

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1348 OF 2019

Devendrapalsingh Ranjitsingh Chawla,
Age 63 years, Occ. Service,
R/o. Mohali, Dist. Ropar, Punjab State
at present at Gurudwara Sachkhand
Nanded, Tq. & Dist. Nanded.

... **Petitioner.**

VERSUS

1) The State of Maharashtra
Through Police Station Vazirabad
Nanded, Tq. & Dist. Nanded.

2) Sampurnasingh Puransing Gill,
Age 55 years, Occ. Service,
R/o. Abchalnagar, Nanded, Tq.
& Dist. Nanded.

... **Respondents.**

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Mr. A.S. Gandhi, h/f Mr. P. P. Mandlik, Advocate for the Petitioner.
Mr. B. V. Virdhe, APP for the respondent No. 1.
Mr. R. M. Lone, Advocate for the respondent No. 2.

CORAM : MANGESH S. PATIL, J.

DATE : 11/10/2019

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned APP waives service for respondent No. 1. Mr. Lone, the learned advocate waives service for the respondent No. 2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The respondent No. 2 filed a complaint against the petitioner for allegedly committing an offence punishable under section 500 of the Indian Penal Code with the allegations that the former had filed a false complaint for a similar offence in the Court of Judicial Magistrate First Class on 04.10.2011. He alleged that because of the false accusations in that complaint the respondent No. 2 was defamed. The Magistrate directed a process to be issued. The petitioner challenged it in revision but the learned Additional Sessions Judge has dismissed it. Hence this Writ Petition.

3. The learned advocate for the petitioner referring to the decision in the case of **Surinder Mohan Vikal Vs. Ascharaj Lal Chopra; 1978 AIR (SC) 986**, submits that since according to the respondent No. 2 the offence has been committed when a false complaint was filed by the petitioner on 04.10.2011, by virtue of Section 468 of the Code of Criminal Procedure the complaint ought to have been filed within three years from that date. Since it has been filed in the year 2017 it is barred by limitation. For this very reason the Magistrate could not have taken cognizance and should not have issued the process. The learned Additional Sessions Judge has also overlooked this aspect and has dismissed the revision petition. Both the orders are illegal and need to be quashed and set aside in this Writ Petition.

4. The learned advocate for the respondent No. 2 submits that it is only after he was acquitted on 20.05.2014 and the revision preferred by the petitioner was dismissed on 17.04.2017 that the cause of action could be said to have occurred for filing the complaint. Since the complaint was filed on 17.08.2017 it was well within limitation. No fault can be found with the orders of the two Courts below.

5. I have carefully perused the papers and the decision in the case of **Surinder Mohan Vikal (supra)**.

6. According to respondent No. 2 he was defamed when the petitioner filed a false complaint against him on 04.10.2011. If that be so, the date of commission of offence as is laid down under Clause (a) of Sub Section 1 of Section 469 of the Code of Criminal Procedure can be said to be the date on which the petitioner had filed the complaint i.e. on 04.10.2011. If that be so, since the offence of defamation is alleged to have been committed which is punishable upto two years, the period of limitation of three years provided under section 468 (2) (c) would get over after three years from 04.10.2011.

7. Argument of the learned advocate for the respondent No. 2 that the cause of action for filing the present complaint has arisen on 17.04.2017 can only be rejected by referring to the following

observations in paragraph No. 6 of the decision in the case of **Surinder Mohan Vikal (supra)** :

“6. The High Court ignored the bar of limitation on the ground that the “cause of action for proceeding for defamation could not arise before he (respondent) was acquitted by the Court of Session.” As the respondent was acquitted on April 1, 1975, it appears that the High Court took the view that the “protection of S. 468(c)” was not available to the appellant. We are constrained to say that the question of “cause of action” could not really arise in this case as the controversy relates to the commission of an offence. As has been stated, sub-sec. (1) of S. 469 of the Code specifically provides that the period of limitation prescribed in S. 468, in relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of the offence was March 15, 1972, when the defamatory complaint was filed in the Court of the Magistrate, and that was the starting point for the purpose of calculating the three years period of limitation. The High Court clearly erred in taking a contrary view.”

As can be noticed, a similar argument was advanced the High Court in that matter had assigned the same reason while holding that the complaint therein was within limitation. The argument was turned down the Supreme Court by referring to the Provision of Section 469(1) of the Code of Criminal Procedure observing that it is not the

cause of action but the date of offence which is relevant and therefore the question when the complainant is acquitted is of no consequence. The period of limitation of three years would start from the date of the earlier complaint wherein the alleged defamatory accusations are made.

8. Applying these principles to the matter in hand, the offence can be said to have occurred even according to respondent No. 2 on 04.10.2011 against the petitioner had filed the defamatory complaint. The respondent No. 2 ought to have filed the complaint within three years there from but has filed it on 17.08.2017 i.e. beyond the period of three years. Therefore, for this reason alone the Magistrate was not competent to take cognizance beyond the period of limitation and ought not to have issued the process. The learned Additional Sessions Judge has also overlooked this aspect of the matter. Therefore the orders are not sustainable in law and are liable to be quashed and set aside and reversed.

9. The learned advocate for the respondent No. 2 submits that by virtue of Section 473 of the Code of Criminal Procedure the Magistrate could have extended the period of limitation in the interest of justice. However, the argument needs to be discarded for the simple reason that no such request was made before the Magistrate. In the

case of **Surinder Mohan Vikal (supra)**, for the very same reason of absence of any such request under section 473 of the Code of Criminal Procedure, the Supreme Court had refuted a similar argument as can be seen from the last sentence in paragraph No. 7 of the judgment. Since no any request was made by the respondent No. 2 before the Magistrate under section 473 of the Code of Criminal Procedure, it cannot be considered now.

10. The Writ Petition is allowed. The impugned order directing the process to be issued passed by the Magistrate and the one dismissing the revision preferred by the petitioner passed by the learned Additional Sessions Judge are quashed and set aside. Consequently, the complaint filed by the respondent No. 2 is dismissed under section 203 of the Code of Criminal Procedure, by applying the principles in the case of **Smt Nagawwa Vs.Veeranna Shivalingappa Konjalgi and others; AIR 1976 SC 1947**

11. The Criminal Writ Petition is allowed accordingly. The rule is made absolute.

(MANGESH S. PATIL, J.)

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