

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.909 of 2018

Arising Out of PS. Case No.-3197 Year-2014 Thana- PATNA JN RPF/POST District- Patna

Sushil Kumar Modi, Son of Late Moti Lal Modi, resident of Road No. 8 - A,
Rajendra Nagar, P.S. Kadamkuan, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Inspector, Railway Protection Force, Post Patna Junction, Patna
- Respondent/s

with

CRIMINAL MISCELLANEOUS No. 54783 of 2018

Arising Out of PS. Case No.-1693 Year-2014 Thana- PATNA JN RPF/POST District- Patna

1. Nitin Navin, Son of Late Navin Kishore Prasad Sinha, Resident of Bander Bagicha, Near Mauryalok Complex, P.S. Kotwali, Town and District Patna.
2. Sanjib Chourasia, Son of Sri Ganga Prasad, Resident of Mungersah Cold Storage, Khajpura, P.S. Shastri Nagar, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Inspector, Railway Protection Force, Post Patna Junction, Patna
- Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 54342 of 2018

Arising Out of PS. Case No.-1693 Year-2014 Thana- PATNA JN RPF/POST District- Patna

1. Sri Nand Kishore Yadav, son of Late Panna Lal Yadav, resident of Mohalla Khazekalan, P.S. Khazekalan, Town Patna City, District Patna.
2. Sri Mangal Pandey, son of Sri Awadhesh Pandey, resident of E - 16, Desh Ratna Path, Vijay Nagar, Hanuman Nagar, P.S. Patrakarnagar, Kankarbagh, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Inspector, Railway Protection Force, Post Patna Junction.
- Opposite Party/s

Appearance :

(In CRIMINAL REVISION No. 909 of 2018)

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
	:	Mrs. Priya Gupta, Advocate
		Mr. Mohit Agarwal, Advocate
		Mr. Subodh Kumar Jha, Advocate
For the Railways	:	Mr. Bijoy Kumar Sinha, Advocate



For the State	:	Mr. Ajay Mishra, A.P.P.
(In CRIMINAL MISCELLANEOUS No. 54783 of 2018)		
For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
	:	Mrs. Priya Gupta, Advocate
	:	Mr. Mohit Agarwal, Advocate
	:	Mr. Subodh Kumar Jha, Advocate
For the Railways	:	Mr. Bijoy Kumar Sinha, Advocate
For the State	:	Mr. Ajay Mishra, A.P.P.
(In CRIMINAL MISCELLANEOUS No. 54342 of 2018)		
For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
	:	Mrs. Priya Gupta, Advocate
	:	Mr. Mohit Agarwal, Advocate
	:	Mr. Subodh Kumar Jha, Advocate
For the Railways	:	Mr. Bijoy Kumar Sinha, Advocate
For the State	:	Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 18-06-2019

All the aforesaid applications were heard individually and the same are being disposed of by this common order for the reason that in all the applications, the main order, which is under challenge, is order of cognizance dated 02.05.2017 passed by the learned Railway Judicial Magistrate, Patna in Rail Police Force P.S. Case No. 1693 of 2014/CIS No. 3197(C) of 2014.

2. The petitioners and several others named and unknown were arrayed as accused in connection with the aforesaid police case with allegation that on 28.02.2014 about 100-125 people, having allegiance to a particular political party, had reached near the Sachivalaya Halt, Railway Station, to obstruct the railway movement. The informant, who is the Sub-Inspector of Police, Sachivalaya Police Station, arrested some of them to frustrate the chances of obstruction in railway traffic.



3. The petitioner of Cr. Revision No. 909 of 2018 challenged the order of cognizance dated 02.05.2017 directly before this Court and the petitioners of Cr. Misc. No. 54783 of 2018 challenged the same order passed, on 02.05.2017, in an application under Section 482 of the Code of Criminal Procedure (in short the “Cr.P.C.”), directly before this Court whereas the petitioners of Cr. Misc. No. 54342 of 2018 had challenged the cognizance order dated 02.05.2017 before the learned Sessions Judge, Patna in Cr. Revision No. 300 of 2018 and after dismissal of the criminal revision aforesaid on 04.08.2018 by the learned 4th Additional Sessions Judge, Patna, the aforesaid criminal miscellaneous was filed, under Section 482 of the Cr.P.C, praying therein for quashment of order of the revisional court dated 04.08.2018 as well as cognizance order dated 02.05.2017.

