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

***Judgment delivered on : June 20, 2016***

\+ CRL.M.C. 693/2016

STATE ..... Petitioner

Through: Mr. Amit Chadha, Additional Public Prosecutor for the State

versus

BINA RAMANI ..... Respondent

Through: None

**CORAM:**
**HON'BLE MR. JUSTICE P.S.TEJI**

**JUDGMENT**

**P.S.TEJI, J.**

1. By this petition filed under Section 482 of Cr. P.C. read with Article 227 of the Constitution of India against the order of discharge dated 07.09.2015 passed by learned Additional Session Judge, Special Judge, CBI-03, (PC Act) South District, Saket Courts, New Delhi.

2. Brief facts of the case are that FIR No. 493/2006 under Section 420/467/468/471/120B IPC was registered in P.S. Hauz Khas against the respondent Ms. Bina Ramani (hereinafter at some places referred as accused"). As per prosecution case, during investigation of Jessica Lal murder case in FIR No.287/1999, Police Station Mehrauli, it was revealed that accused Bina Ramani was running a Restro-Bar in the name and style of "Once Upon a Time" without any valid license for serving liquor. The owner of the said restaurant had simply obtained a

license from MCD for running an eating house. The restaurant was also registered with DCP (Licensing). It was found that the photocopies of the relevant documents submitted by accused Bina Ramani for obtaining license from Health Department of MCD for running an eating house named "Once Upon a Time" at Mehrauli Road, New Delhi i.e. Rent Receipts pertaining to property of 1990-91, "No Objection Certificate" of the land lord dated 09.09.1997, Ration Card and Bills of different shops, were forged. As per prosecution, lease of the property was granted to accused Bina Ramani vide note dated 08.05.1986 with specific condition that property would not be used for running restaurant. In order to neutralize the effect of that condition, accused prepared forged "No Objection Certificate: dated 09.09.1997 purportedly issued by one of its previous owner Sh. Diwan Chand. As per prosecution, the date mentioned below the forged signature of Sh. Diwan Chand on the "No Objection Certificate" was in the handwriting of the accused George Mailhot. During investigation, it was found that rent receipt was also forged to show that the accused was running restaurant in 1990-91. The son and nephew of Sh. Diwan Chand have confirmed the forged signature on "No Objection Certificate" and rent receipts. It was also revealed during investigation from the office of the concerned FSO that ration card was not issued by the authorities concerned.

3. Thereafter, the charge sheet was filed and after considering the facts and circumstances of the case, vide order dated 14.01.2015, learned CMM discharged the petitioner from all offences except for

the offence punishable under Section 471 IPC and directed to frame the charge under Section 471 IPC against her. The State had preferred the revision petition before the learned Additional Session Judge which was dismissed vide order dated 14.01.2015. However, the oral submission made on behalf of the respondent were treated as revision on behalf of her and accordingly the respondent was discharged from all the offences.

4. Mr. Amit Chadha, Additional Public Prosecutor for the State contended that in the revision preferred by the State, the oral submissions made by the respondent were wrongly treated as revision petition preferred on behalf of the petitioner and while dismissing the revision petition filed by the State, the oral submissions made by the respondent were allowed and she was discharged from all the offences, which is totally perverse and uncalled for.

5. It is further contended that the respondent had forged the valuable security including NOC allegedly issued and signed by the owner of the property to run the restaurant in the rented premises which is punishable under Section 465 of IPC. In addition, on account of forging the documents for the purpose of cheating besides other offences mentioned in the charge sheet, the petitioner is liable to be charged for the offence under Section 467 IPC or at least under Section 468 of IPC. Not only this, learned Additional Public Prosecutor for the State contended that there is grave error committed by learned Additional Session Judge by treating the oral plea of the

accused for discharge of offence under Section 471 IPC as a revision petition, which deprived the State of the right to rebut/meet the grounds of the said revision petition on behalf of the accused/respondent.

6. The next contention raised by learned Additional Public Prosecutor for the State was that the respondent had no valid license for serving liquor in her restaurant and had obtained license from MCD for running an eatery which was registered with DCP (Licensing). Learned Additional Public Prosecutor for the State further contended that the charges for offence punishable under Section 420/467/468/471 IPC were made out from the evidence collected by the investigating agency and the learned Additional Session Judge has discharged the respondent on the point of limitation under Section 468(2) Cr.P.C. for the charge under Section 471 of IPC. It is contended that the respondent has committed the offence of forgery with intention of cheating and the same was not barred by limitation and while using the forged documents to obtain the license for running a restaurant, the respondent is prima facie liable to be proceeded under charges punishable under Section 420/467/468/471 of IPC.

