

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29361 of 2016

Arising Out of PS.Case No. -78 Year- 2004 Thana -KUSHESHWARSTHAN District-
DARBHANGA

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Ranjay Mandal @ Ranjan Mandal S/o Late Munilal Mandal @ Munnilal Mandal
Resident of Mohalla- Ghosi Tola, Post Office- Munger, Police Station- Karim
Bazar, District- Munger (Bihar).

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-07-2017

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

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr. P.C.') has been filed by the
petitioner for quashing the order dated 29.04.2013 passed by the
learned Sub Divisional Judicial Magistrate, Biraul, Darbhanga in
T.R. No.721 of 2015 (G.R. No.307 of 2004) arising out of
Kusheshwar Asthan P.S. Case No.78 of 2004 by which cognizance
has been taken against the petitioner for the offence punishable



under Section 406 of the Indian Penal Code.

3. On the basis of a written report submitted by the informant Dilip Sah, Kusheshwar Asthan P.S. Case No.78 of 2004 was registered against the petitioner on 01.09.2004 under Section 379 of the Indian Penal Code. In the said case, on completion of investigation, charge-sheet was submitted on 31.05.2012 by the police under Section 406 of the Indian Penal Code. Thereafter, having considered the first information report, the materials collected during investigation and the police report submitted under Section 173(2) of the Cr. P.C., the learned Sub Divisional Judicial Magistrate, Biraul, Darbhanga took cognizance of the offence under Section 406 of the Indian Penal Code and summoned the petitioner to face trial.

4. The aforesaid order dated 29.04.2013 is under challenge in the present application.

5. It is submitted by the learned counsel for the petitioner that the order passed by the learned Sub Divisional Judicial Magistrate is bad in law in view of the mandatory provisions prescribed under Section 468(2)(c) of the Cr. P.C. He has submitted that the maximum punishment prescribed for the offence punishable under Section 406 of the Indian Penal Code is three years and in view of Section 468(2)(c) of the Cr. P.C., the



court was barred from taking cognizance after expiry of three years.

6. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State has contested the matter. He has submitted that in the matter of taking cognizance of the offence after expiry of the period of limitation, discretion has been given to the court under Section 473 of the Cr.P.C. to condone the delay. He has submitted that if the court is satisfied on the facts and in the circumstances of the case that the reason has properly been explained or that it is necessary to do so in the interest of justice, it may take cognizance of offence even after expiry of the period of limitation.

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

8. There is no dispute to the fact that the first information report regarding an occurrence which took place on 22.08.2004 was instituted on 01.09.2004 and on completion of investigation, charge-sheet was submitted by the police on 31.05.2012 whereafter the court has taken cognizance of the offence under Section 406 of the Indian Penal Code on 29.04.2013. There is also no dispute to the fact that the offence punishable under Section 406 of the Indian Penal Code prescribes punishment for a term which may extend to three years or with fine or with both.



9. Section 468 of the Cr.P.C., which bars to taking cognizance of offence after lapse of the period of limitation 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.”

10. From a reading of Section 468 (2) (c) of the Cr.P.C., 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.

11. In the present case, the period of three years expired on 22.08.2007. Hence, the order taking cognizance was clearly barred by limitation.

12. It is true that Section 473 of the Cr.P.C. has given 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.

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

14. 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 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".

(emphasis mine)

15. Keeping in view 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 has been summoned to face trial cannot be sustained.

16. Accordingly, the impugned order dated 29.04.2013 passed by the learned Sub Divisional Judicial Magistrate, Biraul, Darbhanga in T.R. No.721 of 2015 (G.R.



No.307 of 2004) arising out of Kusheshwar Asthan P.S. Case No.78 of 2004 is quashed. Consequently, the entire prosecution case stands quashed.

17. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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