

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 471 OF 2015

Rajesh S/o Kashiram Karad,
Age : 43 yeas, Occu. : Agri.,
R/o : Rameshwar, Tq. & Dist. Latur .. Petitioner

Vs.

- 1] The State of Maharashtra
Through Police Station, Gategaon,
Tq. & Dist. Latur
- 2] Sharad S/o Manikrao Shinde,
Age 46 years, Occu.: Agri.,
R/o Kasra, Tq. & Dist. Latur .. Respondents

AND
CRIMINAL APPLICATION NO. 4441 OF 2015
IN
CRIMINAL WRIT PETITION NO. 471 OF 2015
(Sharad S/o Manikrao Shinde
Vs.
Rajesh Kashiram Karad and anr.)

Mr. V.C. Patil, Advocate h/f Mr. U.S. Bondar, Advocate for the petitioner in Criminal Writ Petition No.471 of 2015 and for respondent no.1 in Criminal Application No. 4441 of 2015

Mr. H.D. Deshmukh, Advocate for respondent no.2 in Criminal Writ Petition No.471 of 2015 and for applicant in Criminal Application No. 4441 of 2015

Ms. R.P. Gour, APP for the respondent/State in both matters

CORAM : V.K. JADHAV, J.
DATE : 18/10/2016

ORAL JUDGMENT :

Criminal Writ Petition is heard finally with
consent of the learned counsel for the parties.

2. Being aggrieved by the order below Exhibit 1 dated 21/01/2012, passed by learned Chief Judicial Magistrate, Latur in Criminal Misc. Application no. 483 of 2004 and the judgment and order passed by the learned II Additional Sessions Judge, Latur dated 21/01/2015 in Criminal Revision No. 6 of 2015, the original accused has preferred this Criminal Writ Petition.

3. Brief facts giving rise to the present Criminal Writ Petition, are as follows :-

. On the basis of the complaint lodged by respondent no.2 herein, crime no. 78 of 2000 came to be registered at Gategaon Police Station against the present petitioner and others for having committed offences punishable under section 147,148, 149, 323, 427 of the Indian Penal Code. After due investigation, the concerned Police Station has submitted the chargesheet before the Chief Judicial Magistrate, Latur on 24/8/2004. On presentation of the chargesheet before the Court, the Public Prosecutor has filed Criminal Misc. Application No. 483 of 2004 before the Chief Judicial Magistrate in connection with Criminal Case bearing RCC No. 644 of 2004 for condonation of delay in filing the

chargesheet. The learned Chief Judicial Magistrate after giving an opportunity of being heard to both the parties, allowed the said application No. 483 of 2004 and thereby condoned the delay in filing the chargesheet in RCC No. 644 of 2004. The learned Chief Judicial Magistrate has directed that as RCC No. 644 of 2004 is part heard, the prosecution to proceed further in accordance with law and to co-operate the Court for early disposal of the matter.

. Being aggrieved by the same, the present petitioner and other two accused persons preferred Criminal Revision No. 6 of 2015 before the Sessions Court, Latur. The learned II Additional Sessions Judge, Latur by impugned judgment and order dated 21/1/2015 dismissed the revision and confirmed the order passed by the Chief Judicial Magistrate, as aforesaid. Being aggrieved by the same, the present writ petition is preferred.

. Initially, the said Criminal Misc. Application No. 483 of 2004 came to be disposed of by the learned Chief Judicial Magistrate by order dated 29/10/2004 and thereby condoned the delay in filing chargesheet against the present petitioner and other accused persons in RCC

No. 644 of 2004. Thereafter, the charge has been framed in the matter by the learned Chief Judicial Magistrate against the accused in the said case including the present writ petitioner and since all the accused persons pleaded not guilty to the charge and claimed to be tried, the prosecution has examined in all six witnesses to substantiate the charges levelled against them. However, when the prosecution has examined PW6, instead of cross-examining the said witness, counsel representing the accused in the said case, requested the Court to defer the cross-examination, as accused wanted to challenge the said order dated 29/10/2004 whereby delay was condoned in filing the chargesheet exparte by the Chief Judicial Magistrate.

