

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42305 of 2012

Arising Out of PS.Case No. -97 Year- 2002 Thana –Rosera District- SAMASTIPUR

Vijay Kumar Verma, S/O Late Narendra Prasad Verma, Resident of Mohalla-Kashipur, Triyar Bhawan, P.O.- Samastipur H.O., P.S.- Town, District- Samastipur

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

Appearance :

For the Petitioner : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Hemant Kumar Karan, Advocate

For the Opposite Party : Dr. Mayanand Jha, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 16-04-2015

The petitioner is a Medical Officer in the Medical Service of the State of Bihar. In the year 2002, he was required to perform his duties in a Relief Camp on account of flood that occurred at Village-Baghopur, Tola-Hanumannagar, P.S.-Rosera in the district of Samastipur. A lady, by name Urmila Devi, submitted a complaint on 30th August, 2002 stating, inter alia, that her husband suffered serious illness due to floods in the intervening night of 28th-29th of August, 2002 and when she rushed to the Relief Camp along with her husband for treatment, neither the petitioner nor the members of Relief Camp were present; and for want of treatment, her husband died at 8 A.M. on 29.8.2002. She stated that negligence on the part of the petitioner had led to the death of her husband.

Rosera P.S. Case No.97 of 2002 was registered under Section 304A I.P.C. The Court of Sub-Divisional Judicial Magistrate, Rosera took cognizance of the said offence on 28.7.2012 by condoning the delay.

This petition under Section 482 of the Code of Criminal Procedure is filed with a prayer to quash the order dated 28.7.2012.

Heard Shri Chittaranjan Sinha, learned Senior Counsel for the petitioner and Dr. Mayanand Jha, learned Additional Public Prosecutor for the State.

The allegation against the petitioner is that he was negligent in performing his duties in the Relief Camp on 28th/29th August, 2002. Though the F.I.R. was registered and forwarded to the Additional Chief Judicial Magistrate on 31st August, 2002, cognizance thereof was taken ten years thereafter.

The trial court condoned the delay of ten years, through order dated 28.7.2012, which is under challenge.

Section 467 of the Cr.P.C. stipulates the period of limitation, within which the cognizance of an offence can be taken. Section 468(2) of the Cr.P.C. provides that for the offences which are punishable with fine, within which cognizance can be taken, the period is six months, for the offences which are punishable with imprisonment for a term not exceeding one year, it is one year and for

offences which are punishable with imprisonment for a term exceeding one year but less than three years, it is three years. The provision reads thus:

“Section 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—

1. six months, if the offence is punishable with fine only;
2. one year, if the offence is punishable with imprisonment for a term not exceeding one year;
3. three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3)

The offence alleged against the petitioner, even if proved, is punishable with imprisonment of two years. Therefore, it falls in the third category.

The period of limitation stipulated under the Code has its own significance. With the expiry of limitation, valuable rights accrue to the accused and such right gets strengthened, with each passing day. The period can no doubt be extended under Section 473 of the Cr.P.C. in certain cases. The provision reads thus:

“473. Extension of period of limitation in certain cases—Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence 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 or that it is necessary so to do in the interests of justice.”

However, mere existence of power is not a justification for exercise thereof. The Court must be satisfied as to the reason for the delay. The accused needs to be put on notice before the delay is condoned. The reason is that the right that accrued to him, not to be put to trial, with the expiry of the period of limitation, can be taken away only when adequate reasons exist.

The record of this case discloses that no notice was issued to the petitioner before the delay of ten years was condoned. For all practical purposes, the parameters that are applicable to the condonation of delay under Section 5 of the Limitation Act, may be with some difference, apply to the exercise, under Section 473 Cr.P.C. It is only when very exceptional circumstances are stated and proved, that delay of a long period of ten years could have been condoned.

The trial court has condoned the delay without following the procedure required under law. Therefore, the very condonation of delay is untenable.

Coming to the merits of the case, the allegation of the complainant is that the petitioner was not present in the Relief Camp

when the complainant brought her husband for treatment. It is evident that a departmental enquiry was conducted by the Health Department through a committee of three doctors. The committee conducted enquiry and submitted a report stating that the petitioner was very much available in the Relief Camp and the complaint came to be submitted only for obtaining a certificate for the purpose of making claim for compensation. Further, absence from a particular place, that in odd hours, does not by itself constitute offence punishable under Section 304-A of the I.P.C. One must attribute specific acts of negligence, in the course of treatment.

Even if the condonation of delay is taken as valid, and the allegation is taken as true, the case does not fall under Section 304 A of the I.P.C.

Hence, the petition is allowed and the order dated 28.7.2012 taking cognizance of the offence under Section 304A of the Indian Penal Code is quashed.

(L. Narasimha Reddy,CJ)

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