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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 09, 2015

+ **CRL.M.C. 3292/2012 & CrI.M.A.16679/2012**

SHIKHA JAIN & ORSPetitioners
Through: Mr. J.P. Sengh, Senior Advocate,
with Mr. V.K. Jain, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ANRRespondents
Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State
Respondent No.2 in person

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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In a criminal complaint for the offence of defamation, petitioner has been summoned as an accused vide order of 28th June, 2012, which is assailed in this petition.

At the hearing, learned senior counsel for petitioners had submitted that in an application under Section 156 of Cr.P.C., defamatory averments were purportedly made by petitioner against second respondent and the said application was filed in the year 2001 by petitioner and the period of limitation for filing the complaint for the offence of defamation has to be reckoned from the date of the said application.

It was pointed out that the complaint in question has been filed in the year 2010 and is hopelessly barred by time as limitation period for filing of the said application is of three years.

Attention of this Court was drawn to Apex Court's decision in *Surinder Mohan Vikal v. Ascharj Lal Chopra* AIR 1978 SC 986 and a decision of this Court in CRL.M.C.1187/2010 titled *Ms. Romy Khanna v. State (Govt. of NCT of Delhi) New Delhi & Ors.* decided on 4th July, 2011 to submit that no cognizance of the offence in a time barred complaint can be taken.

Respondent No.2 appeared in person and chose to argue this petition himself. It was vehemently submitted by respondent No.2 that in pursuance to an application under Section 156 of Cr.P.C., FIR No.445/2001 was registered at P.S. Sadar Bazaar, District Saharanpur, Uttar Pradesh under Sections 406/498-A of IPC and the said FIR stands quashed by the High Court of Allahabad in the year 2007 and thereafter, the instant complaint has been filed and the period of limitation has been computed from the year 2007 and this complaint has been filed in the year 2010 and thus, within the period of limitation. Reliance was placed upon Apex Court's decision in *Arun Vyas & Anr. v. Anita Vyas* JT 1999 (4) 421 to submit that the question of limitation is required to be considered in the light of Section 473 of Cr.P.C., which empowers the court to take cognizance even after the period of limitation.

It was submitted that even if the cognizance of the offence of defamation and forgery is taken without taking note of Section 468 of Cr.P.C., still the most appropriate stage at which petitioner-accused can

plead for discharge, is the stage of framing of charge. Thus, it was submitted that this petition does not deserve to be entertained at this stage.

Upon hearing and on perusal of the impugned order, the material on record and the decisions cited, I find that the decision of Apex Court in *Arun Vyas (supra)* is of no avail to the case of respondent-accused as the stage of hearing on the point of framing of charge will not be available in this summons trial case.

In the instant case, Notice under Section 251 of Cr.P.C. has not yet been framed but the question which goes to the root of the matter is as to whether cognizance of the offence in a time barred complaint can be taken by resorting to Section 473 of Cr.P.C. or not?

During the course of hearing, it was pointed out that the quashing of FIR No.445/2001 was not on merits but was on jurisdictional ground. Apex Court in *Surinder Mohan (supra)* has declared in no uncertain terms that it is not permissible for the courts to take cognizance of the offence after the period of limitation and the limitation for the offence of defamation is three years, which is to be computed from the date of the offence.

Apparently, impugned order of 28th June, 2012 does not deal with the limitation aspect at all and so, it is rendered unsustainable. Consequentially, the impugned order of 28th June, 2012 is hereby quashed with direction to trial court to consider the limitation aspect, which goes to the root of the matter and thereafter, to decide whether to summon petitioner as an accused or not. The applicability of Section 473 of

Cr.P.C. be also considered by the trial court after hearing the respondent-complainant. Let second respondent appear before trial court on 26th March, 2015 for hearing on the point of summoning in the complaint case in question.

With aforesaid directions, this petition and the application are disposed of while refraining to comment upon the merits of this case.

(SUNIL GAUR)
JUDGE

MARCH 09, 2015

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