. Accordingly, the accused persons including the present writ petitioner preferred Criminal Application No. 1284 of 2010 before this Court against the order dated 29/10/2004 passed by the learned Chief Judicial Magistrate, Latur in Criminal M.A. No. 483 of 2004. This Court, by order dated 30/4/2010, partly allowed the said application and directed the Chief Judicial Magistrate to decide the said application bearing Criminal M.A. No. 483 of 2004 afresh.

. Thereafter, the learned Chief Judicial Magistrate, by order dated 21/1/2012, after giving opportunity of being heard to both the parties, allowed Criminal M.A. No. 483 of 2004 in RCC NO. 644 of 2004 and thereby condoned the delay in filing the chargesheet. Being aggrieved by the same, the present petitioner and two other accused persons preferred Criminal Application No. 1680 of 2012 before this Court. This Court has disposed of the said Criminal Application in view of the alternate remedy available. The applicant/accused preferred Revision No. 69 of 2012 before the Sessions Court and the learned Sessions Judge has dismissed the said Criminal Revision on the ground that the same has been preferred after the expiry of period of limitation.

. Being aggrieved by the same, the petitioner/original accused filed Criminal Writ Petition no. 754 of 2013 before this Court and this Court by order dated 9/1/2014 directed the petitioner/original accused to prefer revision afresh before the Sessions Court alongwith application for condonation of delay and further directed the Sessions Judge to consider the time spent by the petitioner/accused in prosecuting the

various proceedings before the various forums.

. In view of the said directions, the petitioner/original accused filed Criminal M.A. No. 10 of 2014 alongwith Criminal Revision Application and said application for condonation of delay was allowed subject to payment of costs of Rs.1000/-. After payment of costs, the Criminal Revision Application was registered as Criminal Revision No. 6 of 2015. Learned II Additional Sessions Judge, Latur by impugned judgment and order dated 21/1/2015 dismissed the Revision Application. Hence, the present Writ Petition.

4. Learned counsel for the petitioner submits that in the year 2000, in respect of the incident occurred on the same day, two crimes came to be registered against the present petitioner and other accused persons at Police Station, Gategaon. Police Station, Gategaon has registered crime no. 78 of 2000 against the petitioner and others and also registered crime no.79 of 2000 against the petitioner and some other persons. So far as crime no. 79 of 2000 is concerned, Police Station, Gategaon, after due investigation, submitted chargesheet before the Court on 5/1/2001. Learned counsel submits that as per the Court's endorsement on the chargesheet,

the chargesheet was received on 24/8/2004, however, the learned A.P.P. has filed application before the Court on 6/9/2004 under section 473 of the Code of Criminal Procedure for condonation of delay. The learned A.P.P. has submitted said application on the ground that large public interest is involved in the case and in the interest of justice, the chargesheet may be accepted. It has also contended in the said application that the officers of Police Station, Gategaon were frequently transferred and the chargesheet could not be submitted to the Court within time. It has also contended in the said application that the accused persons are political persons and there is every possibility to pressurize the Government servant. It has further stated in the application that if the chargesheet is not accepted, then that will cause injustice to the complainant and other injured witnesses as well as public at large. Learned counsel submits that frequent transfers of the Police officers from the Police Station and the likelihood of the political pressure applied on the Police by the petitioner/accused cannot be a ground to condone the delay in filing the chargesheet. Learned counsel submits that the complaint has been lodged by the complainant on 4/12/2000, however, the chargesheet

came to be filed on 24/8/2004 and, thereafter, the cognizance was taken by the Chief Judicial Magistrate and by order dated 30/10/2004 the process has been issued against the accused. Learned counsel submits that there is inordinate delay of 4 years in filing chargesheet in the matter and the delay has not been properly explained. Learned counsel submits that in view of the bar of section 468 of the Cr.P.C., no cognizance of such a case after the lapse of period of limitation, can be taken for an offence of the category as specified in sub-section 2 of section 468 of the Cr.P.C. Learned counsel submits that the period of limitation in the instant case is maximum 3 years considering the maximum punishment prescribed for the offence punishable under section 148 of the Indian Penal Code. Learned counsel submits that the chargesheet is filed after the expiry of the said period without explaining the delay or without giving justifiable reasons for condonation of such inordinate delay. Even the parties were the same, the same Police Station has submitted the chargesheet immediately so far as crime no. 79 of 2010 is concerned. However, for no reason, chargesheet in crime no.78 of 2000 is delayed. The Court may take cognizance of an offence before the

