

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10256 of 2017

ORDER:

Petition is filed, under Section 482 Cr.P.C, to quash the proceedings in C.C.No.575 of 2016 on the file of XIV Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Sections 342, 347 and 506 read with 34 IPC, registered on the basis of the complaint lodged by respondent No.2 with police on 24.11.2012.

Respondent No.2 lodged report with police alleging that he is a contractor of earth moving, resident of Yuayeola, Nasik District and he is working as Excavation Contractor at Sai Gardens, Shiridi for the past 1½ year. The construction, of I Max Laser Show of Sai Gardens, is undertaken by KRR Infra Projects Pvt. Limited who, in turn, sub-contracted to KRKR Developers. Excavation contract was given to Sai Krupa Earth Movers rep. by Sri Vijay Narayan Khokale. An amount, of Rs.27.00 lakhs towards earth excavation, and Rs.15.00 lakhs towards material suppliers, was due by KRR Infra Projects Pvt. Limited and two cheques were given to complainant before three months but payment was not made till date. On 23.11.2012 at 11.00 hours when the complainant came from Shiridi to KRR Infra Projects Pvt. Limited, Meridian Plaza, Hyderabad, four members, viz. V.Kohkela, Sachin dange, Pradeep Sadpol, Mahesh Dange, wrongfully confined in a room, took

two cheques of Rs.27.00 lakhs and Rs.15.00 lakhs and obtained signature on Rs.100/- stamp paper threatening with dire consequences, and KRR Developers made four members viz. Sri Anil Reddy, Sri Raghava Reddy, Sri Balraj Vasu and Sri G.K.Rao, as witnesses to sign the stamp paper. Petitioner, therefore requests to take appropriate action against the persons, who forcibly obtained cheques, for Rs.25.00 lakhs and Rs.15.00 lakhs, and also signatures on blank stamp paper worth Rs.100/- while wrongfully confining in a room at Meridian Plaza, Hyderabad. On the strength of the report of respondent No.2, Crime No.943 of 2012 was registered against the petitioner for the offences under Sections 342, 347 and 506 read with 34 IPC.

The main contention of the learned counsel for the petitioner is that, though complaint was lodged on 24.11.2012, police could complete investigation and file charge sheet in the year 2016 and numbered as C.C.No.575 of 2016 and, during investigation, the investigating agency examined four witnesses, recorded their statements and collected material to point out their complicity for various offences stated above.

The only contention raised before this Court is that there is abnormal delay in completing investigation and filing charge sheet and, in such case, cognizance of offence is barred by limitation and, thereby, question of proceeding

against the petitioner would not arise and requested to quash the proceedings.

Undoubtedly, commission of cognizable offence was reported to the police by respondent No.2 on 24.12.2012 but charge sheet was filed almost after 3½ years from the date of commission of cognizable offence as investigation could not be completed for one reason or other. However, atlast charge sheet was filed in the year 2016, after expiry of three year period. The offences, allegedly committed by the petitioner, were punishable with maximum imprisonment of three years and, therefore, according to Section 468 Cr.P.C, limitation is three years to take cognizance of offence but police did not file charge sheet within the time prescribed under Section 468 Cr.P.C.

Learned counsel for the petitioner, in support of his contention, placed reliance on the judgment of the Apex Court in **V.V.George v. State of Kerala**¹.

The Supreme Court in **V.V.George**¹ held as under:

A Constitution Bench of the Apex Court in *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others*, MANU/SC/1210/2013 : (2014) 2 SCC 62 resolved the controversy regarding the date relevant for computation of the period of limitation. In paragraph 51, the Supreme Court succinctly stated the following principles:

"In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale

¹ 2015 CriLJ 4062

(Bharat Damodar Kale v. State of A.P. MANU/SC/0794/2003 : (2003) 8 SCC 559 : 2004 SCC (Cri) 39 which is followed in Japani Sahoo (Japani Sahoo v. Chandra Sekhar Mohanty MANU/SC/3080/2007 : (2007) 3 SCC (Cri) 388) lays down the correct law. Krishna Pillai (Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646) will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C."

