

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38 of 2017

Arising Out of PS.Case No. -90 Year- 2013 Thana -KOTWALI District- PATNA

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1. Priyanka Pandey daughter of Late Nand Kishore Dwivedi, resident of Suraj

Bhawan, Devi Asthan, West Lane Postal Park, Chirayatand, P.O.- G.P.O., P.S.-
Jakkanpur, District- Patna

2. Rajiv Kumar Dubey @ Rajiv Dubey @ Rajiv Pandey son of Late Nand Kishore

Dwivedi, resident of Suraj Bhawan, Devi Asthan, West Lane Postal Park,
Chirayatand, P.O.- G.P.O., P.S.- Jakkanpur, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate

: Mr. Sumit Kumar, Jha, Advocate

For the State : Mr. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-09-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'the CrPC') has been filed by the
petitioners for quashing the order dated 26.09.2016 passed by the
learned Chief Judicial Magistrate, Patna in Kotwali P.S. Case No.90
of 2013 by which cognizance has been taken against the petitioners



under Section 341, 323, 379, 504 and 506 read with Section 34 of the Indian Penal Code (for short 'the IPC').

3. On the basis of a written report submitted by one Vinit Kumar Pandey, Kotwali P.S. Case No.90 of 2013 was registered against the petitioners on 25.02.2013 under Section 341, 323, 379, 504 and 506 read with Section 34 of the IPC.

4. On completion of investigation, the investigating officer submitted police report under Section 173(2) of the CrPC in the Court of Chief Judicial Magistrate, Patna. It would be apparent from the final report filed by the police that culpability of the petitioners was not found true under Sections 341, 323, 379, 504 and 506 read with Section 34 of the IPC.

5. On receipt of the police report, the learned Chief Judicial Magistrate, Patna vide order dated 26.09.2016 took cognizance of the offences under Sections 341, 323, 379, 504 and 506 read with Section 34 of the IPC and summoned the petitioners to face trial.

6. The aforesaid order dated 26.09.2016 is under challenge in the present application.

7. It is submitted by the learned counsel for the petitioners that the impugned order dated 26.09.2016 passed by the learned Chief Judicial Magistrate, Patna is bad in law in view of the mandatory provisions prescribed under Section 468(2)(c) of the CrPC. He has



submitted that the offences punishable under Sections 341, 323, 379, 504 and 506 prescribes punishment for one month, one year, three years, two years and two years respectively and, in view of Section 468(2)(c) of the CrPC, the court was barred from taking cognizance after expiry of three years.

8. Learned counsel for the State has contested the matter. He has submitted that if the court is satisfied on the facts and in the circumstances of the case that there is reasonable explanation or that it is necessary to do so in the interest of justice, it may take cognizance of the offence even after expiry of period of limitation in exercise of powers under Section 473 of the CrPC. He has submitted that in view of the allegations made in the First Information Report (for short 'the FIR') have been found true, no interference is required by this Court in exercise of powers conferred under Section 482 of the CrPC on technical ground.

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

10. There is no dispute to the fact that the alleged incident of occurrence, as narrated in the FIR, took place on 25.02.2013 for which the FIR was instituted on the same day. There is also no dispute to the fact that upon completion of investigation and filing of charge-sheet by the investigating officer, the Chief Judicial Magistrate took



cognizance of the offence on 26.09.2016. There is also no dispute to the fact that the maximum punishment prescribed for the alleged offences is three years or with fine or with both.

11. At this stage, it would be apposite to refer to Section 468 of the CrPC which bars taking cognizance of the offence after lapse of period of limitation. It 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.”

12. From a reading of Section 468(2)(c) of the CrPC, it would be evident that the cognizance could have been taken by the learned Magistrate within three years from the date of cause of action.

13. In the present case, the period of three years expired on 25.05.2016. Hence, the impugned order dated 26.09.2016 by which cognizance of the offences alleged was taken in the present case was clearly barred by limitation.

14. It is true that Section 473 of the CrPC has given discretion to the court to take cognizance after expiry of 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.

15. In the present case, no application was filed on behalf of the State for condoning the delay. From perusal of the impugned order, it would appear that the learned Chief Judicial Magistrate has not even recorded in his order that condoning the delay would be in the interest of justice in the facts and circumstances of the case. The order of the learned Chief Judicial Magistrate does not even refer to Section 468 or 473 of the CrPC.



16. In M/s. Zandu Pharmaceutical Works Ltd. & Ors. vs Md. Sharaful Haque & Anr. [2005 (1) SCC 122] while setting aside the order of the High Court holding that the complaint was not hit by limitation, the Supreme Court observed:

“...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 ”.

(emphasis mine)

17. Keeping in mind the provisions prescribed under Sections 468 and 473 of the Cr.P.C. and the ratio laid down by the 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 cognizance has been taken and the



petitioners have been summoned to face trial cannot be sustained.

18. Accordingly, the impugned order dated 26.09.2016 passed by the learned Chief Judicial Magistrate, Patna in Kotwali P.S. Case No.90 of 2013 is quashed. Consequently, the entire prosecution case stands quashed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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