

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Petn. No.2 of 2025

1. Sri Ajoy Patari, S/o Sri Kanti Patari, R/o of Sidhi Ashram, P.S. Amtali, District-West Tripura.
2. Sri Sankar Chakrabarty, S/o Sanjib Chakrabarty, R/o Sidhi Ashram, P.S-Amtali, District-West Tripura.

.....Petitioner(s)

Versus

The State of Tripura, represented by the Secretary, Government of Tripura, Home Department, New Civil Secretariat Complex, P.O.-Kunjaban, P.S. East Agartala, District- West Tripura.

..... Respondent(s).

For Petitioner(s) : Mr. Arjun Acharjee, Advocate.

For Respondent(s) : Mr. Rajib Saha, Additional PP.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/02/2025

Heard Arjun Acharjee, learned counsel for the petitioners and Mr. Rajib Saha, learned Additional Public Prosecutor for the respondent.

2. The order taking cognizance against the petitioners under Section 323/34 of the IPC dated 04.08.2021 passed by the learned Judicial Magistrate, 1st Class, Court No.3, Agartala, West Tripura in PRC(SP) No.445/2020 has been challenged under Section 482 of the Code of Criminal Procedure, 1973 on the ground that the same is barred by limitation in terms of Section 468 of Cr.P.C and moreover, the learned Court has not exercised any power for condoning the delay under Section 473 of the Cr.P.C.

3. Mr. Arjun Acharjee, learned counsel for the petitioner has referred to the FIR which is at Annexure-5 bearing Amtali P.S. case No.2019AMT069. The incident is of 23.05.2019 at about 04:30 pm. The FIR was instituted under Sections 326/307/354B/506/34 of the IPC on the same date (Annexure-1) before Amtali Police Station bearing No.2019AMT069 against the petitioners and other three named accused. Upon completion of investigation, charge sheet bearing No.58/2020 was submitted against the petitioners and three others on 08.07.2020 under Section 323/34 of the IPC. Thereafter, cognizance was taken against these two accused persons on 04.08.2021. He submitted that one accused Sri Tulshi Paul approached this Court in CrI. Petn. No.27/2024 for quashing of the order of cognizance for the same offences on the same grounds. The learned coordinate bench of this Court vide judgment dated 15.07.2024 has allowed the application holding that the order taking cognizance was barred by limitation in terms of Section 468 of the Cr.P.C.

4. Learned counsel for the petitioner submits that the offence under Section 323 of IPC is punishable by a maximum sentence of one year. Therefore, in terms of Section 468(2)(b) no cognizance of such offence could be taken beyond a period of one year from the date of institution of the case. As such, this Court may quash the order taking cognizance dated 04.08.2021 and allow this petition.

5. Mr. Rajib Saha, learned Additional Public Prosecutor has strongly objected to the prayer. He has relied upon a decision of the Constitution Bench of the Apex Court in the case of *Sarah Mathew versus*

Institute of Cardio Vascular Diseases represented by its Director Dr. K. M. Cherian and others reported in (2014) 2 SCC 62. Based upon that he submits that the relevant date for counting the period of limitation under Section 468 of the Cr.P.C. is the date of filing of the complaint or the date of institution of the prosecution case and not the date on which the Magistrate takes cognizance. He submits that the Apex Court has clearly held that treating the date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Cr.P.C is supported by the legal maxim '*actus curiae neminem gravabit*' which means that the act of the Court shall prejudice no man. It is also held that the Court's inaction in taking cognizance or applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. In the present case the incident and institution of FIR both are of the same date i.e. 23.05.2019. He submits that cognizance has been interpreted to be only a formal expression meaning thereby that the learned Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This connotation of the term 'cognizance' has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons. As such, delay in taking cognizance after the complainant has diligently

instituted the complaint or the FIR should not be read as a time bar in taking cognizance within the meaning of Section 468 of the Cr.P.C. He submitted that the judgment of the Constitution Bench of Apex Court rendered in the case of *Sarah Mathew* (supra) was not brought to the notice of the learned coordinate bench of this Court. As such, the said decision can be treated as per incuriam. Therefore, the instant petition may be dismissed.

