

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32895 of 2014

Arising out of PS.Case No. -302 Year- 2014 Thana -PURNEA SADAR District- PURNIA

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Shrimati Poonam Devi @ Poonam Devi wife of Kishor Kumar, resident of Mohalla-Rambag near Miiya Convent Campus, Police Station-Sadar, District-Purnea

.... Petitioner/s

Versus

The State of Bihar through the Chairman cum Managing Director, the Bihar State Power Holding Company Limited, Bidyut Bhawan, Bailey Road, & Anr.

.... Opposite Party/s

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Appearance:

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

For the Opposite Party/s : Mr. Anand Kumar Ojha, Advocate

Mr. Prakash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 08-11-2017

The present application arises out of Purnea Sadar P.S. Case

No. 302 of 2014 registered for the offences punishable under Section 135 of the Indian Electricity Act against the petitioner herein.

2. The short facts of the case are that the Junior Electrical Engineer, Line Bazar, Purnea, on the basis of secret information received by him, conducted a raid in the premises of the petitioner herein on 18.06.2014 at about 5:45 in the morning along with other officials of the North Bihar Power Distribution Company Limited (hereinafter referred as 'NBPDCCL') and armed forces whereupon it was found that in the premises of the consumer three phase electricity line had been brought from L.T. pole whereas single phase meter was installed in the premises which was defective and had been by passed and theft of electricity was being committed. It has further been stated



that the petitioner was committing theft of electricity amounting to 6 K.W. Thereafter, the P.V.C. wire, being used to commit the crime, and the meter were seized. It was further stated that on account of the said occurrence, NBPDCCL has suffered a financial loss of Rs. 1,17,381.88 and apart from this the outstanding dues against the consumer was a sum of Rs. 35,471/-, hence a total loss of Rs. 1,52,852.88 had been caused. On the basis of the said written complaint of the Junior Electrical Engineer dated 18.06.2014, Purnea Sadar P.S. Case No. 302 of 2014 was registered under Section 135 of the Electricity Act against the petitioner herein.

3. The petitioner has filed the present application under Section 482 Cr.P.C. for quashing the First Information Report of Purnea Sadar P.S. Case No. 302 of 2014.

4. The learned counsel for the petitioner has submitted that firstly the aforesaid FIR is fit to be quashed since the same has been filed by an official of the NBPDCCL who had got no power to lodge the aforesaid case and was not authorized by the appropriate commission for filing the complaint or lodging the First Information Report. Secondly, it has been contended on behalf of the petitioner that even otherwise as per the mandate of Section 468 of the Code of Criminal Procedure, 1973, the Court is barred from taking cognizance since the period of limitation has expired.



5. Per contra, the learned counsel for the opposite parties has argued that the first issue regarding the Junior Electrical Engineer being not competent to file the complaint/FIR does not arise in the present case and a non-existent ground has been raised by the petitioner inasmuch as according to the Notification dated 31.05.2013 issued by the Bihar Electricity Regulatory Commission, which has been annexed as Annexure-D to the counter affidavit filed by the opposite party no. 2, the Junior Electrical Engineer posted in the Electricity Supply Sub-Division of NBPDC and South Bihar Power Distribution Company Limited, have been authorized for the purposes of disconnecting the supply line of the electricity within their respective jurisdictions where theft of electricity is detected in the premises of Low Tension consumers for maximum connected load up to 7 K.W. as well as for lodging complaint in police stations. It is further submitted by the learned counsel for the opposite parties that the second argument advanced on behalf of the petitioner regarding the Court being barred from taking cognizance on account of expiry of the period of limitation is premature inasmuch as neither charge sheet has been filed nor cognizance has been taken, hence the stage regarding the order taking cognizance being good or bad does not arise. It is further submitted that in any view of the matter, Section 473 of the Code of Criminal Procedure, 1973 clearly permits the



Court to take cognizance of any offence even after the expiry of the period of limitation.

