

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-33047 of 2012
Date of decision : August 25, 2015

Darshan Singh @ Darshan Ram

....Petitioner

versus

Kamlesh Kaur

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Ms Satpreet Grewal Kapila, Advocate, for the petitioner
Mr. Rajesh Pal, Advocate, for the respondent

Fateh Deep Singh, J.

Kamlesh Kaur respondent before this Court had initially filed an FIR dated 68 dated 8.9.2001 under section 354 IPC at Police Station Sohana, District Mohali against present petitioner Darshan Singh @ Darshan Ram by way of Annexure P/1. During the course of events, the FIR was cancelled through cancellation report submitted on 22.11.2002 on the ground that even earlier the same complainant had got registered against the present petitioner another FIR No. 38 dated 10.9.1998 under sections 457, 380 IPC regarding theft that was alleged to have taken place on 30.6.1998.

Thereafter the petitioner filed a petition bearing CRM-M No.

3784 of 2008 seeking quashment of the FIR which stood disposed of. It is thereafter the complainant filed private complaint on 18.8.2009 against the present petitioner by way of Annexure P/3.

The main grouse whereby the petitioner has who sought quashment of the present complaint is that the same was filed after 8 years of the alleged occurrence and there was misuse of the process of court by making material improvements and thus, summoning order issued against him for commission of offence under section 354 IPC was not sustainable as the occurrence had taken place on 4.9.2001 and complaint has been filed on 18.8.2009 whereas the limitation provided under section 468 Cr.P.C. is three years and therefore, claimed that the trial court could not have taken cognizance of the complaint and the offence and had thus sought, quashment of the summoning order Annexure P/4 as well as the complaint.

Heard Ms. Satpreet Grewal Kapila, Advocate, for the petitioner and Mr. Rajesh Pal, Advocate, for the respondent and perused the record.

The main thrust of the allegations of the complainant are regarding commission of offence under section 354 IPC which deals with assault or criminal force on a woman with intent to outrage her modesty and which prescribes sentence of not less than one year and which may extend to 5 years and shall also be liable to fine.

The contentions of the counsel for the petitioner that the

complaint was barred on account of provisions of section 468 Cr.P.C. has sought to be refuted and controverted on behalf of the respondent-complainant. Under the provisions of section 468 Cr.P.C. a bar is created for taking cognizance after period of limitation and the counsel for the petitioner could not convince this Court how the present case is barred by limitation under this statutory provision. Section 469 Cr.P.C. enlist the starting point of limitation primarily to be on the date of offence and by virtue of section 470 Cr.P.C. provides exclusion of time in certain cases and under which the time from which any person has been prosecuting with due diligence needs to be excluded. Reliance placed on **2003(4) R.C.R. (Criminal) 924, Bharat Damodar Kak and anr. Vs State of Andhra Pradesh**. It is own case of the two sides that the offence so alleged had taken place on 4.9.2001. It is the own stand of the petitioner that the present FIR so lodged was sent for cancellation vide report dated 22.11.2002 and it was only on the basis of repeated investigations and when the present petitioner filed CRM-M No. 3784 of 2008 for quashing of this FIR which stood quashed vide orders of this Court dated 3.12.2008 Annexure P/2 and the instant complaint has been filed on 18.8.2009 Annexure P/3 and therefore, the cause which originated on the day of occurrence on 4.9.2001 legally culminated through orders of this Court dated 3.12.2008 and therefore, within a period of 8 months 15 days, the present complaint has been filed and therefore seeking protection of exclusion of the time in terms

of section 469 Cr.P.C. It has been rightly contended on behalf of the respondent the same needs to be excluded between the occurrence i.e. 4.9.2001 and the quashment order dated 3.12.2008. Moreover since section 354 IPC prescribes sentence upto 5 years the bar of section 468 Cr.P.C does not come into play. The ratio cited by way of **Rakesh Nayar and another vs State of Punjab and anr., 2012(3) R.C.R. (Criminal) 170** does not come to the aid of the petitioner in view of factual disparity. Moreover, it needs to be clarified here that the period of limitation is to be computed from the date of filing of the complaint or initiating criminal proceedings and not taking of cognizance by the learned Magistrate as has been sought to be argued on behalf of the petitioner. Thus, it cannot be accepted as has sought to be projected by the petitioner side that the complainant in this case has belatedly approached the court which could even be termed as violation of the fundamental rights. Since the respondent-complainant has been pursuing the legal recourse and thus her right to file a criminal complaint after quashment of the FIR was lodged earlier by her subsists though its merit cannot be commented upon.

In the light of the foregoing discussion, apparently there is no merit in the present petition and the same stands dismissed.

August 25, 2015
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(Fateh Deep Singh)
Judge