6. I have considered the submissions of the learned counsel for the parties and also taken note of the relevant materials placed from record. The principle of law as regards the operation of bar of limitation under Section 468 of Cr.P.C. has been laid down in the judgment of the Constitution bench of the Apex Court in the case of *Sarah Mathew* (supra). The Apex Court has upon analysis of the relevant provisions of Sections 467, 468, 469 and 473 of the Cr.P.C. under Chapter XXXVI of the Code culled out the gist of these provisions at paragraph No.30 of the report which is extracted hereunder:

“30. The gist of these provisions could now be stated:

30.1. Section 467 defines the phrase "period of limitation" to mean the period specified in Section 468 for taking cognizance of certain offences.

30.2. Section 468 stipulates the bar of limitation. Sub-section (1) of Section 468 makes it clear that a fetter is put on the court's power to take cognizance of an offence of the category mentioned in sub-section (2) after the expiry of period of limitation. Sub-section (2) lays down the period of limitation for certain offences.

30.3. Section 469 states when the period of limitation commences. It is dexterously drafted so as to prevent advantage of bar of limitation being taken by the accused. It states that period of limitation in relation to

an offence shall commence either from the date of offence or from the date when the offence is detected.

30.4. Section 470 provides for exclusion of time in certain cases. It inter alia states that while computing the period of limitation in relation to an offence, 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 Explanation to this section states that in computing limitation, the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly time during which the accused is absconding or is absent from India shall also be excluded.

30.5. Section 471 provides for exclusion of date on which court is closed and Section 472 provides for continuing offence.

30.6. Section 473 is an overriding provision which enables courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation.

30.7. An analysis of these provisions indicates that Chapter XXXVI is a code by itself so far as limitation is concerned. All the provisions of this Chapter will have to be read cumulatively. Sections 468 and 469 will have to be read with Section 473.”

7. The Apex Court has also dealt with the earlier decisions rendered on this point and rendered its conclusion at paragraph No.51 which is as under:

“51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* which is followed in *Japani Sahoo* lays down the correct law. *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C.”

8. As held above, for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of

filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. The Apex Court has further held that the object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim '*nullum tempus aut locus occurrit regi*', which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim '*vigilantibus et non dormientibus, jura subveniunt*'. Chapter XXXVI of the Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Cr.P.C. is supported by the legal maxim '*actus curiae neminem gravabit*' which means that the act of court shall prejudice no man. It was further held that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. Provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.

9. In the light of the ratio laid down by the Apex Court in the facts of the present case, it is clear that the date of initiation of the

proceedings by institution of the FIR is the date on which the offence was committed i.e. 23.05.2019. As such, there was no delay in filing of the complaint or institution of the proceedings at the behest of the complainant/informant. Police investigated the case and submitted charge sheet only under Section 323/34 of IPC against four accused persons. Cognizance against these two accused persons were taken on 04.08.2021 which they have sought to challenge in the present petition under Section 482 of Cr.P.C. after four years also being guided by a judgment rendered by the coordinate bench of this Court in *Crl. Petn. No.27/2024* dated 15.07.2024 in the case of another accused *Sri Tulshi Paul versus the State of Tripura* against whom cognizance was taken for the same offence under Section 232/34 of IPC on 06.06.2022. However, it appears from perusal of the judgment dated 15.07.2024 (Annexure-8) rendered by coordinate bench of this Court that the law in regard to the application of the bar of limitation under Section 468 of Cr.P.C. under Chapter XXXVI of the Code was not brought to its notice. Therefore, learned Court solely being guided by the letter of the provisions under Section 468(2)(B) proceeded to hold the period of limitation for taking cognizance in the said case had expired. However, since the ratio rendered by the Apex Court in this regard could not brought to the notice of the learned Court while delivering the judgment, the said decision can be said to be per incuriam. [See *A.R. Antulay vrs. R.S. Nayak & another* reported in (1988) 2 SCC 602 paragraph-42]

10. This Court being guided by the principles laid down by the Apex Court in the case of *Sarah Mathew* (supra) is of the opinion that since the date of institution of the FIR was on the date of incidents i.e. 23.05.2019, cognizance by the learned trial Court could not be hit by the bar of limitation under Section 468(2)(b) of the Cr.P.C. In such circumstances, this Court does not find any error in the impugned order.

11. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