6. The learned counsel for the opposite parties has relied on a judgment reported in **AIR 2014 Criminal Law Journal 586 (SC) (Mrs. Sarah Mathew vs. Institute of Cardio Vascular Diseases & Ors.)** to contend that a complainant or the prosecuting agency which promptly files a complaint or initiates prosecution, would be severally prejudiced and left at the mercy of the Magistrate, who may take cognizance after the period of limitation is over, if the complaint is thrown out on the ground of limitation because of the Magistrate's act of issuing process after the expiry of period of limitation. The learned counsel for the opposite parties has next relied upon a judgment reported in **AIR 1990 SC 123 (Tinsukhia Electric Supply Company Limited vs. State of Assam and others)** to contend that the Courts strongly lean against any construction which tends to reduce a Statute to a futility. A judgment reported in **AIR 2006 SCW 5905 (Jagmohan Mehatabsingh Gujaral & ors. Vs. State of Maharashtra)**, has been relied upon to contend that there is a large scale theft of electricity which is a very alarming problem being faced by all the State Electricity Boards in the country which is causing loss to the State revenue running into hundreds of crore every year, hence after proper adjudication of the cases of the offence of committing



theft of electricity, apart from the sentence of conviction, the Court should invariably impose heavy fine making theft of electricity a wholly non-profitable venture and the most effective step to curb this tendency perhaps could be to discontinue the supply of electricity to such type of consumers temporarily or permanently. The learned counsel has also relied upon a judgment dated 04.10.2017 passed by the Hon'ble Apex Court in Criminal Appeal No. 1723 of 2017 to contend that economic offences involving the financial and economic welfare of the State have implications which lie beyond the domain of a mere dispute between private disputants, as such the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor.

7. A counter affidavit has also been filed on behalf of the opposite party no. 2 wherein it has been submitted that the petitioner was having a connection under domestic category bearing DS-II single phase having connection no. 21571/HA/DS/2425 and the sanctioned load was 5 K.W as well as the outstanding energy dues was a sum of Rs. 35,470/-, as per the energy bill of the month of April, 2014. On 18.06.2014, a raid was conducted in the premises of the petitioner and it was found that the energy meter installed in the premises had been burnt and the petitioner was engaging in theft of



electricity by by-passing the meter and extracting energy by illegally connecting three phase main L.T. line to her premises by means of P.V.C. wire. The informant had assessed the punitive charges to be a sum of Rs. 1,17,381.88 apart from the outstanding dues of Rs. 35,471/-. The inspection report prepared by the raiding team was also signed by the consumer without any protest. Thereafter, a provisional assessment order under Section 135 of the Electricity Act, 2003 dated 20.06.2014 was passed by the A.E.E. cum Assessing Officer, Purnea, which was served on the petitioner amounting to Rs. 1,17,381.88, which was not objected to by the petitioner and thereafter the final assessment order dated 02.07.2014, passed under section 135 of the Electricity Act, was also served on the petitioner. The petitioner had then filed a writ petition bearing CWJC No. 11697 of 2014 for restoration of electricity line which stood disconnected on 18.06.2014 and this Court by an order dated 23.09.2014, had directed the petitioner to deposit a sum of Rs. 76421/- for the purposes of restoration of electricity line. A copy of the notification dated 31.05.2013 issued by the Bihar Electricity Regulatory Commission, as stated hereinabove, has also been produced along with the said counter affidavit.

8. I have heard learned counsel for the parties and have gone through the materials on record and I find that as far as the first



ground raised by the petitioner for quashing of the FIR i.e. the Junior Engineer being not competent to file the complaints/FIR, is concerned, the same does not arise for consideration in view of the notification dated 31.05.2013 issued by the Bihar Electricity Regulatory Commission which duly authorizes the Junior Electrical Engineer to disconnect the supply line of electricity as well as lodge complaint in the police stations upon detection of theft of electricity in the premises of Low Tension consumers for maximum connected load up to 7 K.W.

9. Now, coming to the second and the only ground urged for quashing of the FIR i.e. the trial Court is barred from taking cognizance of the offences on account of expiry of the period of limitation, it would be proper to reproduce certain provisions of law herein below:-

The Electricity Act, 2003:-

135. Theft of electricity.-

Section 135. (Theft of Electricity): --- 1[(1) Whoever, dishonestly, --

- (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or
- (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or



method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

- (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,
- (d) uses electricity through a tampered meter; or
- (e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

- (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;
- (ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be



less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) 1[Any officer of the licensee or supplier as the case may be,] authorized in this behalf by the State Government may --

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity



2[has been or is being,] used unauthorisedly;

- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under subsection (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.
- (3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

- (4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

151. Cognizance of offences.-

No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.



151A. Power of police to investigate.-

For the purposes of investigation of an offence punishable under this Act, the **police** officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.

151B. certain offences to be cognizable and non-bailable.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.

The Code of Criminal Procedure, 1973:-

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.

