

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3541 of 2015

Arising Out of Complaint Case No.-2737 (C) Year-2010 Thana- PATNA COMPLAINT
CASE District- Patna

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Syed Azim Akhtar @ Syed Anim Akhtar, Son of Syed Jamal Akhtar, Resident of Mohalla - Khajpura, Bailey Road, P.S. - S.K. Puri, Now P.S. - Hawaiadda, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Rajeev Ranjan Sinha Son of Late Shashi Bhushan Prasad R/o Cambridge Academy International School, New Yarpur, P.S. - Gardanibagh, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Dular Sah and Mr. Aminuddin Ahmad Khan, Advocates
For the Opposite Party/s	:	Mr. Dhivendra Nath Jha and Mr. Ahmad Ali, APP
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-05-2019

Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2.

2. 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 invoking the inherent jurisdiction of this Hon’ble Court for quashing the order dated 04.03.2012 passed by Smt. Gayitri Kumari, J.M. Ist Class, Patna in complaint case no. 2737(C)/2010 whereby and whereunder cognizance has been taken U/S 406 of I.P.C. against



the petitioner and others and summon has been issued to face the trial.”

3. The allegation against the petitioner and three others is of receiving Rs. 7,00,000/- for transfer of a flat in Shobha Apartment being built by Haweli Construction Private Ltd., but till date not doing the same.

4. Learned counsel for the petitioner submitted that he has been unnecessary implicated in the case, as he has nothing to not taken any money from the complainant (opposite party no. 2). It was submitted that in the agreement he is merely a signatory as a witness and whatever money has been given was to the Haweli Construction Private Ltd. Learned counsel submitted that without going into the facts, the present complaint case is fit to be quashed purely on the basis of there being legal bar to such proceeding. He submitted that Section 468 of the Code prescribes a period of limitation for the Court to take cognizance of an offence of categories enumerated in that Section. It was submitted that the cognizance taken by the order impugned being under Section 406, which provides for imprisonment for three years, is covered under Section 468(2)(c) of the Code, which prescribes a maximum period of three years for taking of cognizance. Learned counsel submitted that in the present case, the admitted position is that the cause of action ended sometime in the year 2001, where it is



alleged that a total of Rs. 7,00,000/- was paid and the complaint case has been filed on 29.09.2010 i.e., almost after 9 years and thereafter cognizance taken on 04.03.2012, which is almost 11 years from the last date on which the alleged offence occurred. Learned counsel submitted that cognizance having been taken after so long is also bad as the Court has not passed any order under Section 473 of the Code by extending the period of limitation upon being satisfied that the delay has been properly explained. For such proposition he has relied on a decision of the Karnataka High Court in **Wockhardt Hospital and Heart Institute v. G. R. Parthasarathi** reported as **2008 CRI. L. J. 2198**.

5. Learned APP and learned counsel for the opposite party no. 2 submitted that the Court below has taken cognizance under Section 406 of the Indian Penal Code as there were materials before it and that the petitioner had committed criminal breach of trust by taking money and not transferring the flat in question to the opposite party no. 2. However, on a direct query of the Court as to how the complaint was maintainable in law in view of bar of Section 468 of the Code, learned counsel were not in a position to meet the same.



6. 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.

7. Without adverting to the factual aspect of the matter, law is settled, that for offences when the punishment prescribed is three years, no Court shall take cognizance after three years of the date of the offence, specifically Section 468 of the Code which 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.]”

8. The same has been explained by the Hon’ble Supreme Court in **Japani Sahoo v. Chandra Sekhar Mohanty** reported as **(2007) 7 SCC 394**, where at paragraph no. 52 it has been held as under:



“52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.”

9. Further, the Constitution Bench of the Hon’ble Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases** reported as **(2014) 2 Supreme Court Cases 62**, has held that the principle laid down in **Japani Sahoo** (*supra*) is the correct proposition of law. Paragraph no. 51 of the same reads as under:

“51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.”

10. In the present case, from the complaint petition itself, it is admitted that the last payment made by the opposite party no. 2 was in the year 2001. Thus, the complaint case could not be filed, in any view of the matter, beyond the year 2004. Thus, the same having been filed on 29.09.2010, without doubt is



impermissible, both in terms of the bar under Section 468 of the Code as well as the law laid down by the Hon’ble Supreme Court in **Japani Sahoo** (*supra*) and **Sarah Mathew** (*supra*).

11. In view of the aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 2737(C) of 2010, pending before the Court below at Patna, including the order dated 04.03.2012 by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

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