

GAHC010136092019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./677/2019

TAPASH BHATTACHARJEE
S/O LATE JAYANTA BHATTACHARJEE, R/O TARUN NAGAR, ABC MAIN
LANE, P.S.-BHANGAGARH, DIST-KAMRUP(M), ASSAM, PIN-781005

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SANJAY KR. MEHTA
S/O LATE RAMAN BHAI MEHTA
M/S M.K.D. FILMS
24
A.T. ROAD
GUWAHATI
P.S.-BHARALUMUKH
DIST-KAMRUP(M)
ASSAM
PIN-78100

Advocate for the Petitioner : MR. J R GIRI, MR. U K BARMAN, MR H ALI, MR. R
KONWAR, MS A RONGHANGPI

Advocate for the Respondent : PP, ASSAM, MS P DAS, Amicus Curiae for R-2

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

28.11.2024

Heard Mr. H. Ali, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No.1 and Ms P. Das, learned Amicus Curiae for the respondent No.2.

2. This application is filed under Section 482 *read with* Section 468(2) (d) of the Code of Criminal Procedure, 1973 praying for the quashing of the proceedings of G. R. Case No.2868/1999, registered under Sections 63/64(1)/66/68A of the Copy Right Act, 1957 which is pending before the learned Additional Chief Judicial Magistrate (in short 'Id. Addl. CJM'), Kamrup (M), Guwahati.

3. The brief facts of the case are as follows: On 25.07.1999, one Sanjay Kr. Mehta, on behalf of MKD Films, lodged an FIR before the Dispur Police Station, alleging that they are the sole distributors of the film titled *HINDUSTAN KI KASAM* under the banner of MKD Films. However, it came to their knowledge that some illegal CDs/video cassettes of the said film had come from Mumbai to Guwahati through an illegal source, which were re-recorded here and supplied throughout the N.E. Region by one Mr. Tapas Bhattacharjee (present petitioner) of Tarun Nagar, Guwahati. Accordingly, a case was registered vide Dispur P.S. Case No. 729/1999 under Sections 63/64(1)/66/68A of the Copyright Act, 1957, and the matter was investigated by the police. During the investigation, the police arrested the accused/petitioner, who was forwarded to the Court of the Id. Addl. CJM on 26.07.1999 and taken into police custody for one day. Thereafter, the present petitioner was re-produced before the Court of the learned Chief Judicial Magistrate (in short Id. CJM'), Kamrup (M), Guwahati, on 27.07.1999 and was forwarded to judicial custody.

4. It is contended by the petitioner that after the completion of the investigation, the Investigating Officer (in short 'IO') filed a charge sheet against the accused/petitioner, vide Charge Sheet No. 387/2014, dated 03.08.2014 and long after the receipt of the charge sheet, the case record, along with the charge sheet, was put up before the Id. CJM on 02.05.2018 and on same day, the trial court took the cognizance of the offence against the accused/petitioner under Sections 63/64(1)/66/68A of the Copyright Act, 1957, and the case was made over to the Court of the Id. Addl. CJM, for disposal.

5. The present petitioner further stated that on receipt of the case record on 04.05.2018, the Id. Addl. CJM, issued a summon to the present petitioner, and upon receipt of the summon, the accused/petitioner appeared before the Court of the Id. Addl. CJM, on 03.12.2018. On prayer being made, the petitioner was allowed to remain on previous bail, and thereafter, copy of the case was furnished to him on 05.01.2019, with the case fixed for consideration of charge.

6. Thereafter, on 18.03.2019, the petitioner filed an application under Sections 468 and 469 of the Cr.P.C., vide Petition No. 5624, praying to drop the proceedings of the case, considering the fact that the FIR was lodged in the year 1999, the charge-sheet was submitted in the year 2014 (i.e., after a gap of more than 14 years), and cognizance of the case was taken on 02.05.2018. However, upon hearing the petition, the prayer of the petitioner was rejected by the Id. Addl. CJM, vide order dated 20.05.2019.

