

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21069 of 2018

Arising Out of PS.Case No. -53 Year- 2013 Thana -MITHANPURA District- MUZAFFARPUR

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1. Swami Bhawatmanand @ Bhavatmanand Son of Swami Bhuteshanand
 2. Brahmachari Lokesh Jee Son of Swami Smaranand Both residents of Village/Mohalla - Ramkrishna Mission Sevashram, Swami Vivekanand Path, Bela, P.S. Mithanpura, District - Muzaffarpur, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Surendra Singh son of late Chandradeo Prasad Singh resident of village/mohalla - Kanhauli (Rajput Tola), P.S. - Mithanpura, District - Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr. Arun, Adv.
	Mr. Agreya Pratap, Adv.
For the Opposite Party/s	: Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-08-2018

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 petitioner for quashing the order dated 19.06.2014 passed by the learned Sub-Divisional Judicial Magistrate, East, Muzaffarpur in Trial No.1470 of 2017 arising out of Mithanpura P.S.Case No. 53 of 2013 whereby he has taken cognizance of the offences punishable under Sections 341 and 323 read with 34 of the Indian Penal Code (for short 'IPC') and summoned the petitioners to face trial.

3. It is submitted by learned counsel for the petitioners that



from the FIR itself it would be manifest that the alleged offence took place on 01.03.2013 for which an FIR was instituted on 02.03.2013. After completion of investigation, the police submitted charge-sheet in the court on 12.06.2013. Since then the case was adjourned from time to time and by the impugned order dated 19.06.2014 cognizance of the offences punishable under Section 341 and 323 read with 34 of the IPC was taken. It is contended that the maximum punishment prescribed for the offence punishable under Section 341 of the IPC is imprisonment for one month or with fine which may extend to five hundred rupees or with both and the maximum punishment provided for the offence punishable under Section 323 of the IPC is imprisonment for one year or with fine which may extend to one thousand rupees or with both. In view of the maximum punishment of one year provided under Section 323 of the IPC, the cognizance after lapse of one year in view of the provisions prescribed under Section 468(2)(b) of the Cr.P.C is bad in law.

4. On the other hand, learned counsel appearing for the State submitted that in the instant case the police had completed investigation of the case much before the expiry of the period of limitation. The alleged offence had taken place on 01.03.2013 and after completion of investigation charge-sheet was submitted on 12.06.2013. According to him, the prosecution should not suffer on



account of lapses on the part of the court as the delay, if any, was because the matter the kept pending in the court without taking cognizance of the offence.

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

6. Section 468 of the Cr.P.C provides for bar to taking cognizance after lapse of the period of limitation. It mandates that no court shall take cognizance of an offence after expiry of the period of limitation. Sub-clause (b) of Clause (2) of Section 468 of the Cr.P.C. provides that the period of limitation shall be one year if the offence is punishable with imprisonment for a term not exceeding one year. In the instant case, the offences for which cognizance has been taken prescribes maximum punishment of one year. Hence, there would be a limitation of one year for taking cognizance of the offence. It is true that the delay has been caused on account of the fact that the matter remained pending in the court after filing of the charge-sheet. However, that alone would not justify taking of cognizance of offences after expiry of the period of limitation.

7. The Cr.P.C. provides for extension of the period of limitation in certain cases. Section 473 of the Cr.P.C prescribes that notwithstanding anything contained in the Chapter XXXVI, 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. In the instant case neither the prosecution filed any application for taking cognizance after the expiry of the period of limitation nor the court has even referred to the provisions prescribed under Section 473 of the Cr.P.C. while passing the impugned order.

8. Hence, the order impugned cannot be sustained. Resultantly, the impugned order dated 19.06.2014 passed by the learned Sub-Divisional Judicial Magistrate, East, Muzaffarpur in Trial No.1470 of 2017 arising out of Mithanpura P.S.Case No. 53 of 2013 is set aside.

9. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