expiry of limitation in terms of provisions of section 473 of the Cr.P.C. if the Court is satisfied on the facts and circumstances of the case that the delay has been properly explained. The prosecution agency has to give reasons for the delay and only if the Court is satisfied about the delay or if it finds that it is necessary in the interest of justice, to do so, it may condone the delay and take cognizance of the case beyond the period of limitation.

. In the instant case, the prosecution agency has not explained the delay to the satisfaction of the Court nor pointed out any special reasons necessary in the interest of justice, to condone such an inordinate delay in filing the chargesheet.

5. Learned counsel for the petitioner submits that the learned Magistrate has erroneously observed that the date of the filing of the complaint is material and the delay on the part of the Investigating/Police machinery for filing chargesheet in the Court or taking cognizance of the matter by the Court, cannot be considered while computing the period of limitation. Learned counsel submits that the approach of the Magistrate as well as the learned Sessions Judge is not proper, correct and

legal and thus the same calls for interference.

6. Learned counsel for the respondent no.2/original complainant submits that the Five Judge Bench of the Supreme Court has dealt with this issue and the following questions were taken for consideration by the Five Judge Bench of the Supreme Court in the case of **"Sarah Mathew & Ors. Vs. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & Ors."** 2014 Cri. L.J. 586.

(a) Whether for the purposes of computing the period of limitation under section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence ?

(b) Which of the two cases i.e. Krishna Pillai or Bharat Kale (which is followed in Japani Sahoo) lays down the correct law ?

7. Learned counsel for respondent no.2 submits that even though the respondent no.2/original complainant has lodged the complaint in the concerned Police Station on the date of the alleged incident

itself, the Investigating Officer has submitted the chargesheet in the year 2004. Though apparently, there is delay of 3 years 10 months and 27 days in filing the chargesheet before the Court, in the light of the observations made by the Hon'ble Five Judge Bench of the Supreme Court, for the purpose of computing the period of limitation under section 468 of the Cr.P.C., the relevant date is the date of institution of the prosecution and not the date on which the Magistrate takes cognizance. Learned counsel submits that considering the same, the Magistrate has rightly allowed the said application and the learned Additional Sessions Judge has confirmed the said order in Criminal Revision No.6 of 2015. There is no substance in the writ petition and thus the writ petition is liable to be dismissed.

8. I have also heard learned A.P.P. for the State.

9. In "**Sarah Mathew & Ors.**", (cited supra), relied on by the learned counsel for respondent no.2, the Supreme Court has considered the earlier decision in the cases of Krishna Pillai Vs. T.A. Rajendran and Bharat Damodar Kale Vs. State of Andhra Pradesh. In Bharat Kale's case, offence under the Drugs and Magic Remedies

(Objectionable Advertisements) Act, 1954 was decided on 5/3/1999 and the complaint was filed on 3/3/2000, which was within the period of limitation of one year, however, the Magistrate took the cognizance on 25/3/2000 i.e. beyond the period of one year. In the said case, it has been observed that taking cognizance is an act of the Court over which the prosecuting agency or the complainant has no control. A complaint filed within the period of limitation cannot be made infructuous by the act of the Court which will cause prejudice to the complainant. Such a construction will be against the maxim *actus curiae neminem gravabit*, which means that the act of the Court shall prejudice no man.