Hence, the date relevant for computing the period of limitation is the date of final report (18.12.1998 in this case) is a fact no more questionable. Learned counsel for the appellant contended that the trial court without regarding the question of limitation took cognizance of all the offences shown in the final report and thereby caused a substantial prejudice and injury to the accused/appellant. The appellant has another contention that the trial court, after illegally taking cognizance of time barred offences along with other offences, proceeded with the trial whereby the whole trial is vitiated. The accused would contend that evidence adduced conjointly in the case is in respect of offences barred by limitation and other offences. The nature of offences alleged against the appellant is such that they are so intrinsically intertwined and therefore the evidence cannot be separated or segregated. For that reason also, the conviction is not sustainable, contended the learned counsel. I shall deal with this contention separately in the succeeding paragraphs. However, I have to find that the offences under Sections 465 and 471 I.P.C. were barred at the time of taking cognizance of the offences. To this extent, the contention of the appellant is to be upheld. The consequence thereof can be considered in the succeeding paragraphs.

The same principle has been laid down in **Somesh Shokeen v. State Govt. of NCT of Delhi**². Therefore, long delay is consistent with the limitation and cognizance starts from the date of complaint.

Learned Public Prosecutor for the State of Telangana, while contending that the limitation starts from the date of

² 2014(2) JCC 1432

complaint and not from the date of filing charge sheet, placed reliance on **Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr.K.M. Cherian and Ht Media Ltd v. State (Govt. of NCT of Delhi)**³ and **V.V.George**¹. In para 41 of the judgment, the Supreme Court held that for the purpose of computing the period of limitation, under Section 468 Cr.P.C. the relevant date is the date of filing the complaint or the date of institution of prosecution, and not the date on which the Magistrate takes cognizance. The same principle was followed in **V.V.George**¹ referred supra.

Thus, there is consistency on the principle in the two judgments relied on by both the parties regarding commencement of limitation but the counsel for the petitioner, Sri Padmarao Lakkaraju, would make an attempt to distinguish the fact on the ground that the principle laid down by the Supreme Court in **V.V.George**¹, and relied on by the Public Prosecutor, would apply to the complaint cases but not to the cases where charge sheet is filed based on the report lodged by respondent/s. It is difficult to accept the said principle merely because the police kept the investigation pending for years together, the parties who approached the Court to set the criminal law into motion would not be responsible for such delay and, on account of such delay, the limitation cannot be counted

³ 2014(2) SCC 62

from the date of commission of offence but from the date of filing final report before the Magistrate by police after completion of investigation under Section 173 Cr.P.C.

In **State of Haryana v. Bhajan Lal**⁴ this Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

⁴ 1992 Supp. (1) SCC 335

proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of the guidelines, the allegations made in the complaint if constitute an offence, the proceedings cannot be quashed and, at the same time, if there is any bar under any law to take cognizance or criminal proceedings are launched against the accused with an oblique motive, the Court can exercise jurisdiction, under Section 482 Cr.P.C. and quash the proceedings.

Yet another question that is required to be decided is whether, based on limitation to take cognizance, the proceedings can be quashed or not.

In **Noida Entrepreneurs Association v. Noida**⁵, the Apex Court at paragraph No.18 held that the question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot be a ground for dismissing the complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge.

Therefore, the contention of the petitioner that limitation cannot be taken as a ground at the initial stage is

⁵ AIR 2011 SC 2112

supported by the law declared by the Supreme Court in the decisions referred supra.

The Supreme Court consistently held that while deciding an application under Section 482 Cr.P.C. the limitation cannot be taken into consideration if the allegations in the complaint disclose commission of offence on its face value. Therefore, by applying the aforesaid judgments, it is difficult to uphold the contention raised by the petitioner.

I find no ground to quash the proceedings in C.C.No.575 of 2016 on the file of XIV Additional Chief Metropolitan Magistrate, Hyderabad. However, it is left open to the petitioner to raise such plea before the Trial Court and, if such plea is raised, the Magistrate is directed to decide the question of limitation at the end of proceedings.

With the above observation, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:23.11.2017
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