

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13351 of 2015

Arising Out of PS. Case No.-67 Year-1995 Thana- MUNGER MUFFASIL District- Munger

1. Rajendra Prasad Sah, son of Late Banarshi Sah
2. Indrakala Devi, w/o Rajendra Prasad Sah
3. Shiva Nand Bharti, S/o Rajendra Pd. Sah
4. Rukmini Kumari, d/o Rajendra Pd. Sah
5. Meena Kumari, d/o Rajendra Prasad Sah
6. Geeta Kumari, d/o Rajendra Prasad Sah.

All residents of village + Post Office Tola, Bariarpur, Police Station -
Bariarpur, District - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anju Kumari @ Anju Devi, D/o Manilal Modi, R/Village + Post Office
Bariarpur, P.S. Bariarpur, District Munger.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
For the Opposite Party/s : Mr. S. M. Rahman, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 18-10-2019

Heard learned counsel for the parties.

2. This application, under Section 482 Cr.P.C., is for quahsment of order of cognizance dated 10.01.2011 passed by the learned Chief Judicial Magistrate, Munger in Muffasil (Bariarpur) P.S. Case No. 67 of 1995 as well as against revisional court's order dated 18.12.2014 passed by the learned 3rd Additional Sessions Judge, Munger in Cr. Revision No. 72 of 2012 whereby the learned revisional court refused to interfere with the order of cognizance passed by the learned Magistrate.



3. The petitioners are accused in connection with Munger Muffasil (Bariarpur) P.S. Case No. 67 of 1995. The date of occurrence is 04.04.1995. The charge sheet was submitted by the police on 30.08.1995 for offence under Section 323 of the Indian Penal Code and cognizance was taken on 10.01.2011 for offence under Section 323 of the Indian Penal Code by simply writing that for the ends of justice, the delay is condoned.

4. The cognizance should have been taken within a period of one year as the offence is punishable with maximum imprisonment of one year in view of the provisions of Section 468 Cr.P.C.

5. Section 473 Cr.P.C. empowers the Court to extend the aforesaid period of limitation in certain cases. The provision reads as follows:-

“Notwithstanding anything contained in the forgoing provisions of this Chapter, any Court may take 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.”

6. Merely writing a sentence that it is in the interest of justice to condone the delay would not suffice unless the Court records reason for such conclusion. I fail to understand as to why offence under Section 323 of the Indian Penal Code which is



punishable with imprisonment for one year only, the prosecution should be allowed to continue even after expiry of fifteen years. There is no explanation that delay in cognizance has been properly explained.

7. Submission of learned counsel for the petitioners is that the delay could not have been condoned without notice to the accused persons. Reliance has been placed on the case of **State of Maharashtra v. Sharadchandra Vinayak Dongre and orthers** reported in **AIR 1995 SC 231**. Paragraph 9 of the judgment is being reproduced below:-

“9. Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter. The finding of the High Court that the CJM could not take cognizance of the offence on the basis of ‘incomplete’ police report, for the reasons already recorded, is, however, set aside. The Chief Judicial Magistrate shall proceed further in accordance with law after deciding the application seeking condonation of delay. Nothing said herein above



shall, however, be construed as any expression of opinion on the merits of the case.”

8. Learned counsel for the informant submits that there is no fault on the part of the informant rather protest petition of the informant was there on the record and the same was considered by the learned court below at the time of cognizance.

9. The right of speedy trial of the accused is guaranteed under Article 21 of the Constitution of India and that cannot be allowed to be violated in a casual manner in which it has been done in the present case. For a petty offence, cognizance has been taken after fifteen years of the date of occurrence without any reasonable explanation as to how the interest of justice would be served. Hence, the same is fit to be quashed. This application is allowed, accordingly.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	24.10.2019
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