

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.322 of 2015

Arising Out of PS.Case No. -171 Year- 2009 Thana -GARDANIBAGH District- PATNA

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Dhananjay Kumar Mishra @ Dhananjay Mishra, Son of Late Srikant Mishra,
Resident of House No. NY/105, New Yarpur, P.S. -Gardanibag, District - Patna.
2. Prabhat Kumar @ Monti, S/o - Vijay Kumar Mishra, Resident of House No.
NY/105, New Yarpur, P.S. Gardanibag, District - Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Ajit Kumar, Son of Late Chaturbhuj Prasad Singh, Resident of NY/27 New
Yarpur, P.S.- Gardanibag, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party No.2: Mr. Binod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 22-12-2015

Heard Mr. Surendra Kishore Thakur, learned counsel
for the petitioners, Mr. Jharkhandi Upadhyay, learned counsel for
the State and Mr. Binod Kumar, learned counsel for the Opposite
Party No. 2.

2. By the present application under Section 482 of the
Code of Criminal Procedure (For short 'the Code'), the petitioners
seek quashing of the order dated 04.06.2014 passed by the learned
Judicial Magistrate-1st Class, Patna in connection with Gardanibagh
P.S. Case No. 171/2009 whereby cognizance has been taken for the
offence punishable under Section 323 of the Indian Penal Code.



3. Mr. Surendra Kishore Thakur, learned counsel for the petitioners has submitted that the impugned order taking cognizance of the offence is bad in law as the court has taken cognizance of the offence after expiry of the period of limitation prescribed under Section 468(2)(b) of the Code. He has submitted that the alleged occurrence took place on 30th September, 2009 for which Gardanibagh P.S. Case No. 171 of 2009 was registered under Sections 147, 148, 149, 323, 307, 379 of the Indian Penal Code (For short 'IPC') and 27 of the Arms Act on the same day.

4. Mr. Thakur would submit that on completion of investigation, the police submitted its report under Section 173(2) of the Code on 10th April, 2010. The investigating officer had found the case true only under Section 323 IPC. After receipt of the police report under Section 173(2) of the Code, the learned Jurisdictional Magistrate took cognizance of the offence under Section 323 of the IPC vide impugned order dated 04.06.2014.

5. Mr. Thakur would submit that Section 323 of the IPC prescribes punishment with imprisonment which may extend to one year and fine upto Rs. 1,000/- or both. He would submit that in view of the mandatory provision of Section 468(2)(b) of the Code, the Court was debarred from taking cognizance of the offence after expiry of one year.

6. On the other hand, Mr. Binod Kumar, learned

counsel for the Opposite Party No. 2 would submit that Section 473 of the Code provides that if any Court is satisfied on the facts and in the circumstances of the case that it is necessary to do so in the interest of justice, it may take cognizance of the offence even after the expiry of the period of limitation. He would submit that in view of the materials available in the case diary and the police report submitted under Section 173(2) of the Code, the learned Magistrate thought it prudent to condone the delay and took cognizance of the offence in the interest of justice.

7. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State would submit that the point of limitation raised by the petitioners can be taken only before the court of Magistrate and not before this Court in a proceeding under Section 482 of the Code.

8. I have heard respective counsel for the parties and perused the materials available on record.

9. Chapter XXXVI of the Code deals with limitation for taking cognizance of certain offences. Section 467 of the Code defines limitation for the purpose of that chapter, to mean the period specified in Section 468 of the Code for taking cognizance of offence. The object of Chapter XXXVI in the Code is to protect persons from prosecution either in FIR or the complaint which may turn out to be vexatious. The reasons for indicating rule of



limitation is that due to lapse of time necessary evidence would be lost and the person prosecuted will be placed in defenceless position. Taking note of various aspects, the parliament classified offence into two categories, having regard to the gravity of the offences, on the basis of punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for the offence for which punishment specified is imprisonment for a term not exceeding three years. In such cases also wide discretion is given to the Court in the matter of taking cognizance of offence after expiry of the period of limitation. Section 473 of the Code provides that if any Court is satisfied on the facts and in the circumstances of the case that delay has properly been explained or that it is necessary so to do in the interest of justice it may take cognizance of offence even after expiry of the period of limitation.

10. Section 468 of the Code which bars taking cognizance of the offence after lapse of the period of limitation reads 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.”

11. A bare perusal of Section 468(2)(b) of the Code would make it evident that the Court would be debarred from taking cognizance of the offence after expiry of one year if the offence is punishable with imprisonment for a term not exceeding one year.

12. Section 323 of the IPC under which cognizance has been taken by the impugned order reads as under:-

“323. Punishment for voluntarily causing hurt.-
Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

13. A perusal of the provision prescribed under Section 323 IPC would make it evident that if any person is held guilty for the said offence, he shall be punished with imprisonment for either description for a term which may extend to one year, or with fine or with both.

14. Hence, in view of the mandatory provision prescribed under Section 468(2)(b) of the Code, the cognizance of the offence punishable under Section 323 IPC could have been taken by the learned Magistrate within one year from the date of institution of FIR.

15. From a bare perusal of the FIR, it would appear that the alleged offence took place on 30th September, 2009 for which an FIR was instituted on the same date.

16. In view of the provision prescribed under Section 468(2)(b) of the Code and the facts stated in the FIR, the limitation for taking cognizance of the offence in the present case expired on 30th September, 2010. It is true that Section 473 of the Code give discretion to the Court to take cognizance of the offence after expiry of the period of limitation. However, such discretion has to be exercised on the facts and circumstances of the case if the delay has been properly explained or that it is necessary to do so in the interest of justice. In the present case, no application was filed on behalf of the prosecution for condoning the delay. From perusal of

the impugned order, it would appear that the learned Magistrate has also not assigned any reason for condoning the delay. The learned Magistrate has not even recorded in his order that the condonation of delay would be in the interest of justice in the facts and circumstances of the case. The expression “in the interest of justice” in Section 473 of the Code cannot be incorporated to mean “in the interest of the prosecution”.

17. Keeping in mind the provisions prescribed under Sections 468 and 473 of the Code, I am of the opinion that the impugned order dated 04.06.2014 passed by the learned Judicial Magistrate-1st Class, Patna in connection with Gardanibagh P.S. Case No. 171 of 2009 cannot be sustained. Accordingly, it is set aside.

18. The application stands allowed.

(Ashwani Kumar Singh, J.)

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