

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29575 of 2015

Arising Out of PS.Case No. -383 Year- 2005 Thana -KAHALGAON District- BHAGALPUR

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Sadanand Singh son of Krishna Prasad Singh resident of Choudhari Tola,
Kahalgaon , P.S. Kahalgaon, District Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar
2. Ram Anugrah Narayan Singh, the then Executive Magistrate, Kahalgaon,
District Bhagalpur.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.

For the Opposite Party/s : Mr. Ram Sevak Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-09-2015

By the present application under Section 482 of the Code of Criminal Procedure (for short 'the Code'), the petitioner seeks quashing of the order dated 12.5.2015 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Kahalgaon (NTPC) P. S. Case No. 383 of 2005 whereby cognizance has been taken for the offence punishable under Section 133 of the Representation of the People Act, 1951 (for short 'RP Act').

2. Mr. Ramakant Sharma, learned Senior Counsel for the petitioner 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 on the basis of a written report submitted by one Ram Anugrah Singh, Executive Officer, Kahalgaon, Bhagalpur, Kahalgaon (NTPC) P. S. Case No. 383 of 2005 was registered under Section 133 of the RP Act on 16th October 2005 against the petitioner. The police investigated the case and finding the accusation to be false submitted final report vide Final Report No. 94 of 2008 dated 12.4.2008. However, the report submitted under Section 173(2) of the Code by the Investigating Officer of the case remained pending before the Court for more than 7 years and on 12th May 2015, the learned Magistrate differing with the police report took cognizance of the offence under Section 133 of the RP Act and summoned the petitioner to face the trial. He would submit that the offence punishable under Section 133 of the RP Act prescribes punishment with imprisonment which may extend to three months and with fine and in view of the mandatory provision of Section 468(2)(b) of the Code, the Court was debarred from taking cognizance after expiry of one year.

3. On the other hand, learned counsel for the State 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 so to do in the interest of justice, it may take cognizance of

the offence after expiry of the period of limitation. He would submit that in view of the materials available in the case-diary, the learned Magistrate thought it proper to condone the delay and took cognizance of the offence in the interest of justice.

4. I have heard learned counsel for the parties and perused the materials available on the record.

5. 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. Bar to taking cognizance on the expiry of period of limitation and extension of period of limitation in case of continuing offence is embodied in Section 472 of the Code and in case other than a continuing offence it contains in Section 469 of the Code. The provisions for exclusion of time in computing period of limitation in certain cases are incorporated in Sections 470 and 471 of the Code. 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 engrafting 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.

6. 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.”

7. A perusal of the Section 468 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.

8. Section 133 of the RP Act under which cognizance has been taken by the impugned order reads as under:-

“133. Penalty for illegal hiring or procuring of conveyances at elections.- If any person is guilty of any such corrupt practice as is specified in clause (5) of Section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine.”

9. A perusal of the provision prescribed under Section 133 of the RP Act would make it evident that if any person is guilty of any corrupt practice as is specified in Clause 5 of Section 133 of the RP Act or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine. Hence, in view of the mandatory provision prescribed under Section 468(2)(b) of the Code, the cognizance should have been taken by the

learned Magistrate within one year from the date of institution of the FIR.

10. From perusal of the FIR, it would appear that the alleged occurrence of offence took place on 13.10.2005 for which an FIR was instituted on 16.10.2005. In view of the provisions prescribed under Section 468 of the Code and the facts stated in the FIR, the limitation for taking cognizance of the offence in the present case expired on 13.10.2006.

11. It is true that Section 473 of the Code gives 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 in the 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 prosecution'.

12. Keeping in mind the provision prescribed under

Sections 468 and 473 of the Code, I am of the opinion that the impugned order dated 12.05.2015 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Kahalgaon (NTPC) P. S. Case No. 383 of 2005 cannot be sustained. Accordingly, it is set aside.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

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