7. Being highly aggrieved and dissatisfied with the orders dated 02.05.2018 and 20.05.2019, the petitioner has filed the present petition, praying for the quashing of the said orders passed by the Id. CJM and the Id. Addl. CJM, respectively, as well as the proceedings of G.R. Case No. 2868/1999, which is currently pending before the Court of the Id. Addl. CJM, Kamrup (M), Guwahati.

8. Mr. Ali, learned counsel for the petitioner has submitted that the order dated

02.05.2018, passed by the Id. CJM, is bad in law, as cognizance of the offence was taken after the lapse of the period of limitation as provided under Section 468(2)(c) of the Code of Criminal Procedure, 1973. Furthermore, the said order dated 02.05.2018 is not a reasoned order, and there is no explanation in the said order as to why taking cognizance was necessary even after the lapse of the period of limitation as provided under Section 468(2)(c) of the Cr.P.C. Hence, the order dated 02.05.2018 is liable to be set aside and quashed.

9. He further submitted that the order passed on 20.05.2019 is bad in law, as it was passed without the application of judicial mind. There is no logical explanation in the said order as to why the provisions of Section 468(2)(c) of the Cr.P.C. cannot be invoked. The learned Trial Court failed to appreciate that mandatory provisions of law must be followed mandatorily. By not doing so, the learned Trial Court committed a grave error in law, and therefore, the order dated 20.05.2019 is liable to be set aside and quashed.

10. He also submitted that the learned Trial Court failed to appreciate that the maximum punishment for the alleged sections of law is three years, and therefore, taking cognizance of the offence is barred as per the provisions of Section 468(2)(c) of the Cr.P.C.. Therefore, the orders dated 02.05.2018 and 20.05.2019 are liable to be set aside and quashed.

11. In support of his submissions, Mr. Ali, learned counsel for the petitioner has relied on the following decisions;

- i. **K. Vikheho Sema vs. The State of Nagaland** reported in 2007 STPL 16240 Gauhati;
- ii. **Gauri Kanta Borah vs. The State of Assam** reported in 2011 STPL 16658 Gauhati; and
- iii. **The State of H.P vs. Tara Dutt and Anr.** reported in 1999 STPL 12262 SC.

12. In this context, Mr. Baruah, learned Additional Public Prosecutor, has submitted that the period of limitation under Section 473 of the Cr.P.C. can be extended in certain cases. For ready reference, Section 473 of the Cr.P.C. reads as follows:

“Section 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.”

13. He further submitted that the Magistrate has the power to condone the delay, considering the facts and circumstances of the case. Thus, he submits that the Id. CJM has committed no irregularity or mistake in taking cognizance of the said offence against the petitioner. He further submitted that in the order dated 20.05.2019, it is clearly reflected that the prayer for dropping the case against the present petitioner was rejected, with the observation that, considering the grievances and nature of the offence, the Id. CJM, in taking cognizance, must have resorted to Section 473 of the Cr.P.C. and, by condoning the delay, took cognizance of the case.

14. On the other hand, Ms. P. Das, learned Amicus Curiae for respondent No. 2, has submitted that the petitioner used to supply C.D. illegally throughout the entire Northeast under the name and style of his company. Considering the nature and gravity of the offence, the cognizance was rightly taken by the learned Trial Court.

15. In reply, Mr. Ali, learned counsel for the petitioner, submitted that the FIR was lodged long ago on 25.07.1999 and that the company, run by the present petitioner, is no longer in existence. He further submitted that there is no record in the order passed by the Id. CJM indicating that cognizance was taken by condoning the delay, nor is there any reason for the delay recorded at the time of filing the charge-sheet. Moreover, there is no reasonable explanation in the order made by the learned Trial

Court regarding the taking of cognizance. Therefore, it cannot be held that the delay was condoned in compliance with Section 473 of the Cr.P.C.

16. Hearing the submissions made by the learned counsels for both sides and upon perusal of the case record, it is seen that the FIR was lodged on 25.07.1999, and the accused/petitioner was remanded to police custody by the Id. CJM on 26.07.1999. However, the charge-sheet was filed under C.S. No. 387/2014, dated 03.08.2014, i.e., after a period of 15 years. Cognizance of the offence was taken by the Id. CJM four years after the filing of the charge-sheet.

