

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12901 of 2018

Arising Out of PS.Case No. -335 Year- 2014 Thana -ARA NAWADA District- BHOJPUR

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1. Jitendra Kumar Pandey @ Vivek Kumar Son of Brij Kishore Pandey, Resident of Mohalla Maharaja Hata, P.S. Ara Nawada, District Bhojpur
 2. Devjee Mishra Son of Late Bateshwar Mishra, Resident of Village-Jagatpur, P.S. Krishnagarh, District-Bhojpur.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Ranjan, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-08-2018

Heard learned counsel for the petitioners and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioners for quashing the order dated 21.12.2017 passed by the learned Chief Judicial Magistrate, Bhojpur, Ara in Nawada P.S. Case No. 335 of 2014 whereby he has taken cognizance of the offences punishable under Sections 341, 323, 353, 427, 379 read with 34 of the Indian Penal Code (for short 'IPC').

3. It is submitted by the learned counsel for the petitioners that the impugned order whereby cognizance of the offences has been



taken is bad in law and has been passed in a mechanical way without application of judicial mind. It is further contended that the Court was debarred from taking cognizance of the offences after expiry of three years under Section 468 of the Cr.P.C as the most severe punishment which could have been passed against the petitioners was for a term which may extend to three years or with fine or with both under Section 379 of the IPC. From a perusal of the FIR it would be evident that the alleged occurrence took place on 12.07.2014 at 1:30 p.m. and the FIR was lodged on the same day.

4. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has opposed the application filed by the petitioners. He admitted that the cognizance was taken after expiry of more than three years from the date of the occurrence but according to him the same has been done in exercise of powers conferred under Section 473 of the Cr.P.C.

5. I have heard learned counsel for the parties and carefully perused the record.

6. After completion of investigation, the police submitted charge-sheet vide charge-sheet no. 275 of 2017 dated 19.07.2017 which was seen by the learned Chief Judicial Magistrate on 27.07.2017. Subsequently, vide impugned order dated 21.10.2017, the learned Chief Judicial Magistrate took cognizance of the offences



and summoned the petitioners to face trial under Sections 341, 323, 353, 427 and 379 read with 34 of the IPC.

7. The offences under which cognizance has been taken are punishable for different terms.

8. Section 323 of the I.P.C. prescribes a maximum punishment for a term which may extend to one year; Section 341 of the IPC prescribes a maximum punishment for a term which may extend to one month; Section 353 of the IPC prescribes a maximum punishment for a term which may extend to two years; Section 427 of the IPC prescribes a maximum punishment for a term which may extend to two years and Section 379 of the IPC prescribes a maximum punishment for a term which may extend to three years.

9. Section 468 of the Cr.P.C bars taking of cognizance after lapse of a period of limitation. It 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.”

10. From a perusal of Section 468(2)(c) of the Cr.P.C, it would be manifest that the Court is debarred from taking cognizance of an offence after expiry of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. In the present case, the occurrence is of 12.07.2014 and the cognizance has been taken on 21.12.2017 i.e. much after three years from the date of occurrence.

11. Section 468 (3) of the Cr.P.C provides that the period of limitation in relation to offences shall be determined with reference to the offence which is punishable with the most severe punishment. In the present case, the most severe punishment is up to three years for the offence punishable under Section 379 of the IPC. Thus, the court was debarred to take cognizance of offence after expiry of three years. As seen above, cognizance has been taken in the present case after three years from the date of occurrence. Hence, the same is unsustainable in law.

12. It is true that Section 473 of the Cr.P.C gives discretion



to the Court to take cognizance of the offence after expiry of the period of limitation under certain circumstances. It reads as under:-

“473. Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitations, 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.”

13. From a perusal of the aforestated provision of Section 473 of the Cr.P.C, it would be manifest that if the Court is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice, it may extend the period of limitation. However, in the present case, no application was filed on behalf of prosecution for condoning the delay and from perusal of the impugned order it is evident that even the learned Magistrate has also not assigned any reason for condoning the delay nor the learned Magistrate while taking cognizance has recorded in his order that the condonation of the delay would be in the interest of justice nor he has referred to the provisions prescribed under Section 473 of the Cr.P.C.

14. In that view of the matter, the order impugned cannot be sustained. Accordingly, the impugned order dated 21.12.2017 passed



by the learned Chief Judicial Magistrate, Bhojpur in Nawada P.S
Case No. 335 of 2014 is set aside.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

