

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10210 of 2012

Arising Out of Case No. 681C Year- 2005 Thana –Complaint District- Khagaria

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1. Mahendra Poddar, S/O Late Baldeo Podda
 2. Sanjiv Poddar, S/O Mahendra Poddar
 3. Bambam Poddar S/O Mahendra Poddar
 4. Madhur Kishore Poddar @ Chutar Poddar S/O Late Baso Poddar
 5. Pintu Poddar S/O Brahmdeo Poddar

Resident of Village- Sumbha Gajighat, P.S.- Allauli, Distt.- Khagaria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Shambhu Ram S/O Late Tanuk Ram Resident Of Village- Sumbha Gajighat,
P.S.- Allauli, Distt.- Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 05-07-2017

Heard learned counsel for the petitioner.

2. The petitioners have challenged the order taking cognizance dated 01.10.2010 passed by Judicial Magistrate 1st Class, Khagaria in Complaint Case No. 681C of 2005 under Sections 323 and 379/34 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the order taking cognizance is barred by limitation, in view of Section 468(3) of Cr.P.C. The alleged occurrence is dated 30.07.2005 whereas cognizance is taken on 01.10.2010, so after a lapse of five years,



cognizance has been taken and the impugned order does not show that the delay was exempted by the Magistrate. It is further submitted that infact Mahendra Poddar , petitioner no. 1 of this case, had earlier lodged a complaint, bearing Complaint Case No. 619C of 2005, against several accused persons, including the present complainant, and the said case is pending and in order to put pressure, this false case has been lodged with the allegation that while he was passing in front of the house of Mahendra Poddar, he asked him not to go in front of his house and also alleged that they assaulted with *lathi* causing fracture in his hand and the allegation against rest of the petitioners is of committing theft. He submits that the Magistrate, at the stage of enquiry, under Section 210 of the Cr.P.C., also called for a report from the concerned police station and the police submitted its report dated 10.04.2006 finding the allegation against Mahendra Poddar and others, as alleged by the complainant, false, so it is a malicious prosecution lodged by the complainant against the petitioners and its continuation will be abused of process of the court.

4. Learned A.P.P. supports the cognizance order.

5. Considering the submissions of both sides and on perusal of record, I find that the date of occurrence, as alleged in this complaint, was of 30.07.2005 and cognizance, in this case, has been taken by the Magistrate on 01.10.2010 after lapse of more than five



years. Section 468 of the Cr.P.C. bars taking cognizance after lapse of period of limitation but despite limitation, in view of Section 473 of the Cr.P.C. the court may take cognizance of an offence even after expiry of the period of limitation subject to condition of his satisfaction on the facts and in the circumstances of the case if the delay has been properly explained or it is necessary so to do in the interests of justice.

6. In the present case, cognizance has been taken under Sections 323 and 379/34 of the Indian Penal Code and the maximum punishment prescribed under Section 379 of the Indian Penal Code is three years. The impugned order does not reflect that delay in taking cognizance was condoned by the court on being satisfied on the facts and in circumstances of the case that such delay has been properly explained or it is necessary so to do in interest of justice. Section 468 of the Cr.P.C., contemplates that the period of limitation for taking cognizance is three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. The major offence in this case is of theft under Section 379 of the Indian Penal Code and maximum period of sentence may extend to three years or with fine or with both. Therefore, the impugned order is hit by limitation under Section 468(2)(c) of the Cr.P.C. Moreover, at the initial stage of enquiry, a report was called for from the police,



which shows that allegation levelled by the complainant against the petitioners was found false. Therefore, for the aforesaid reasons, criminal proceeding including order taking cognizance against the petitioners in Complaint Case No. 681C of 2005, pending before the Judicial Magistrate, 1st Class, Khagaria, is set aside.

7. Accordingly, this quashing petition is allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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