17. There is no explanation made by the IO for the delay of 14/15 years in filing the charge-sheet against the accused/petitioner. It is noted that the charge-sheet was filed only after sufficient evidence was found against the accused/petitioner under Sections 63/64(1)/66/68(A) of the Copyright Act. From the order of cognizance, it is evident that the Id. CJM did not mention any reason for condonation of delay while taking cognizance of the case, which was taken four years after the charge-sheet was filed. The cognizance was taken under Sections 63/64(1)/66/68(A) of the Copyright Act, and the case was transferred to the Court of the Id. Addl. CJM for disposal.

18. In the order of rejection passed by the Id. Addl. CJM, it is observed that while taking cognizance, the learned CJM might have resorted to Section 473 of the Cr.P.C. to condone the delay, as the charge-sheet was admittedly filed after the expiry of the limitation period. Thus, it is apparent that no explanation or reasons have been recorded by the IO for the 14/15-year delay in submitting the charge-sheet, nor have any reasoned order was passed by the Id. CJM while taking cognizance of the offence and a mechanical order was passed.

19. Section 468 of the Cr.P.C. bars the taking of cognizance after the lapse of the period of limitation, while Section 469 provides details regarding the commencement of the limitation period. Section 473, however, allows for the extension of the limitation period in certain cases, where the Court may take cognizance of the offence

after the expiry of the limitation period, provided that the facts and circumstances of the case are specified, the delay is properly explained, or it is deemed necessary in the interest of justice.

20. In the case of **Tara Dutt** (supra), it has been held that "*Section 473 confers power on the Court taking cognizance 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 and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available*". It is further held that "*the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence*".

21. Another judgment, relied upon by the learned counsel for the petitioner, is the case of **K. Vikheho Sema** (supra), and paragraph 11 of the said judgment, reads as follows;

11. [Section 473](#) Cr.P.C, no doubt, has given discretionary powers to the Courts to take cognizance even after the lapse of statutory period. However, this discretion can be exercised only after fulfillment of preconditions laid down therein. The conditions are that the Court must be satisfied on facts that the delay has been satisfactorily explained by the prosecution or extension of time is necessary in the interest of justice. These two prerequisites are *sine qua non* to extend the period of limitation.

22. But in the instant case, as discussed above, there is no explanation provided by the IO for submitting the charge-sheet after a delay of 14/15 years from the registration of the case. Similarly, there is no explanation provided by the Id. CJM while taking cognizance against the accused/petitioner. A mechanical order of

cognizance was passed, and the case was transferred for trial before the Id. Addl. CJM. Although the Id. Addl. CJM observed, while rejecting the petitioner's prayer, that the Id. CJM might have resorted to Section 473 of the Cr.P.C. in taking cognizance, it is evident that no such reasoned order was passed by the Id. CJM while taking cognizance of the offence against the accused/petitioner.

23. In view of the detailed discussion made above, this Court is of the opinion that the cognizance is already barred by limitation under Sections 468 and 473 of the Cr.P.C. and that, without providing any satisfactory explanation, the order of cognizance dated 02.05.2018 passed by the Id. CJM is invalid. Furthermore, by the order dated 20.05.2019, the Id. Addl. CJM failed to provide any explanation as to why the provisions of Section 468(2)(c) of the Cr.P.C. could not be invoked, which is legally unsustainable and liable to be set aside and quashed. Therefore, the interference of this Court is necessary, and accordingly, the orders passed by the Id. CJM and the Id. Addl. CJM, as well as the proceedings of G.R. Case No. 2868/1999, currently pending before the Court of the Id. Addl. CJM, Kamrup (M), Guwahati, are hereby set aside and quashed by invoking the power under Section 482 of Cr.P.C. *read with* Section 468(2) (d) of Cr.P.C.

24. With the above observation, this criminal petition stands allowed and disposed of.

JUDGE

Comparing Assistant