473. Extension of period of limitation in certain cases.-

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

10. In the background of the aforesaid provisions of Law, it would be apropos to examine the contention of the petitioner that



since the period for taking cognizance of the offence has become barred by limitation as per the mandate of Section 468 Cr.P.C., the FIR in question is liable to be quashed. It would be pertinent to state that prosecution in a criminal matter is generally launched by the State since a criminal offence is considered an injury caused not only to the person but also to the society, hence the lapse of time would not generally bar the rights of the State and further the general rule of equity i.e. “*vigilantibus et non dormientibus jura subveniunt*” i.e law will not assist those who are careless of his/her right, will not apply to the State. It is a trite law that a diligent complainant who has promptly filed a complaint or initiated the prosecution cannot be prejudiced for the fault of the investigating agency or the Magistrate, hence it can never be the intention of the legislature to throw out a diligent complainant out of the Court merely on the ground of the cognizance being barred by limitation.

11. Chapter XXXVI of the Criminal Procedure Code, 1973, contains Section 473 which is an overriding provision and according to it notwithstanding anything contained in the foregoing provisions of the said Chapter, any Court can take cognizance of an offence even after the expiry of the period of limitation. The Hon’ble Apex Court in a catena of cases has held that it is the duty of the Court to be alive to the provisions of Section 473 of the Cr.P.C. on its



own at the time of taking cognizance of an offence as indicated in Section 468 of the Cr.P.C. In fact the Hon'ble Supreme Court in a catena of decisions has also held that delay in filing the charge sheet as well as the delay in taking cognizance can very well be condoned as per the mandate of Section 473 of the Cr.P.C. but after hearing both the prosecution and the would be accused persons. This aspect of the matter has also been dealt with by the Hon'ble Supreme Court in a case reported in (1984) 4 SCC 222 (*Bhagirath Kanoria & ors. Vs. State of M.P.*), paragraph no. 22 whereof would be relevant to quote herein below:-

"**22.** Before we close, we consider it necessary to draw attention to the provisions of Section 473 of the Code which we have extracted above. That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI ²³⁰ of the Code, any court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in Section 473 of the Code."

12. In fact the Hon'ble Apex Court in a case reported in



(1993) 3 SCC 4 (*Vanka Radhamanohari v. Vanka Venkata Reddy*)

has further reiterated that in view of Section 473, a Court can take cognizance of an offence not only when the delay has been properly explained but also if it is satisfied that it is necessary to do so in the interest of justice. It would be relevant to quote paragraph no. 5 of the said judgment herein below:-

"5. Earlier there was no period of limitation for launching a prosecution against the accused. But delay in initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the prosecution story. But, then a court could not throw out a complaint or a police report solely on the ground of delay. The Code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony of witnesses becomes weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired, if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the Code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The framers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed on a par with the provisions in respect of civil disputes. So far cause of action accruing in connection with civil dispute is concerned, under Section 3 of the Limitation Act, it has been specifically said that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 5 of that Act enables any court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the court



that he had "sufficient cause for not preferring the appeal or making the application within such period". So far Section 473 of the Code is concerned, the scope of that section is different. Section 473 of the Code provides:

"Extension of period of limitation in certain cases.— Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non-obstante clause which means that said section has an overriding effect on Section 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice."

13. From a bare reading of the various provisions of Chapter XXXVI of the Criminal Procedure Code and upon application of the law laid down by the Hon'ble Apex Court on the subject matter, as aforesaid, it is clear that cognizance of an offence can definitely be taken by any Court after the expiry of the period of limitation if the Court is satisfied that either the delay has been properly explained or it is necessary to condone the delay in the interest of justice, obviously after hearing the parties. Similarly, a charge sheet can also be filed after the expiry of the period of limitation and the Court has upteem powers to condone the delay in filing the same. Thus the



delay in filing the charge sheet or taking cognizance, cannot be a circumstance or a ground for dismissing the complaint.

14. It may also be relevant to reproduce the relevant paragraphs of a judgment reported in (2014) 2 SCC 62 (*Sarah Mathew v. Institute of Cardio Vascular Diseases*) herein below:-

"36. The role of the court acting under Section 473 was aptly described by this Court in *Vanka Radhemanohari*¹⁷ where this Court expressed that this section has a non obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that: (SCC p. 8, para 6)

"6. ... There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Criminal Procedure Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for  95 condonation of the delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay."

These observations indicate the scope of Section 473 CrPC. Examined in the light of legislative intent and meaning ascribed to the term "cognizance" by this Court, it is clear that Section 473 CrPC postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for



computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (*U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra*⁶.)

