

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30057 of 2013

Arising Out of PS.Case No. -522 Year- 1999 Thana -PATRAKARNAGAR District- PATNA

1. Ajit Kumar S/O Sri Raghunandan Prasad Singh R/O Village Chandrapura Khurd, P.S. Alauli, District Khagaria.
2. Jay Shankar Prasad S/O Ram Ratan Sah R/O Village Chhoti Ballia, P.S. Ballia, District Begusarai.
3. Sambhu Sharan S/O Shiv Shankar Sah R/O Village Gaura, P.S. Teghra, District Begusarai.
4. Raj Kumar S/O Biran Prasad R/O Village Sanaha (Naya Tola), P.S. Sahebpur Kamal, District Begusarai.

.... Petitioner'ss

Versus

The State of Bihar.

.... Opposite Party

Appearance :

For the Petitioners/s : Mr. Shubesh Pandey, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 02-08-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioners seek quashing of the order dated 10th September, 2012 passed by the learned Chief Judicial Magistrate, Patna in Patrakar Nagar P. S. Case No. 522 of 1999, whereby cognizance of the offences punishable under Sections 419, 465 and 120-B of the Indian Penal Code (for short 'IPC') has been taken against the petitioners and they have been summoned to face the trial.



2. The first information report (for short 'FIR') of Patrakar Nagar P. S. Case No. 522 of 1999 was instituted on the basis of written report of Center Superintendent-cum-Principal of College of Commerce, Patna on 12th September, 1999. It has been alleged in the FIR that the petitioners and others were appearing in the 22nd Primary Teachers Examination in place of some other candidates.

3. On the basis of the aforesaid allegation, the FIR was registered under Section 465, 468, 471, 419 and 120-B of the IPC. On completion of investigation, the police found the allegation to be true against the petitioners and others under Sections 465, 419 and 120-B of the IPC.

4. Accordingly, a report under Section 173(2) of the CrPC vide Charge-Sheet No. 161 of 2012 dated 31.07.2012 was filed in the court of Chief Judicial Magistrate, Patna.

5. On perusal of the police report as also the other materials available on record vide order dated 10th September, 2012, learned Chief Judicial Magistrate, Patna took cognizance of the offences punishable under Sections 465, 419 and 120-B of the IPC against the petitioners and 24 other co-accused persons and summoned them to face trial. The said order is under challenge in the present case.



6. It has been submitted by Mr. Shubhesh Pandey, learned counsel for the petitioners that the impugned order taking cognizance of the offence is certainly on complete non-application of mind and has been passed in the most mechanical manner. He has submitted that the order taking cognizance is hit by the provision prescribed under Section 468 of the CrPC, as the alleged occurrence is said to have taken place on 12th September, 1999 for which an FIR was instituted on the same date, but the learned Chief Judicial Magistrate took cognizance of the offences punishable under Sections 465, 419 and 120-B of the IPC vide order dated 10th September, 2012. He has submitted that the for offences under which cognizance has been taken, the maximum sentence which could have been awarded is three years, or with fine, or with both and in that case, in view of Section 468(2)(c), no cognizance could have been taken after the expiry of the period of limitation of three years from 12th September, 1999. He has also submitted that the prosecution did not file any application for condonation of period of limitation and the impugned order also does not reflect that the learned Magistrate has condoned the period of limitation prescribed under Section 468 of the CrPC.

7. Learned Additional Public Prosecutor appearing on behalf of the State has conceded that the order impugned has

been passed beyond the period of limitation. However, he has contended that in view of the provisions prescribed under Section 473 of the CrPC, the learned Chief Judicial Magistrate was empowered to take cognizance of the offences even after expiry of the period of limitation.

8. I have heard respective counsel for the parties and perused the record.

9. Section 468 of the CrPC bars taking cognizance of the offence after the lapse of the period of limitation, which 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.”

10. From a reading of Section 468(2)(c) of the CrPC, it would be evident that the court would be debarred from taking cognizance of the offence after expiry of three years if the offence is punishable with imprisonment for a period exceeding one year but not exceeding three years.

11. The provisions of Section 468 of the CrPC are mandatory and cognizance taken beyond the period of limitation would be bad in the eye of law. The offences under which the learned Chief Judicial Magistrate has taken cognizance in the present case are Sections 465, 419 and 120-B of the IPC.

12. The punishment prescribed for the offences under Sections 419 and 465 of the IPC is as under:-

- “(i) Section 419 of the IPC - imprisonment for a term which may extend to three years, or with fine, or with both.*
- (ii) Section 465 of the IPC- two years, or with fine, or with both.”*

13. Further, Section 120-B of the IPC deals with the offence of criminal conspiracy to commit an offence. In case an



accused is a party to a criminal conspiracy punishable with death, or imprisonment for life, or rigorous imprisonment for a term of two years or upwards, punishment would be in the same manner as if he had abetted such offence. Thus, the offence alleged under Section 120-B of the IPC in the present case is to be read with other offences under which the offence has been committed, i.e., Sections 419 and 465 of the IPC.

14. As noted above, the maximum punishment prescribed under Section 419 of the IPC is three years, as such, for the offence under Section 120-B of the IPC, the maximum punishment, which could have been awarded to the petitioners would be three years, in the present case.

15. In view of the discussions made, hereinabove, it would be evident that the most severe punishment in the present case would be imprisonment for three years. In view of sub-section (3) of Section 468 of the CrPC, it is evident that the period of limitation in relation to offences, which may be tried together has to be determined with reference to the offence, which is punishable with most severe punishment. The most severe punishment in the present case would be imprisonment for three years. Hence, in view of the mandatory provisions prescribed under Section 468(2)(c) of the CrPC, cognizance could have been taken by the court of

Magistrate within three years from the date of institution of the FIR and not thereafter.

16. As noted above, in the present case, since the alleged occurrence took place on 12th September, 1999, in view of the provision prescribed under Section 468(2)(c) of the CrPC the limitation for taking cognizance of the offence expired on 12th September, 2002 whereas the impugned order taking cognizance of the offences has been passed on 10th September, 2012.

17. It is true that Section 473 of the CrPC gives discretion to the court to take cognizance of the offence after expiry of 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 it is necessary so to do 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 not even referred to the provisions prescribed under Section 473 of the CrPC. He 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.

18. For the reasons assigned, hereinabove, the impugned order dated 10th September, 2012 passed by the learned

Chief Judicial Magistrate, Patna in Patrakar Nagar P. S. Case No. 522 of 1999 cannot be sustained in law.

19. Accordingly, it is set aside. As a consequence thereof, the entire proceedings arising out of Patrakar Nagar P. S. Case No. 522 of 1999 are also set aside.

20. The application stands allowed.

(Ashwani Kumar Singh, J.)

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