

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-38653 of 2013

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Date of decision:18.8.2015

Ram Kumar

.....Petitioner

v.

Satnam Singh

.....Respondent

....

Present: Mr. Arvind Bansal, Advocate for the petitioner.

Mr. K.P.S. Virk, Advocate for the respondent.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of criminal complaint No.174/07 dated 26.8.2006 (Annexure-P.1) filed for the offences under Sections 420, 406, 419 and 506 IPC, summoning order dated 27.9.2011 (Annexure-P.2), whereby the petitioner has been summoned by learned Sub Divisional Judicial Magistrate, Assandh under Sections 406 and 506 IPC and all subsequent proceedings arising therefrom.

Notice of motion has been issued in this case. Mr. K.P.S. Virk, learned Advocate has put in appearance on behalf of the respondent and contested this petition.

The brief facts of the case are that Satnam Singh-complainant filed complaint against Ram Kumar for the offences under Sections 420, 406, 419 and 506 IPC by alleging that he purchased a car through Kumar

Finance Company, Patran, District Sangrur through its proprietor Shankar Kumar, whereas the name of proprietor is Ram Kumar. The complainant purchased car No.DL-4CB-7400, model 1993, make Maruti Esteem for ₹1,50,000/- and paid ₹1 Lac to the vendor of said car and rest of the amount i.e. ₹50,000/- only was financed for the purchase of said car on interest @18% per annum. The car was delivered to the complainant on 12.1.2001 and financed amount was to be repaid in 18 equal monthly instalments. The complainant paid two instalments and the third instalment, which was to be deposited in the month of March 2002, could not be deposited. On 4.6.2002, the accused came at the Dera of the complainant situated at Mardan Khera along with one Constable Jai Bhagwan and ASI Chandi Ram and other persons and they took the car from the possession of complainant. It is also the case of the complainant that he filed suit for mandatory injunction in Civil Court, Karnal for returning the car in question to the complainant which was decreed and the accused had been directed to return the car. But in spite of that the accused has not returned the said car as the accused had impersonated to be as Shankar, who signed the delivery letter as Shankar Kumar and had cheated the complainant.

On the basis of preliminary evidence, the Court summoned accused Ram Kumar for the offences under Sections 406 and 506 IPC.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that the vehicle in question had been

taken away on 4.6.2002 and the present complaint has been filed on 26.8.2006 i.e. after more than four years. As per Section 468 Cr.P.C., the offence under Section 406 IPC is punishable for maximum sentence of three years and the offence under Section 506 IPC is punishable upto two years only and the period of limitation for filing the complaint is only three years. No explanation has been given as to why this complaint has been filed beyond the period of limitation. Even there is no application filed for condoning this delay. Therefore, as per Section 468 Cr.P.C. this complaint is time barred.

Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in Mrs. Sarah Mathew v. The Institute of Cardio Vascular Diseases by its Director – Dr. K.M. Cherian and others, 2014 (1) R.C.R. (Cr.) 590, in which it is held that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of a process by Courts. It is also held that limitation to file complaint provided in the statute is that no Court shall take cognizance after expiry of one year from the date on which offence is committed. If in a given case complaint was filed within period of one year, but Court took cognizance after expiry of one year, the complaint whether could be quashed on the ground that Court took cognizance after expiry of one year whereas the Court was required to take cognizance within one year from the date of commission of offence, the Supreme Court held that for the

purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by Courts.

Keeping in view the facts and circumstances of the present case, I find that filing of complaint after the period of limitation, the subsequent proceedings are nothing, but abuse of process of law, therefore, this complaint is liable to be quashed. Further more, as regards the ingredients of Section 405 IPC, I find that necessary ingredients of criminal breach of trust are entrusting any person with property or with any dominion over property and that person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The ingredients of Section 405 IPC are also not made out from the averments of the complaint. There is no entrustment to the accused regarding this car. Rather, the allegations are that it had been taken away forcibly. Further more, the rights of the parties have already been determined in the civil suit. If the accused is not complying with the decree, the petitioner has remedy before the Civil Court.

Therefore, from the above, I find that as the complaint is time barred, no cognizance can be taken after the period of limitation

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prescribed under Section 468 Cr.P.C. Consequently, this petition is allowed and criminal complaint No.174/07 dated 26.8.2006 (Annexure-P.1) filed for the offences under Sections 420, 406, 419 and 506 IPC, summoning order dated 27.9.2011 (Annexure-P.2), whereby the petitioner has been summoned by learned Sub Divisional Judicial Magistrate, Assandh under Sections 406 and 506 IPC and all subsequent proceedings arising out of the same are hereby quashed.

August 18, 2015.

(Inderjit Singh)
Judge

hsp