

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39019 of 2013

Arising Out of Complaint Case No. -1434 (C) Year- 2011 District- Nalanda (Biharshariff)

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1. Janardan Prasad Verma S/O Late Guru Adhin Prasad Verma, resident of Village- Panditpur, P.S.- Rajgir, District- Nalanda, at Present Mohalla- Katara Par, Town Bihar Sharif, P.S.- Laheri, District- Nalanda.
 2. Akhilesh Dutta Verma S/O Dr. Janardan Prasad Verma, Permanent resident of Mohalla Village- Panditpur, P.S.- Rajgir, District- Nalanda at present Mohalla- Katara Par, Town Bihar Sharif, P.S.- Laheri, District- Nalanda and at Present residing at Mohalla- Flat No.-101, Aman Apartment , South Chandmari Road, P.S.- Kankarbagh, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Ravi Bhushan Prasad Verma S/O Late Achutanand Prasad Verma, resident of Village- Panditpur, P.S.- Rajgir, District- Nalanda at present residing at Amruddi Lane, Arya Kumar Road, P.S.- Kadamkuan, Town And District- Patna

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Laxmi Narayan Das, Advocate
For the State : Dr. Mayanand Jha, APP
For O.P. No. 2 : Mr. Ravi Bhushan Prasad Verma, in person

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-04-2017

Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and Mr. Ravi Bhushan Prasad Verma, learned advocate (opposite party no. 2) in person.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for



quashing the order of cognizance dated 21.11.2012 passed by learned Judicial Magistrate, 1st Class, Biharsharif in Complaint Case No. 1434 (C) of 2011 whereby finding a *prima facie* case to be made out against the petitioners under Sections 341, 323 and 504/34 of the Indian Penal Code (for short 'IPC') summons has been ordered to be issued against them.

3. Initially, complainant-opposite party no. 2 had filed a written report before the Officer-in-Charge, Rajgir Police Station, Nalanda on 12.05.2008 regarding an occurrence which is said to have taken place on 17.04.2008 whereafter Rajgir Police Case No. 71 of 2008 was registered on 12.05.2008 under Sections 341 and 323/34 of the IPC against the petitioner no. 1 Janardhan Prasad Verma and two others.

4. On completion of investigation, the police submitted final report, vide Final Report No. 90 of 2008 dated 12.06.2008, in the court of Chief Judicial Magistrate holding the dispute to be a case of civil nature.

5. It would be evident from the pleading of the parties that the complainant opposite party no. 2 filed a protest petition in the aforesaid police case on 19.07.2008. The said protest petition was in the nature of a complaint alleging that the investigation of the case was not being done in a fair and impartial



manner. The aforesaid complaint petition remained on the record of the police case for sufficiently long time.

6. It was separately registered as a complaint case vide Complaint Case No. 1434 (C) of 2011 on 03.12.2011 under the orders of the court. In the complaint, the alleged date of occurrence of offence is said to be between 17.04.2008 and 10.05.2008. Subsequently, the complainant was examined on oath. It is submitted by the complainant opposite party no. 2 that besides the complainant three other witnesses were also examined under Section 202 of the Cr.P.C. in course of inquiry whereafter, the learned Magistrate passed the impugned order dated 21.11.2012 summoning the petitioners to face trial for the offences punishable under Sections 341, 323 and 504/34 of the IPC.

7. It is submitted by the learned counsel for the petitioners that the order passed by the learned Magistrate is bad in law in view of the mandatory provisions prescribed under Section 468(2)(c) of the Cr.P.C. He submitted that the maximum punishments prescribed for the offences punishable under Sections 341, 323 and 504 of the IPC are one month, one year and two years respectively. In that view of the matter, the court was debarred from taking cognizance after expiry of three years in view of Section 468(2)(c) of the Cr.P.C.



8. In reply, the complainant opposite party no. 2, who has appeared in person submitted that the submissions made by the learned counsel for the petitioners are erroneous. He submitted that since the complaint was filed before the court in the year 2008, it would be presumed that the cognizance was taken on the date of filing of the complaint itself. He submitted that the subsequent order dated 21.11.2012 is not an order taking cognizance of the offence rather it is an order by which the petitioners have been summoned to face trial in exercise of powers conferred under Section 204 of the Cr.P.C. According to him, the crucial date for computation of period of limitation would not be the date on which summoning order was passed, but the date on which the complaint was filed. In support of his submission, he has placed reliance on a decision of the Hon'ble Supreme Court in **Bharat Damodar Kale & Anr. vs. State of A.P [2003 Cr.L.J. 4543]**.

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

10. There is no quarrel about the proposition of law argued by complainant opposite party no. 2. As a matter of fact, it is neither the date of filing of the complaint nor the date of passing the order of summoning which is crucial for computation of the



period of limitation under Section 468 of the Cr.P.C. rather the crucial date would be the date of application of judicial mind by the judicial Magistrate over a complaint.