4. The record reveals that an inquiry report in the form of a complaint (bearing CIS No. 3197(C) of 2014) was submitted purportedly in exercise of power under Section 180-A of the Railways Act, to the learned Railway Judicial Magistrate, 1st Class, Patna, by the Inspector, Railway Protection Force, Patna Junction signed on 25.04.2017 and received on the record of the Court on 02.05.2017 and the impugned order of cognizance was passed. Later on, the entire matter was transferred to the Special Court of



the learned Additional District Judge at Patna which was constituted for trial of cases against the Members of Parliament and the Members of Legislature.

5. Learned Senior Counsel Mr. S.D. Sanjay, submits that the offence allegedly took place on 28.02.2014 whereas the complaint was filed on 25.04.2017 and cognizance was taken on 02.05.2017, after expiry of more than three years, for offences, under Sections 145, 146, 174(a) of the Railways Act, 1989 (in short the “Act”). As such, the cognizance was barred by limitation under Section 468 Cr.P.C. as maximum punishment provided under the aforesaid sections are of two years imprisonment, hence, the cognizance should have been taken within three years. His next contention is that for the offences alleged complaint should have been filed by “the officer authorized” under Section 180-A of the Act and the Magistrate could have taken cognizance only on complaint by the officer authorized in view of the bar under Section 180-F of the Act. Therefore, the institution of FIR was at the instance of incompetent person, as such, cognizance order was also against the mandate of Section 180-F of the Act. He next contended that none of the offences, for which cognizance has been taken, are disclosed on bare perusal of the first information report or the complaint petition. In other words, the ingredients of



offences are not made out, hence, the impugned order suffers from non-application of judicial mind.

6. Learned counsel for the railways as well as the State opposed the prayer, however, does not dispute the legal issue involved in the case that cognizance has been taken after expiry of the period of limitation and without condoning the delay as empowered under Section 473 Cr.P.C. The opposite parties have not brought on the record that the complainant/informant of this case was an authorized officer to file a complaint under the Act.

7. According to FIR, the informant got information that 100-125 workers of the referred political party were proceeding towards Sachivalaya Halt, Railway Station, making slogan of “Chakka Jam”. The informant apprehended that they may disturb rail traffic, hence, informed to the Senior Police Officer and arrested to some of the members of the crowd including the petitioners and reported the matter to the In-Charge Inspector, Railway Protection Force, Post at Patna Junction.

8. Section 145 of the Railways Act, 1989 reads as follows:-

“145. Drunkenness or nuisance.— If any person in any railway carriage or upon any part of a railway—
(a) is in a state of intoxication; or
(b) commits any nuisance or act of indecency or uses abusive or obscene language; or



(c) wilfully or without excuse interferes with any amenity provided by the railway administration so as to affect the comfortable travel of any passenger, he may be removed from the railway by any railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than —

(a) a fine of one hundred rupees in the case of conviction for the first offence; and

(b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence.”

9. The FIR does not disclose that the named accused persons had committed any nuisance or act of indecency or had used any abusive or obscene language or wilfully interfered with any amenities provided by the railway administration, as such, apparently, there is no ingredient of the aforesaid offence made out against any of the accused.

10. Section 146 of the Railways Act, 1989 reads as follows:-

“146. Obstructing railway servant in his duties.-- If any person wilfully obstructs or prevents any railway servant in the discharge of his duties, he shall be punishable with imprisonment for a term



which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

11. There is no allegation of obstruction or prevention in discharge of duty by any railway servant by anyone named in the FIR, hence, offence under Section 146 of the Act is also not made out.

