

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32053 of 2011

Arising Out of PS. Case No.-89 Year-2007 Thana- TRAFFIC District- Patna

Shambhu Prasad Son of Late Bhikari Lal r/o House No. 55 E, Road No. 12
Rajendra Nagar, P.S- Kadamkuan, Distt- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Awadh Prasad Sharma Son of Late Ram Sharan Prasad r/o 14/CC Sector,
C.PC Colony, Kankarbagh, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Shambhu Prasad (in person)
For the State	:	Mr. Narendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-03-2019

Heard Mr. Y.V. Giri, learned senior counsel along with the petitioner, who is appearing in person, and learned A.P.P. for the State.

2. Despite service of notice and learned counsel for opposite party no.2 entering appearance and name of learned counsel also printed in the cause list, nobody appeared when the matter was taken up and heard.

3. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Code”) for the following relief:

“That this is an application for quashing the order dated 5.6.2010 passed by Hon'ble Smt. Namita



Chandra J. M. 1st Class, Patna u/s 279, 337, 338 IPC and the case was registered as traffic P.S. case no. 89 of 2007.”

4. The petitioner is alleged to have been driving his Maruti Car bearing registration no. BR 1C 2500 which hit the leg of opposite party no. 2 leading to fracture and for which Patna Traffic P.S. Case No. 89 of 2007 was instituted. However, ultimately upon the charge sheet submitted by the police against the petitioner, cognizance was taken on 05.06.2010 which is impugned in the present application.

5. Learned counsel for the petitioner made a very short legal submission. He submitted that the occurrence took place on 14.04.2007 and the F.I.R. was lodged on 15.04.2007. It was pointed out that the cognizance having been taken on 05.06.2010, is clearly beyond the jurisdiction of the Court. He submitted that cognizance having been taken under Sections 279, 337 and 338 of the Indian Penal Code prescribes imprisonment for six months or fine of Rs. 1,000 or both; imprisonment for six months or fine of Rs. 500 or both and imprisonment for 2 years or fine of Rs 1,000 or both, respectively. It was submitted that in view of such proposition in law, the limitation prescribed for taking cognizance under the Code having expired such order taking cognizance is bad in law. Learned counsel submitted that Sections 467, 468 and 469



of the Code would apply, which prescribes the period of limitation for taking cognizance by the Court in such cases. It was submitted that the maximum period of limitation is three years, from the date of the offence, if the offence is punishable for a term exceeding one year but not exceeding three years. It was, thus, submitted that in the present case, maximum punishment prescribed being two years with regard to the sections under which cognizance has been taken, the limitation for taking cognizance expired on 13.04.2010 and, thus, the order taking cognizance dated 05.06.2010 requires to be interfered with.

6. Learned A.P.P. fairly submitted that in view of the statutory bar, the order taking cognizance cannot be sustained.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. As has been rightly submitted by the learned counsel for the petitioner, there being a statutory bar under the Code, especially Sections 467, 468 and 469, the period prescribed for the Court to take cognizance cannot exceed three years in the present case. Thus, when the statute itself provides for counting the period of limitation also, i.e., from the date of offence, which is 14.04.2007, the cognizance, if at all, had to be taken by the Court



latest by 13.04.2010, and the same having been taken on 05.06.2010, is clearly beyond jurisdiction and also against the statutory bar.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out Patna Traffic P.S. Case No. 89 of 2007, including the order dated 05.06.2010 by which cognizance has been taken against the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

s.hassan/-

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