for initiating criminal proceedings of certain offences.

11. The Joint Committee of Parliament also considered the following as sufficient grounds for prescribing the period of limitation:

(1) As time passes the testimony of witnesses becomes weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.

(2) For the purpose of peace and repose, it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with multifarious laws creating new offences many persons at sometime or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

(3) The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of persons concerned.

(4) The sense of social retribution which is one of the purposes of criminal law loses its edge after the expiry of long period.

(5) The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

12. In the Statement of Objects and Reasons, it had been observed:

“There are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present there is no period of limitation for criminal prosecution and a court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission.”

13. It is thus clear that provisions as to limitation have been inserted by Parliament in the larger interest of administration of criminal justice keeping in view two conflicting considerations:

(i) the interest of persons sought to be prosecuted (prospective accused);

(ii) and organs of State (prosecuting agencies).

14. It is a settled principle of law that a criminal offence is considered as wrong against the State and the society even though it has been committed against an individual. Generally, in serious offences prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict. The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for example, Articles 114, 115, 131 and 132 of the Limitation Act.

15. The Limitation Act prescribes the limitation for taking action in the court of law and if the action is taken after the expiry of the period prescribed under the Limitation Act, the remedy is said to be barred. The same principle would also apply while considering the question of limitation provided under Section 468 Cr.PC. I may give an illustration to demonstrate how the submission of counsel for petitioner in connection with the interpretation of Section 468 Cr.P.C., will lead to illogical situation and disastrous result. It is also well settled that a party can take action on the last date of the limitation prescribed under the Act. Suppose a complaint is filed on the last day of limitation prescribed under the Act and if on that date the Magistrate is on leave and/or otherwise unable to hear the party and/or apply his mind to the complaint on that date then naturally his complaint will have to be held barred by limitation if arguments of the petitioner are to be accepted.

16. Suppose a complaint is filed quite in advance before the expiry of the period of limitation and if the Magistrate in his discretion postpones the issue of process by directing an investigation under Section 202 CrPC and if that investigation is not completed within the prescribed period of limitation, naturally the Magistrate shall not be able to apply his mind and take cognizance and/or issue the process until report under Section 202 of the Code is received and in that event the complaint will have to be dismissed on the ground that the court cannot take cognizance of an offence after the expiry of the period of limitation from the date of offence.

17. There could be several such situations. The complaint although filed within limitation but the Magistrate due to some or other reasons beyond his control could not apply his mind and take cognizance of the complaint and/or could not issue the process within the prescribed period of limitation as provided under Section 468 of the Code, then the complaint will have to be dismissed in limine. So also if the Magistrate takes cognizance after the period prescribed under Section 468 of the Code the said order of taking cognizance would render illegal and without jurisdiction. In such contingencies can the complainant be blamed who has approached the court quite within limitation prescribed under the Act but no cognizance could be taken for the valid and good reasons on the part of the magistrate and should the complainant suffer for no fault on his part. This could not be the object of the framers of the provisions of Section 468 CrPC.

18. A similar question cropped up before the Apex Court in **Bharat Damodar Kale vs. vs. State of AP**, (2003) 8 SCC 559, complaint was filed by Drugs Inspector against the accused for the offence punishable

under Drugs and Magic Remedies (Objectionable Advertisements) at 1954. The complaint was filed in the Court on 03.03.2000 in respect of the offence detected on 05.03.1999. The Magistrate took cognizance of the offence on 25.03.2000. The period of limitation was one year. After considering the relevant provisions of the Cr.P.C. it was held:-

“10. On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned counsel for the appellants, the limitation prescribed under the above Chapter 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. This argument seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus: “Limitation for taking cognizance of certain offences”. It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter 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 the 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 indicate 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 in our opinion 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 of this view of ours, we find support for this view 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 on 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. This view of ours is also in conformity with the earlier decision of this Court in the case of *Rashmi Kumar* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] .”

19. The controversy is no more res integra in view of law laid down in **Sarah Mathew vs. Institute of Cardio Vascular Diseases by its Director**, (2014) 2 SCC 62. In the said case Hon'ble Supreme Court of India observed that date relevant for completion of period of limitation is the date when criminal complaint is filed or date of institution of prosecution/ criminal proceedings and not the date when a court/Magistrate takes cognizance.

20. After considering the various provisions of CrPC and the law laid down in the aforesaid judgments, I am of the considered view that the limitation prescribed under Section 468 of CrPC should be the date of institution of complaint/ charge sheet and not the date of cognizance or issuance of process by the Court.

21. In the instant case the FIR was lodged on 08.10.2005 and the charge-sheet was filed on 06.10.2006. The limitation period prescribed under Section 468 Cr.P.C. is one year and therefore the charge sheet in the instant case cannot be said to be barred by limitation.

22. The other submission of counsel for the petitioner that there is no complaint under Section 195 of Cr.P.C. does not hold water. A complaint under Section 195 Cr.P.C. dated 05.10.2006 sent by Mr.S.S. Parihar, SDM, Najafgarh was filed along with the charge-sheet. Moreover, while taking cognizance, learned Metropolitan Magistrate has also considered the said complaint under Section 195 Cr.P.C.

23. I have gone through the judgments relied upon by counsel for the petitioner. The same are of no help to the petitioner, in view of the aforesaid dictum of the Apex Court.

24. In view of the above discussion the petition is dismissed. Trial Court record as well as record of Revision petition be sent back forthwith.

CRL.M.A. No.545/2012

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

May 02, 2014
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