

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 181 of 2014**

- Ashok Sonwani S/o Late Shri Goverdhan Sonwani Aged About 44 Years At Present Working As A Range Officer, Mardapal, Forest Division, Jagdalpur, Distt. Bastar, Ps Kanker, Civil And Revenue District. Kanker C.G. At Present R/o Gram Chhura, P.S. Chhura, Distt. Raipur C.G.

---- Applicant**Versus**

- State Of Chhattisgarh Through Ps Kanker, Civil And Rev. Distt. Kanker C.G.

---- Respondent

For Applicant	:	Mr. Vishnu Koshta Advocate
For Respondent/State	:	Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER****Reserved on 17/11/2016****Delivered on 28 /11/2016**

1. The present Revision Petition has been preferred challenging the judgment of conviction and sentence dated 30.10.2012 which has been affirmed by the Lower Appellate Court i.e. Additional Sessions Judge (F.T.C.), North Bastar, Kanker in Criminal Appeal No. 20/2012. Vide the said judgment dated 07.03.2014 the Court below has confirmed the judgment of conviction dated 30.10.2012 passed in Criminal Case No. 776/2010 by the Chief Judicial Magistrate, Kanker.
2. The relevant facts for adjudication of the present dispute is that the present applicant was working as Range Officer, Forest Division, Kanker. The Complainant in the instant case are 4 lady Forest Guard namely Smt.

Leena Kashyap, Smt. Karuna Bhardwaj, Smt. Sharada Bhardwaj and Smt. Shiyan Dhruw. It is said that they were all working as sub-ordinate to the present applicant. The dispute arose when a written complaint dated 13.04.2010 was submitted to the State Women's Commission whereby it was held that the applicant herein was in habit of misbehaving with the complainant with an intention of outraging their modesty. In the complaint the period during which allegation against the present applicant was made was for the period between Jan 2009 to August, 2009.

3. It would be relevant at this juncture to mention that initially an oral complaint was made to the higher authorities in the department. The department had conducted a preliminary inquiry but could not find any strong proof in respect of the allegation and therefore no departmental action was initiated against the applicant. Subsequently, on a complaint made to the State Women's Commission the said Women's commission had sent a report to the Superintendent of Police, Kanker who in turn ordered the police station, Kanker to register a case against the applicant and accordingly an FIR was registered against the applicant for the offence punishable under Section 509 of the I.P.C. on 01.09.2010. Thereafter, the charge sheet was filed and the matter was put to trial before the Chief Judicial Magistrate registered as Criminal Case No. 776/2010 for the offence under Section 509 I.P.C.. After conclusion of the trial, the Court below found the applicant guilty for the said offence and having convicted sentenced him to undergo simple imprisonment for six months with fine of Rs. 500/- vide its judgment dated 30.10.2012. Aggrieved with the judgment of the Court below dated 30.10.2012 the applicant preferred an appeal which was registered as Criminal Appeal No. 20/12 before the Additional Sessions Judge (F.T.C.), North Bastar, Kanker. The Appellate

Court also vide its judgment dated 07.03.2014 affirming the decision of the Trial Court confirmed the conviction for the offence under Section 509 I.P.C., leading to the filing of the present Revision Petition.

4. Sh. Vishnu Koshta Counsel appearing for the applicant submitted two fold arguments. Firstly, the entire case of the prosecution is not sustainable for the reason that the police authorities have taken cognizance of the offence beyond the period of limitation as is prescribed under the provisions of the Cr.P.C. The second limb of the argument by Sh. V. Koshta is the evidence which have come on record also there were major contradictions, omissions and improvements in the statement of the complainants as recorded during the course of the evidence when compared to the statements initially made. It was contended by Sh. Kostha that the applicant has been falsely implicated in the case on account of the fact that the applicant would not let the complainants to sit idle and would always assign some duties or the other so as to extract work from them and therefore to teach a lesson the complainants have filed the complaint. It is contended by the applicant that the Prosecution has not been able to establish the case before the Court by leading proper cogent evidence so as to establish the case beyond reasonable doubt and thus conviction of the applicant on both grounds is not sustainable and deserves to be set aside / quashed.
5. The State Government however opposing the Petition submits that there is no illegality or infirmity in the judgment passed by the two Court below. Due process of law have been taken into consideration while registering the complaint and that there is sufficient material produced before the Court below during the course of trial, for the Court below to reach to the

conclusion of holding the applicant guilty of having committed the offence under Section 509 of the I.P.C. and therefore prayed for the rejection of the Revision Petition holding it to be devoid of merits.

6. Having considered the contentions put forth on either side and perusal of the records, this Court is of the view that while proceeding with the two fold arguments put forth by the Counsel for the applicant, it would be just and proper to first decide the question of limitation and then if necessary to proceed further to decide the case on its merits.
7. So far as the issue of limitation is concerned it would be trite to first appreciate the relevant provision of law in this regard. Primarily since the charges against the applicant being one under Section 509 of the IPC it would be relevant to refer to the said section before dealing with the procedural aspects. For ready reference Section 509 IPC is reproduced herein under:

“509. Word, gesture or act intended to insult the modesty of a woman - Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”

8. A plain perusal of the aforesaid provision of law clearly stipulates that the maximum imprisonment which can be imposed for the said offence can be extended up to one year or with fine or with both. In dealing with the question of limitation the relevant provision of law in this regard is section 468 of the Cr.P.C. which for ready reference again is reproduced herein 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 taken 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. From the aforesaid provision what is clear is the fact that the so far as the offence which has been attributed upon the applicant which is Section 509 I.P.C. and for which maximum sentence which can be imposed is upto one year it would be clause (b) of the Subsection 2 of the Section 468 which would be relevant and which clearly enunciates that the period of limitation for taking cognizance is one year from the date of commission of the offence.

