

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 174 OF 2017

Ketan Shamjibhai Gogri.

..Applicant.

Vs.

The State of Maharashtra & anr.

..Respondents.

Mr. K.H. Giri, advocate for applicant.

Mr. V.B. Konde-Deshmukh, APP for State.

Mr. Prasad Sankpal, advocate for respondent No. 2.

**CORAM : RANJIT MORE, J &
SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 10, 2017**

P.C.

1 Heard the learned Counsel for the applicant, learned Counsel for the respondent No. 2 and the learned APP for State.

2 The present application is filed challenging the order of the learned Metropolitan Magistrate, 40th Court, Girgaon passed in C.C. No. 200/PS/2017 taking cognizance of the offence under section 341 of the Indian Penal Code against applicant.

3 At the instance of Suresh Chaurasia Respondent No.2, Gaondevi Police Station has registered FIR bearing C.R. No. 216 of 2016 on 6/12/2016 against applicant and 3 others for an offence under section 341 read with section 34 of the Indian Penal Code. It is alleged in the FIR that on 11/1/2016 the applicant alongwith other accused shifted the panpati bakda belonging to complainant from original place i.e. opposite Ashford Palazzo building to some other place. As stated above, in respect of the incident dated 11/1/2016 FIR is registered on 6/12/2016. After completion of investigation, charge-sheet is filed in the court of learned Metropolitan Magistrate, 40th Court, Girgaon and it is numbered as C.C. No. 200/PS/2017. The applicant has annexed roznama of the said case at page 41. The roznama shows that on 30/1/2017 learned Magistrate has taken cognizance of the offence against the applicant and others.

4 Thus, the offence is alleged to have been committed on 11/1/2016 of which cognizance is taken on 30/1/2017. Offence under section 341 of the Indian Penal Code is punishable with simple imprisonment for a terms which may extend to one month or fine of Rs. 500/- or with both. Section 468 of the Cr. P.C. deals with the bar to taking cognizance after lapse of the period of

limitation. In sub-clause (2) thereof, it is contemplated that if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation is one year. Obviously, when the learned Magistrate has taken cognizance of the alleged offence period of one year has expired. The Magistrate is authorised to take cognizance after expiry of limitation period under section 473, however, this can be done only upon subjective satisfaction, that delay has been properly explained. The learned Magistrate neither exercised power under section 473, while taking cognizance of an offence, nor recorded subjective satisfaction in this regards. In the circumstances, we are of the opinion that the Magistrate could not have taken cognizance of the offence alleged against the applicant and others. In any case, we find that there is inordinate delay in reporting the incident to the police, which are not at all explained by the prosecution.

5 Taking totality of the facts and circumstances of the case, we allow this application in terms of prayer clause (a). The impugned order of the learned Magistrate taking cognizance of the offence alleged against

applicant and others is quashed and set aside. Resultantly, the proceedings in C.C.No. 200/PS/2017 pending on the file of Metropolitan Magistrate, 40th Court, Girgaon, Mumbai is also quashed. The application is disposed of accordingly.

[SMT.SADHANA S. JADHAV,J]

[RANJIT MORE, J]