

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.24080 of 2015**

Arising Out of PS.Case No. -48 Year- 2014 Thana -RAMGARH District- BHABHUA (KAIMUR)

Subodh Kumar, son of Late Shyam Mahto, Resident of Mohalla-Ashok Chakna  
Gali, Gurhatta, P.S.- Khajekala Patna City, District- Patna

... .... Petitioner

Versus

1. The State of Bihar

2. Block Development Officer, Ramgarh Block, P.S.- Ramgarh, District- Kaimur

.... .... Opposite Parties

**Appearance :**

For the Petitioner/s : Mr. Wasi Ahmad Khan, Advocate

For the Opposite Party/s : Mr. L. K. Saharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 21-09-2015**

The present application under Section 482 of the Code of Criminal Procedure (For short 'Cr. P.C.'), the petitioner seeks quashing of the order, dated 17.12.2014, passed by the learned Chief Judicial Magistrate, Bhabhua (Kaimur), in Ramgarh P.S. Case No. 48 of 2014, whereby he has been taken cognizance for the offence punishable under Section 134 of the Representation of the People Act, 1951 (For short 'R.P. Act').

2. The petitioner has been made accused in Ramgarh P.S. Case No. 48 of 2014, dated 20.03.2014, instituted under



Section 134 of R.P. Act, on the basis of written report submitted by one Arun Singh, In-charge Block Development Officer, Ramgarh, Bhabhua. It has been alleged in the FIR that the petitioner disobeyed the order dated 15.03.2014 passed by the District Magistrate, Kaimur, Bhabhua and without giving the charge of Cash-book, left the Headquarter of his office, ignoring the work related to election, as a result of which, the election work is being hampered.

3. Mr. Wasi Ahmad Khan, learned counsel for the petitioner, submits that the impugned order by which cognizance has been taken against the petitioner under Section 134 of the R.P. Act, is bad in law, as the court has been taken cognizance of the offence after expiry of the period of limitation prescribed under Section 468(2) (a) of the Cr. P.C. He submits that the offence alleged is punishable with fine only which may extend to 500/- rupees and in view of Section 468(2)(a) Cr. P.C., the Court was debarred from taking cognizance of the offence after expiry of six months.

4. Learned counsel for the State would submit that Section 473 Cr. P.C. empowers the court to condone the delay and take cognizance of an offence after the expiry of the period of limitation. According to him, overriding provisions of Section 473

Cr. P.C. clearly gives jurisdiction to the Magistrate to take cognizance beyond the period of limitation. Hence, there is no error in the order passed by the learned Magistrate.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Facts of the case are not in dispute. The alleged offence was committed by the petitioner on 15<sup>th</sup> March, 2014, for which an FIR was instituted on 20<sup>th</sup> March, 2014 and after completion of investigation the investigating officer submitted his report under Section 173(2) Cr.P.C., in the court of Chief Judicial Magistrate, pursuant to which, the learned Chief Judicial Magistrate took cognizance of the offence under Section 134 of the R.P. Act on 15<sup>th</sup> December, 2015.

7. Sub-section (1) of Section 134 of the R.P. Act reads as under:-

**“134. Breaches of official duty in connection with elections.-(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.”**

8. From perusal of the provision prescribed under sub-section (1) of Section 134 of the R. P. Act, it would be evident that

the maximum punishment prescribed for the offence is fine which may extend to five hundred rupees.

9. Chapter XXXVI of the Cr. P.C. deals with limitation for taking cognizance of certain offences. Section 467 of the Cr. P.C. defines limitation for the purpose of that chapter, to mean the period specified in Section 468 of the Cr. P.C. 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 Cr. P.C. and in case other than a continuing offence it contains in Section 469 of the Cr. P.C. The provisions for exclusion of time in computing period of limitation in certain cases are incorporated in Sections 470 and 471 of the Cr. P.C. The object of Chapter XXXVI in the Cr. P.C. 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 Cr. P.C. 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 Cr. P.C. which bars a court from taking cognizance of the offence after lapse of the prescribed 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. It would be evident from perusal of Section 468(2)(a) Cr. P.C. that the Court would be debarred from taking cognizance of the offence on expiry of six months, if the offence is punishable with fine only.

12. It is true that Section 473 of the Cr. P.C. 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 Cr. P.C. cannot be incorporated to

mean 'in the interest of prosecution'.

13. Under the circumstances discussed above, I am of the opinion that the impugned order, dated 20.03.2014 passed by the learned Chief Judicial Magistrate, Bhabhua (Kaimur), in Ramgarh P.S. Case No. 48 of 2014, cannot be sustained. Accordingly, it is set aside.

14. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

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