10. It is pertinent to mention that it is only one single section which has been charged against the applicant which is section 509 IPC and as such Subsection 3 the Section 468 Cr.P.C. does not come into play. Another aspect which has to be considered is the fact that the Section 473 Cr.P.C. deals with the circumstances in case if the Court intends to take cognizance beyond the period of limitation. For ready reference Section 473 also is reproduced herein under:-

“473. Extension of period of limitation in certain cases - Notwithstanding anything contained in the foregoing

provisions of this Chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.”

11. At this juncture it would be trite to mention that in the entire proceeding there does not appear to have any proceeding drawn under Section 473 of the CrPC so as to bring the case of the applicant within the ambit of Section 473 Cr.P.C. or to put it otherwise whether the trial Court had condoned the delay caused in taking cognizance in invoking the provision of Section 473 of the Cr.P.C. In the absence of any proceeding under Section 473 of the Cr.P.C. all that this Court has to see is that is whether the cognizance against the present applicant was taken within the period as is prescribed under Clause (b) Sub-section 2 of the Section 468 Cr.P.C.
12. In the light of the aforesaid legal provision we shall now consider some judicial pronouncements in this regard by the Hon’ble Supreme Court and the High Court so far as Section 468 is concerned:-

1. The Supreme Court in the case of **State of Punjab v. Sarwan Singh [AIR 1981 SC 1054]** at paragraph No. 3 has held as under:-

“3. The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing case after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings

culminating in the conviction of the respondent herein is non est.....

2. The Supreme Court In the case of **State of Himachal Pradesh v. Tara Dutt and another [AIR 2000 SC 297]** at paragraph Nos. 5 & 7 has held as under:-

“5.The plain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure makes it crystal clear that under sub-section (2) (a) of Section 468 where the offence for which the accused is charged is punishable with fine only, the prosecution must be launched within six months from the date of commission of the offence. Similarly, under sub- section (2)(b) of Section 468, the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year and under sub-section (2)(c) of the said Section where the offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation provided is three years for taking cognizance. Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment) Act, 1978, provides that in relation to offences which may be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of Section 468 makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of the offence charged and not in respect of offence finally proved. This being the position, in the case in hand, when the respondents were charged under Section 468 read with Section 120-B for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation.....

7. Section 473 confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously,

therefore in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence.....”

3. The Supreme Court in the case of **M/s Zandu Pharmaceutical Woks Ltd. And Others v. Md. Sharaful Haque and Others [AIR 2005 SC 9]** at paragraph No. 14 has held as under:-

“14. The learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of Section 648(2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code. High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5.12.2001 was in response to the letter of complainant dated 24.11.2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised.....

4. **In the case of Japani Sahoo v. Chandra Sekhar Mohanty [AIR 2007 SC 2762]** the Supreme Court at paragraph Nos. 51 & 53 has held as under:-

“51. We are in agreement with the law laid down in *Bharat Damodar*. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law.....

53. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as 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 a Court. We, therefore,

overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.”

5. The High Court of Madhya Pradesh in case of **Harishankar & Another v. State of M.P. [2009 (2) C.G.L.J. (MP)]** at paragraph Nos. 7 & 8 referring the above mentioned judgments of the Supreme Court has held as under:-

“7. Applicants are charged under Section 224 of IPC and 31(B) of Prisoners Act, 1900, in both these offences, applicants can be punished with imprisonment for either description for a term which may extend to 2 years or with fine or with both. In these circumstances, as provided in Section 468(2)(C) of Cr.P.C. the period of limitation is 3 years in these circumstances the Court could not have taken cognizance of the offence under Section 224 of IPC and 31(B) of Prisoners Act, 1900 after 3 years. Further Section 473 of Cr.P.C. provides extension of period of limitation in certain cases which reads as under :-

“473. *Extension of period of limitation in certain cases* - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of any offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. “

8. This section has given judicial powers and discretion to take cognizance even after the limitation period, but if sufficient cause is shown or interest of justice demand so. Power under Section 473 are discretionary and wider than Section 5 of Limitation Act. Whenever a challan is filed, Court must see that it is in limitation as provided in Section 468 of the Code. If it is time bar, opportunity should be given to both parties to satisfy the Court for purpose of condonation of delay. Delay has to be condoned with exercise of judicial discretion as well as by speaking order as held in *Krishna Sanghi and Others V. State of M.P.[1977 Cri.L.J.90 (MP)]* and *State of Hichal Pradesh vs. Tara Dutt [AIR 2000 SC 297]*

13. In the light of the authoritative judicial pronouncement as referred in the preceding paragraph this Court has no hesitation in reaching to the conclusion that so far as case of the applicant is concerned cognizance was taken beyond the period of limitation as is prescribed under Section 468 of the Cr.P.C.
14. Once when cognizance has been taken beyond prescribed period of limitation the benefit of which would go in favour of the applicant and the entire case of the prosecution deserves to be and is liable to be quashed only on this ground.
15. Thus, in the light of the judicial pronouncements referred to in the preceding paragraph this Court holds that the case of the prosecution is not sustainable for the reason that the cognizance has been taken beyond the period of one year from the date of offence. Therefore, the entire case of the trial Court and the Appellate Court therefore deserves to be and is hereby set aside / quashed.
16. The fact that this Court has quashed the entire proceeding on the technical ground of limitation, thus this Court deliberately is not venturing in to the second fold of argument of the applicant so far as the merits of the case is concerned.
17. For the aforesaid reasons the present Revision Petition succeeds and the two orders passed by the Trial Courts well as lower Appellate Court is set aside and it is held that the applicant accordingly stands acquitted from the charges leveled against him.

Sd/-

P. Sam Koshy
JUDGE