11. Here in the present case, fortunately, the facts of the case are not in dispute. The complainant opposite party no. 2 had filed a petition in the nature of protest in the police case on 19.07.2008. The said petition remained on the file of the police case. The learned Magistrate never applied his mind over it before directing the same to be registered as a separate complaint. The complainant himself submits that the same was sent for registration of complaint on 03.12.2011. Thus, there is no dispute to the fact that the very complaint in which summoning order dated 21.11.2012 has been passed was registered on 03.12.2011. Hence, there was no occasion for the court to apply its mind over the complaint prior to its registration on 03.12.2011. As noted above, indisputably, the date of occurrence of offence, according to the complainant, is between 17.04.2008 and 10.05.2008. Hence even if I presume that the learned Magistrate had applied his mind to the facts stated in complaint on the date of its registration, the same was done after lapse of more than three years and six months.

12. Chapter XXXVI of the Cr.P.C. deals with limitation for taking cognizance of certain offences. Section 467 of



the Cr.P.C. defines limitation for the purpose of that chapter to mean the period specified in Section 468 of the Cr.P.C. for taking cognizance of offence. Bar to taking cognizance on the expiry of period of limitation and extension of period of limitation in case of continuing offence is mentioned in Section 472 of the Cr.P.C. and in case other than a continuing offence it contains in Section 469 of the Cr.P.C. The provisions for exclusion of time in computing period of limitation in certain cases are incorporated in Sections 470 and 471 of the Cr.P.C.

13. The object of Chapter XXXVI in the Cr.P.C. is to protect persons from prosecution either in FIR or complaint which may turn out to be vexatious. Taking note of various aspects, the parliament classified offences into two categories, having regard to the gravity of the offences, on the basis of punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for the offences for which punishment specified is imprisonment for a term not exceeding three years. In such cases also wide discretion is given to the Court in the matter of taking cognizance of offence after expiry of the period of limitation. Section 473 of the Cr.P.C. provides that if any Court is



satisfied on the facts and in the circumstances of the case that delay has properly been explained or that it is necessary so to do in the interest of justice it may take cognizance of offence even after expiry of the period of limitation.

14. Section 468 of the Cr.P.C. which bars taking cognizance of the offence after lapse of the period of limitation reads as under:-

“Section 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.”

15. A perusal of the offences prescribed under Sections 341, 323 and 504 of the IPC would make it evident that if any person is held guilty for the aforesaid offences, he shall be



liable for imprisonment for a term not exceeding two years. Hence, in view of the mandatory provisions prescribed under Section 468(2)(c) of the Cr.P.C., the cognizance should have been taken by the learned Magistrate within three years from the date of cause of action, i.e. between 17.04.2008 and 10.05.2008. In the present case, the period of three years expired on 10.05.2011. As noted above, the complaint has been registered on 03.12.2011, i.e. after three years, six months and twenty three days. Hence, the very institution of the complaint was beyond the period of prescribed limitation.

16. It is true that Section 473 of the Cr.P.C. 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 complainant for condoning the delay. From perusal of the impugned order, it would appear that 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.

17. **M/S Zandu Pharmaceutical Works Ltd. & Ors. vs Md Sharaful Haque & Anr. [(2005) 1 SCC 122]**, the



appellants called in question the legality of the judgment rendered by this Court before the Hon'ble Supreme Court holding that issuance of summons to the appellants by the Judicial Magistrate, 1st Class, Patna in a complaint case filed by the respondent is proper. In the said complaint case, the learned Magistrate had issued process in respect of offence under Section 418 of the IPC. After examining the provision of Section 468(2)(c) of the Cr.P.C., the Hon'ble Supreme Court set aside the order of this Court *inter alia* holding that the complaint was not hit by limitation after taking note of Section 468 of the Cr.P.C.. The Hon'ble Supreme Court held : “...*The learned Magistrate has issued process in respect of offence under [Section 418](#) of the IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of [Section 468\(2\)\(c\)](#) is 3 years. That being so, the Court could not have taken cognizance of the offence. [Section 473](#) of the Cr.P.C. 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 Cr.P.C.. The High Court clearly erred in holding that the complaint was not hit by limitation*”.



18. Keeping in view the provisions prescribed under Section 468 of the Cr.P.C. and the ratio laid down by the Hon'ble Supreme Court in **M/S Zandu Pharmaceutical Works Ltd. vs. Md Sharaful Haque** (supra) , I am of the considered opinion that the impugned order whereby the petitioners have been summoned to face trial cannot be sustained.

19. The decision of the Hon'ble Supreme Court in **Bharat Damodar Kale & Anr.** (supra) on which the complainant opposite party no. 2 has placed reliance is of no help to him as the facts of that case were quite different from the facts of the present case.

20. Accordingly, impugned dated 21.11.2012 passed by learned Judicial Magistrate, 1st Class, Biharsharif in Complaint Case No. 1434 (C) of 2011 is quashed. Consequently, the complaint case also stands quashed.

21. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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