12. Section 174 of the Railways Act, 1989 reads as follows:-

“174. Obstructing running of train, etc.--- If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway,--

(a) by squatting or picketing or during any *rail roko* agitation or *bandh*; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.”

13. Apparently, there is no allegation in the FIR that any of the accused attempted to obstruct any train by squatting or picketing. There is no reference that any individual train was stopped nor there is allegation that the petitioners or any other



accused indulged in squatting or picketing. However, the complaint petition discloses commission of act by the accused attracting requirement of the offence under Section 174(a) of the Act.

14. In this case, the offences allegedly took place on 28.02.2014. The period of limitation for cognizance starts from the date of offence as provided under Section 469 of the Cr.P.C. While counting the said period, the date of offence is to be excluded as per sub-section 2 of Section 469 of the Cr.P.C. None of the offences alleged are continuing offence, hence, provisions of Section 472 of the Cr.P.C. would not come into play. Under Section 473 Cr.P.C., the Magistrate is empowered to take cognizance of an offence, after the expiry of the period of limitation, if he 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 interest of justice. The impugned order does not show that the learned Magistrate has applied its mind on this question of law nor there is any disclosure in the impugned order that the learned Magistrate has condoned the delay as it was necessary to do so in the interest of justice.

15. The scope and ambit of powers under Section 473 of the Cr.P.C. was considered by the Hon'ble Supreme Court in **State**



of Himachal Pradesh Versus Tara Dutt & Anr. reported in **2000 SCC (Cri.) 125** and in **Sanapareddy Maheedhar Seshagiri & Anr. v. State of Andhra Pradesh & Anr.** reported in **AIR 2008 (SC) 787** and the Hon'ble Supreme Court observed as follows:-

“Section 473 confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well-recognised principles. This being a discretion conferred on the court taking cognizance, wherever the court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior court to come to the conclusion that the court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the court took cognizance and proceeded with the trial of the offence.”



16. In State of Maharashtra vs. Sharadchandra Vinayak Dongre reported in **AIR 1995 (SC) 231**, the Hon'ble Supreme Court held that delay in launching the prosecution cannot be condoned without notice to the accused.

17. In the case at hand, the learned court below while passing the impugned order did not notice to the accused person nor condoned the delay by speaking order. Therefore, the impugned order of cognizance was barred by limitation and, as such, whole subsequent proceeding was bad in law.

18. To consider the third ground of the petitioners regarding competency of the person, who lodged the prosecution, it is necessary to have a look on the following provisions of the Act.

19. Section 179 of the Railways Act, 1989 provides as follows:-

“179. Arrest for offences under certain sections. –

(1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the



officer authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.

(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.”

20. Section 180-A and 180-F of the Railways Act, 1989

provides as follows:-

“180-A. Inquiry by officer authorised to ascertain commission of offence.--- For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent Court if the offence is found to have been committed.”

“180-F. Cognizance by Court on a complaint made by officer authorised.--- No Court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint made by the officer authorised.”

21. There is no material on the record to substantiate that complainant of this case was an officer authorized by the Central



Government as defined under sub-section 26-A of Section 2 of the Act. Therefore, inquiry of the offences alleged against the petitioners which are covered by sub-section 2 of Section 179 of the Act aforesaid was not done by an officer authorized. Hence, the complaint filed after about three years of the alleged occurrence was itself by an incompetent person under Section 180-A of the Act. Therefore, the Magistrate was not competent to take cognizance in view of the bar under Section 180-F of the Act. Apparently, the impugned order is barred by statutory provisions also due to non-filing of the complaint by an authorized officer, as such, the entire criminal prosecution is fit to be quashed for this reason also.

22. In the result, the entire criminal proceeding arising out of Rail P.S. Case No. 1693 of 2014 giving rise to Case No. 3197(C) of 2014 and later on Special Case No. 94 of 2018 pending before the learned Special Judge, M.P., M.L.A. and M.L.C. Court stands quashed and all the applications aforesaid stand allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	20.06.2019
Transmission Date	20.06.2019

