

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.524 of 2015

Arising Out of PS.Case No. -156 Year- 2011 Thana -ARA NAWADA District- BHOJPUR

Radheshyam Sharma Son of Late Ganga Sharma, resident of Mohalla-Karman
Tola, P.S-Ara Nawada, Distt.Bhojpur

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Baxi S. R. P. Sinha, Sr. Advocate
Mr. Rahul Nath, Advocate
For the Opposite Party/s : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-03-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioner seeks quashing of the order dated 25.11.2014 passed by the learned Chief Judicial Magistrate, Bhojpur at Ara in Ara Nawada P. S. Case No. 156 of 2011 by which he has taken cognizance of the offence punishable under Sections 341, 323, 506, 504, 354 and 34 of the Indian Penal Code (for short “IPC”) against the petitioner and others.

2. The FIR, in question, was registered on the basis of written report dated 24.03.2011 submitted by one Sitaram Sharma before the Officer-in-charge of Ara Police Station. The



informant has alleged that the petitioner, his wife Bhagwati Devi and their three sons, namely, Sanjay Sharma, Suman Sharma and Shani Sharma assaulted him and his wife and ousted them from their house. He has further alleged that they snatched Rs.5000/- from his pocket and a golden chain of his wife. They also took away telephone set and utensils. He also alleged that when he was absent, Santosh Sharma and Sanjay Sharma forcibly entered into the house and tried to outrage the modesty of his wife.

3. On the basis of the aforesaid allegations, the FIR was registered under Sections 341, 323, 384, 506, 504, 379, 354/34 of the IPC. However, on completion of investigation the police found the allegation to be true only for the offences punishable under Sections 341, 323, 506, 504, 354/34 of the IPC and accordingly a report under Section 173(2) of the CrPC was filed in the court.

4. On perusal of the police report as also the other materials available on record the learned Chief Judicial Magistrate, Bhojpur at Ara took cognizance of the offences vide order dated 25.11.2011. The said order is under challenge in the present case.

5. It has been contended by Mr. Baxi S. R. P. Sinha, learned Senior Counsel for the petitioner that the impugned order taking cognizance is as a result of complete non-application



of mind and has been passed in the most mechanical manner. He has further contended that the order taking cognizance is hit by the provision prescribed under Section 468 of the CrPC. He has submitted that the alleged occurrence is said to have taken place on 24th March 2011 for which an FIR was instituted on the same day. However, on perusal of the police report submitted under Section 173(2) CrPC the Chief Judicial Magistrate took cognizance of the offences under Sections 341, 323, 506, 504, 354 and 34 of the IPC vide order dated 25.11.2014. He would further submit that the offences under which the cognizance has been taken the maximum sentence which could have awarded is two years 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 24.03.2011. He would further contend that the prosecution has not filed any application for extension 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 CrPC

6. Dr. Mayanand Jha, learned Additional Public Prosecutor for the State has conceded that the order impugned has been passed beyond the period of limitation. However, he has contended that Section 473 CrPC gives discretion to the court to

take cognizance of the offence after expiry of the period of limitation

7. I have heard learned counsel for the parties and perused the record.

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

9. A perusal of Section 468(2)(c) of the CrPC would make it 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 term exceeding one year but no exceeding three years.

10. The provisions of Section 468 CrPC are mandatory and cognizance taken beyond the period of limitation would be bad in the eye of law.

11. As noted above, the offences under which the court of Magistrate has taken cognizance are Sections 323, 506, 504 and 354 of the IPC. The punishment prescribed for the aforesaid offences at the relevant time was as under:-

“ (i) Section 323 IPC – Imprisonment for one year or fine of Rs.1000/- or both;

(ii) Section 504 IPC –Imprisonment for two years or fine, or both;

(iii) Section 506 IPC – Imprisonment for two years or fine, or both;

(iv) Section 354 IPC – Imprisonment for two years or fine, or both.”

12. A perusal of the provisions under which

cognizance has been taken would make it evident that the maximum punishment prescribed thereunder is two years.

13. A perusal of clause (3) of Section 468 of the CrPC would make it 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 the most severe punishment.

14. The most severe punishment in the present case would be imprisonment for two years. Hence, in view of the mandatory provision prescribed under Section 468(2)(c) of the CrPC, the cognizance should have been taken by the learned Magistrate within three years from the date of institution of the FIR.

15. In the present case, the alleged occurrence took place on 24.03.2011 for which an FIR was instituted on the same day. In view of the provisions prescribed under Section 468(2)(c) of the CrPC, the limitation for taking cognizance of the offence expired on 24.03.2014, whereas the impugned order has been passed on 25.11.2014.

16. It is true that Section 473 of the CrPC gives discretion to the Court to take cognizance of the offence after expiry of the 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 that it is necessary to do so 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 also not assigned any reason for condoning the delay. The learned Magistrate 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. The expression “in the interest of justice” in Section 473 of the Code cannot be incorporated to mean ‘in the interest of prosecution’.

17. For the reasons assigned, hereinabove, the impugned order dated 25.11.2014 cannot be sustained in law. Accordingly, the order dated 25.11.2014 passed by the learned Chief Judicial Magistrate, Bhojpur at Ara in Ara Nawada P. S. Case No. 156 of 2011 is quashed. The application stands allowed.

(Ashwani Kumar Singh, J.)

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