. In *Japani Sahoo's* case, the complainant therein filed complaint in the Court of the concerned Magistrate, alleging commission of the offences punishable under section 161, 294, 323, 506 of the Indian Penal Code and on 8/8/1997, the learned Magistrate issued summons for the appearance of the accused. The said order was challenged by the accused mainly on the ground that no cognizance could have been taken by the Court after the period of one year of limitation prescribed under section 294 and 323 of the

Indian Penal Code. The High Court held that the relevant date for deciding the bar of limitation was date of taking cognizance by the Court and since the cognizance was taken after a period of one year and delay was not condoned by the Court by exercising powers under section 473 of the Cr.P.C., the complaint is liable to be dismissed. On appeal, the Supreme Court referred another maxim *nullum tempus aut locus occurrit regi*, which means that the crime never dies.

. The Hon'ble Five Judge Bench of the Supreme Court has considered the law of limitation in cases and also considered the provisions of chapter XXXVI of the Code of Criminal Procedure. The Supreme Court has observed that all the provisions of this chapter will have to be read cumulatively and section 468, 469 will have to be read with section 470, to understand the term 'cognizance'. The provisions of section 190 of the Code of Criminal Procedure are discussed at length and it is observed that the only harmonious construction which can be placed on section 468, 469 and 470 of the Cr.P.C. is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period and he would however be

entitled to exclude such time as is legally excludable.

In paragraph no.37 of the judgment, the Hon'ble Supreme Court has made the following observations:-

"37. We also concur with the observations in *Japani Sahoo*, where this Court has examined this issue in the context of Article 14 of the Constitution and opted for reasonable construction rather than literal construction. The relevant paragraph reads thus:

" The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalised because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law

that a Court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of *litera legis*. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and *ultra vires* Article 14 of the Constitution."

. As observed by the Supreme Court, it is not within the domain of the complainant or the prosecuting agency to take cognizance of the offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If the action of initiation of complaint has been taken within the period of limitation, the complainant is not responsible for any delay.

. In paragraph no.39 of the judgment, while concluding the issue, the Hon'ble Supreme Court has made following observations:-

"39. It is true that the penal statutes must be strictly construed. There are, however, cases where this Court has having regard to the nature of the crimes involved, refused to

adopt any narrow and pedantic, literal and lexical construction of penal statutes. See (Muralidhar Meghraj Loya & Anr. Vs. State of Maharashtra & Ors.) 43, 1976(3) S.C.C. 684 and (Kisan Trimbak Kothula & Ors. Vs. State of Maharashtra) 44, 1977(1) S.C.C. 300]. In this case, looking to the legislative intent, we have harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, we must bear in mind that Chapter XXXVI is part of the Cr.P.C., which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. See Sardar Amarjeet Singh Kalra, (N. Balaji Vs. Virendra Singh & Ors.) 45, reported in 2005(3) Bom.C.R. 370(S.C.) : 2004(8) S.C.C. 312 and Kailash."

. It is also observed that the procedural law must be liberally construed to serve as a handmaid of justice and not as its mistress.

. Thus, in paragraph no.41 of the judgment, Hon'ble Five Judge Bench of the Supreme Court concluded the issue :-

"41. In view of the above, we hold that for the purpose of computing the period of

limitation under section 468 of the Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in *Japani Sahoo* lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under section 468 of the Cr.P.C.".

10. In the instant case, the respondent no.2/complainant has immediately lodged the complaint in the concerned Police Station on the date of the alleged incident itself. Thus, the date of institution of the prosecution is material and, therefore, there is no question of delay as such in institution of prosecution. In computing period of limitation under section 468 of the Cr.P.C., the relevant date is the date of institution of the prosecution and not the date on which the Magistrate takes cognizance on the basis of chargesheet filed before it.

11. In view of above discussion, I do not find any substance in the present writ petition. Both the Courts

below have rightly considered this position and accepted the chargesheet. There is no substance in the writ petition. Hence, I proceed to pass the following order:-

ORDER

- I) Criminal Writ Petition is hereby dismissed.
- II) Rule stands discharged.

12. In view of disposal of Criminal Writ Petition No. 471 of 2015, Criminal Application No. 4441 of 2015 filed in this Writ Petition, seeking to vacate the interim relief, does not survive and the same stands disposed of.

[V.K. JADHAV]
JUDGE

arp/