7. It is further contended on behalf of the State that there is no period of limitation provided under Section 468 of Cr.P.C. for the offences under Section 468/467 IPC. In support of his submission, learned Additional Public Prosecutor for the State relied upon the judgment of Hon'ble Supreme Court in the case of ***State of Himachal***

***Pradesh v. Tara Dutta & Anr.,* AIR 2000 SC 297.**

8. In the aforesaid facts and circumstances of the case, learned Additional Public Prosecutor for the State prayed for setting aside the order dated 14.01.2015 passed by learned Chief Metropolitan Magistrate and 07.09.2015 passed by learned Additional Session Judge.

9. I have heard the submission made by both the sides and also gone through the contents of the petition and the impugned orders passed by the learned Chief Metropolitan Magistrate as well as by the learned Additional Session Judge in this case.

10. Indisputably, the learned Chief Metropolitan Magistrate discharged the respondent from the offence under Section 420/467/468/120-B IPC, however the respondent was charged for the offence punishable under Section 471 IPC only. In a revision petition preferred by the State, on the oral submission of the respondent, the submissions made by the respondent were treated as the revision filed by the respondent and while discussing the numerous judgments in the impugned order, learned Additional Session Judge while dismissing the revision petition filed by the State discharged the respondent even for the offence under Section 471 IPC.

11. This Court has gone through the impugned order passed by the learned Additional Session Judge in which the judgments cited on behalf of both the sides have been considered and distinguished and

this Court finds no illegality or infirmity in suo motu calling the record of the subordinate Court on the verbal request of the respondent and observed that the case was initial registered under Section 420/467/468/4714/120-B of IPC on 04.08.2006 and the charge sheet was filed on or about 21.06.2013, i.e. after about seven years of the registration of the said FIR.

12. This Court observes that the learned Additional Session Judge vide its impugned order discharged the respondent even under offence punishable under Section 471 of IPC in the light of Section 468(2)(b) Cr.P.C. It would be relevant to reproduce Section 468 Cr.P.C., which read 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.*

13. This Court observed from the record of the case that the FIR was registered on 04.08.2006 and the charge sheet was filed on or about 21.06.2013, i.e. after about seven years after the registration of the FIR, which is clearly barred by the limitation as provided under Section 468 Cr.P.C.

14. This Court has also perused the order dated 07.09.2015 whereby the learned Additional Session Judge has elegantly dealt with the issue before him, in paragraph 17 and 18 of the impugned order. For better appreciation, paras 17 and 18 of the impugned order are reproduced hereunder:

> *"17. The careful perusal of above cited judgments makes is clear that limitation period cannot be extended by the prosecution by addition offence in the charge sheet and the limitation period will be determined with reference to the charges actually made out against the accused at the time of framing of charge.*
>
> *18. Section 471 IPC provides that whoever fraudulently or dishonestly uses a forged document as genuine knowingly or having reason to believe the same to be a forged document, he shall be punished in the same manner as if he had forged such documents. The punishment for forgery is provided under Section 465 IPC as imprisonment which may extend to two years or with fine or with both. So the combined reading of section 471 IPC and Section 465 IPC makes it clear that for the offence u/s 471 IPC, accused may be sentenced maximum to the extent of two years, or with fine, or with both. Section 468(2)(c) Cr.P.C. provides three years limitation period, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

*Therefore, for the offence u/s 471 IPC, which is punishable maximum for an imprisonment of two years in accordance with Section 465 IPC, the maximum limitation u/s 468(2)(c) Cr.P.C. is three years. As per section 469 Cr.P.C., the period of limitation will commence either from the date of offence; or where the commission of the offence was not known to the person aggrieved or to the police officer, the first day on which such offence comes to the knowledge of aggrieved person or to the police officer, whichever is earlier; or on the first day on which the identity of the offender is known to the aggrieved person or to the police officer. In the present case, identity of the accused was never in dispute. At least it may be assumed that the offence and the offender came to the knowledge of the police officer conducting the investigation on the date of FIR in the year 2006. Admittedly, the charge sheet was filed in the year 2013 after about six years and therefore, the cognizance and framing of charge for the offence u/s 471 IPC was clearly barred by limitation."*

15. This Court finds no illegality or infirmity in the aforesaid reasoning given by learned Additional Session Judge and this Court finds no reason to take a different view from the said order.

16. Apart from the question of limitation the other reason exists for the discharge of accused is that when apparently charge under Section 420/467/468 IPC are not made out against the respondent, then the document used by the accused/respondent could not be termed as using of the forged document as genuine. In the present case, the accused/ respondent has been discharged from the offence under Section 467/468 IPC, i.e. forging of the document, so the alleged use of document does not subsist.

17. In view of the aforesaid discussion and the facts and circumstances of the present case, the present petition filed on behalf of the petitioner – State is dismissed and the orders dated 14.01.2015 and 07.09.2015 passed by learned CMM and the learned Additional Session Judge are upheld.

18. Finding no merit in the present petition the same is hereby dismissed.

**(P.S.TEJI)**
**JUDGE**

**JUNE 20, 2016**
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