

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12455 of 2012

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

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Aditya Kumar Sinha, Advocate, Son of Late Chandra Kishore Sinha, Resident of
Pran Pokhar, Gali No. 2, Amgola, P.S.- Kazi, Mohammadpur, District-
Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar & Anr.

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Abhay Kumar Roy, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 11-04-2018

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 06.04.2005 passed by the learned Judicial Magistrate, Ist Class, Kishanganj in Complaint Case No. C-245 of 2005 whereby the learned court below took cognizance against the petitioner under Sections 498A, 323, 379, 384 and 120B of the Indian Penal.

The brief facts of this case is that the complainant was married with the petitioner on 17.06.1998 according to Hindu rites and several articles have been gifted to the petitioner along with cash of Rs. 3,41,000/- by the family members of the complainant. After some time, according to the complainant, the family members of the petitioner started demanding Rs. 50,000/- and non fulfillment of the same, she was subjected to assault and torture. Further, when the



brother of the complainant tried to pacify the matter, the family members of the petitioner abused the complainant and snatched the ornaments in presence of brother of the complainant. Thereafter, brother of the complainant taken her back to her Maik. Again on 10.07.2001 the husband of the complainant taken her back to her matrimonial home and again started torturing her for fulfillment of demand of a motorcycle. Thereafter, on 31.08.2001, the complainant returned back to her Naihar and since then no one has come to look after her at her Naihar but the when the brother of the petitioner again went to settle the dispute, the petitioner along with others have abused him and ousted from the matrimonial home of the complainant. Hence, the complainant left with no option lodged the complaint case.

Learned counsel for the petitioner has submitted that there is general and omnibus allegation against the petitioner and no specific overt act is attributed to him. As a matter of fact, the incident is said to have been taken place during the year 1998- 2001 whereas the complaint has been filed in the year 2005 after lapse of more than four years without explaining the plausible delay and the learned Magistrate, Kishanganj took cognizance against the petitioner and others under Section 498A, 323, 379, 384 and 120B of the Indian Penal Code without considering the law of limitation specified under Sections 468, 469 and 473 of the Cr.P.C. It has further been submitted that the complainant happened to be mentally retarded lady, who was



not capable of adjusting with the petitioner-husband and their parents-in-law even for a week. Neither the petitioner has demanded any dowry nor assaulted the complainant-wife in any manner. Moreover, it has brought to the notice of the Court that the alleged occurrence never took place within the territorial jurisdiction of Kishanganj Court, which is evident from the plain reading of the complainant and as such the learned Magistrate, Kishanganj is not empowered to take cognizance of the alleged offence in view of Chapter XIII (under Sections 177 to 189 Cr.P.C.), therefore, the prosecution of the petitioner in the court of Kishanganj amounts to an abuse of the process of the Court. Moreover, it is pertinent to bring notice of this Court that order taking cognizance dated 06.04.2005 has already been quashed with respect to other named accused in the complaint on the point of jurisdiction by a co-ordinate Bench of this Court vide order dated 09.08.2007 passed in Cr. Misc. No. 18581 of 2006, which is evident from Annexure-2. On the above ground, it is submitted that the cognizance order dated 06.04.2005 passed by the learned Judicial Magistrate, Kishanganj, is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and the court below after going through the materials available on record has found a prima facie case against the petitioner and rightly taken cognizance for the offences under



Sections 498A, 323, 379, 384 and 120B of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.

From perusal of the material on record and looking into the facts of the case, at this stage, it appears that admittedly the learned Judicial Magistrate, Kishanganj after going through the complaint and S.A. of the complainant found prima facie case against the petitioner and took cognizance under Sections 498A, 323, 379, 384 and 120B of the Indian Penal Code after lapse of more than four years from the date of occurrence as alleged in the complaint. The delay aforesaid comes under the purview of law of limitation. Therefore, this Court feels it proper to refer Sections 468, 469 and 473 Cr.P.C., which is quoted hereinunder;

“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.*

469. Commencement of the period of limitation.- (1) *The period of limitation, in relation to an offence, shall commence,-*

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or



(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

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."*

From bare perusal of the aforesaid discussed provisions of the Cr.P.C., it is quite apparent that if the offence is punishable with imprisonment of one year and not more than three years, cognizance, thereof, should be taken within a period of three years from the date of the alleged occurrence. Here, in this case, the occurrence took place during the year 1998 to 2001 whereas the complaint lodged in the year 2005 and the cognizance under Section 498A for which maximum punishment is three years, Section 323 for which maximum punishment is one year, Section 379 for which maximum punishment is three years, Section 384 for which maximum punishment is three years and Section 120B for which same punishment of three years, of the Indian Penal has been taken by the Magistrate in the year 2005 after more than four years from the alleged occurrence. Therefore, the order taking cognizance dated 06.04.2005 is squarely covered under the provisions of Section 468 (2)(b)(c) and 469(a) Cr.P.C. and the same cannot be overlooked. Further, although the cognizance has been taken after expiry of the



period of limitation but the learned Magistrate has not expressed any finding that the delay has been properly explained while taking cognizance in the matter.

In view of the aforesaid provisions, the order taking cognizance, being barred by law of limitation, dated 06.04.2005 is, hereby, quashed.

This application is , accordingly, allowed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
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