38. The conclusion reached by us is reinforced by the fact that the Law Commission in Para 24.20 of its Forty-second Report, which we have quoted hereinabove, referred to *Dau Daya*⁴¹ where the three-Judge Bench of this Court was dealing with a special Act i.e. the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26-4-1954 when he was arrested, and that, in consequence, the issue of process on 22-7-1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three-Judge Bench of this Court observed as under: (AIR p. 435, para 6)

"6. It will be noticed that the complainant is required to resort to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the



complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court."

Though this Court was not concerned with the meaning of the term "taking cognizance", it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year.

39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Kale*², *Japani Sahoo*³ and *Vanka Radhamanohari*¹⁷. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim *vigilantibus et non dormientibus, jura subveniunt*. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *actus curiae neminem gravabit* which means  ⁹⁷ that the act of court shall



prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

15. Now, coming back to the present case, it may be apposite to deal with the argument advanced by the learned counsel for the petitioner that since now the period of limitation has expired and the Court is barred from taking cognizance, the connected FIR in the present case should be quashed. There are two aspects to the said submission. Firstly, in view of the law laid down by the Hon'ble Apex Court, as discussed herein above in the preceding paragraphs, it is clear that even after expiry of the period of limitation, cognizance can be taken by the Courts, of course after the Court is satisfied that either the delay has been properly explained or it is necessary to condone the delay in the interest of justice. Thus, the said ground of limitation urged by the learned counsel for the petitioner is answered in the negative and it is held that the cognizance can still be taken by the learned trial court, even after expiry of the period of limitation, and the same cannot be a ground for quashing of the FIR. In fact, the learned counsel for the petitioner could not bring to the notice of this Court any existing precedent to buttress his ground. Secondly, since



no cognizance has been taken in the present case till date, the entire thrust of argument of the learned counsel for the petitioner is premature and would not fall for consideration at the moment inasmuch as the said issue can only be decided at the appropriate stage, as and when it arises. The law does not work on surmises and conjectures or on hypothetical situations. In the present case, the question as to whether the cognizance taken by the Court is legally sustainable or not would arise only when the Court passes an Order taking Cognizance and only then the issue as to whether FIR could be quashed or not would arise. But since at the moment no cognizance has been taken by the learned trial Court, therefore, legally the Court has not taken any judicial note of the offences, hence the stage has not reached when it can be said that the case is pending before the Court, thus there cannot be any abuse of the process of the Court, as such no right is accrued to challenge the FIR under Section 482 Cr.P.C. Moreover, the present case is under investigation, hence the accused has got no right to interfere with the investigation by the Police, as has been held in a catena of decision reported in AIR (1993) SC 1082 (Union of India vs. W.N. Chadda); (2009) 6 SCC 65 (Narendra G. Goyal vs. State Bank of Maharashtra), (2012) 9 SCC 771 (V.K. Sasikala vs. State) and (2014) 15 SCC 221 (Teja Devi vs. State of Rajasthan).



16. Yet another aspect of the matter is that the basic fundamental rule of Law, as enunciated by the Hon'ble Apex Court in a judgment reported in 1992 supplementary (1) SCC 335 (State of Haryana vs. Bhajan Lal), for exercising inherent powers under section 482 of the Cr.P.C. is that either the allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or the allegations leveled in the FIR and other materials accompanying the same does not disclose a cognizable offence justifying an investigation by the Police, however, this is the case in the present proceedings inasmuch as the petitioner has been caught red handed committing theft of energy by a duly constituted raiding team comprising of Engineers and Armed forces and the inspection report also bears the signature of the petitioner as well as the provisional assessment and the final assessment made under section 135 of the Electricity Act by the appropriate authority has also not been challenged by the petitioner, thus there is no iota of doubt that the present petition filed by the petitioner for quashing the FIR is bereft of any merit and liable to be dismissed.

17. For the reasons mentioned hereinabove, I find that no ground whatsoever has been made out by the petitioner so as to warrant quashing of the FIR, as such the present application is



dismissed sans any merit.

18. Before parting with this case, I would like to caution the opposite parties that in the face of alarming problem of large scale theft of electricity being faced by all the licensees, resulting in huge loss to the licensees and in turn the same being saddled upon the consumers, it would be in the right perspective if the Chairman cum Managing Director, Bihar State Power Holding Company takes effective steps to device a mechanism to keep a track of the theft cases filed by the licensees / company especially with the object of and in pursuit of expeditious investigation, filing of charge sheet and trial. The instant case is a glaring example of the apathy of all concerned in as much as the FIR was lodged on 08.06.2014 and till date neither the charge sheet has been filed nor has cognizance been taken.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	N/A
CAV DATE	01.11.2017
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