

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20521 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

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1. Ranjeet Kumar Rai son of Rajeshwar Rai
2. Rajeshwar Rai son of Late Ram Udgar Rai
Both resident of village- Nathudwar, P.S.-Khanpur, District- Muzaffarpur
..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

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Appearance :

For the Petitioner/s : None

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 16-11-2017

Despite repeated calls, no body appears on behalf of the petitioners. Heard Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioners for quashing the order dated 14th February, 2011 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Samastipur in Criminal Revision No.408 of 2010 whereby and whereunder while dismissing the revision petition, he has affirmed the order passed by the learned Chief Judicial Magistrate, Samastipur in G.O. No.98 of 2010 whereby and whereunder learned Chief Judicial Magistrate, Samastipur took cognizance of the offence under Section 188 of the Indian Penal Code (for short 'the IPC') against the



petitioners

3. The case of the complainant Sub Divisional Magistrate, Samastipur, in brief, is that a proceeding under Section 144 CrPC being M.R. No.575 of 2008 was initiated by him being a public servant duly empowered to initiate the said proceeding in respect of the land detailed in schedule-1 of the complaint petition in which the accused petitioners were made members of the Second Party. The said proceeding was initiated on 24th June, 2008 and the parties were abstained from going over the land and doing any act and the said order was duly served on the parties on 06th July, 2008. In spite of preventive order issued and duly served and the accused petitioners being restrained from going over the land, they knowingly and deliberately went over the land in question, on 04th August, 2008 along with anti-social elements armed with Lathi, Bhala, Garasa and broke the western ridge and attempted to pitch hut and Bhuskar.

4. On the basis of the aforesaid allegations, the complainant alleged that the accused persons including the petitioners knowingly and deliberately disobeyed the preventive order and such disobedience tended to cause obstruction, annoyance, risk of human life and also caused the offence of rioting etc. and thereby he committed an offence punishable under Section 188 of the IPC. From the lower court records, it would appear that the complaint was filed in the court on



23rd March, 2010, but the cognizance of the offence punishable under Section 188 of the IPC was taken by the Chief Judicial Magistrate, Samastipur, vide order dated 18th May, 2010.

5. Being aggrieved by the afore-stated order dated 18th May, 2010 passed by the learned Chief Judicial Magistrate, Samastipur, the petitioners preferred a revision application before the Court of Sessions mainly on the ground that the order taking cognizance is barred by limitation under Section 468 of the CrPC, as according to the complaint itself, the accused persons had violated the prohibitory order dated 04.08.2008; whereas cognizance of the offence under Section 188 of the IPC was taken on 18th May, 2010.

6. The learned Additional Sessions Judge, Fast Track Court-IV, Samastipur, however, dismissed the revision application preferred by the petitioners, vide impugned order dated 14th February, 2011 mainly on the ground that the complaint petition was filed in the court on 23rd March, 2010 and cognizance of the offence was taken on 18th May, 2010 and, thus, the same was within the period of limitation.

7. Being aggrieved by the afore-stated order dated 14th February, 2011, the present application under Section 482 of the CrPC has been filed by the petitioners before this Court.

8. Mr. Jharkhandi Upadhyay, learned counsel appearing for



the State submitted that the offence punishable under Section 188 of the IPC prescribes punishment for a period of six months and in that view of the matter the period of limitation shall be one year in terms of Section 468(2)(b) of the CrPC. He submitted that in the present case the learned Magistrate took cognizance of the offence within a period of three months from the date of filing of the complaint and, hence, no error can be found with the order impugned.

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

10. Section 468 of the CrPC, which bars taking cognizance of the 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.”



11. A perusal of the offence prescribed under Section 188 of the IPC would make it evident that if any person is held guilty for the said offence, he shall be liable for imprisonment for maximum period of six months. Hence, in view of the statutory provisions prescribed under Section 468(2)(b) of the CrPC, the cognizance should have been taken by the learned Chief Judicial Magistrate, Samastipur within one year from the date of cause of action i.e. 04th August, 2008.

12. Be it noted here that the limitation period starts to run from the date of cause of action and not from the date of filing of a complaint. In the present case, period of one year expired on 04th August, 2009. As noted above, the complaint has been filed by the Sub Divisional Magistrate, Samastipur on 23rd March, 2010, i.e. much after the lapse of the period of limitation. Hence, the very institution of the complaint was beyond the period of limitation.

13. In that view of the matter, this Court is of the opinion that the learned Chief Judicial Magistrate, Samastipur erred in law in taking cognizance of the offence and summoning the petitioners to face trial for the offence punishable under Section 188 of the IPC. The revisional court also erred in holding that the complaint was not hit by law of limitation.

14. Accordingly, the impugned order dated 14th February,



2011 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Samastipur, in Criminal Revision No.408 of 2010 and the order dated 18th May, 2010 passed by the learned Chief Judicial Magistrate, Samastipur in G.O. No. 98 of 2010 as also the entire proceedings of G.O. No.98 of 2010 are hereby quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	
Transmission Date	

