

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

CRIMINAL WRIT PETITION NO. 1415 OF 2018

- 1] Shivaji s/o Rajaram Nikam,
Age : 48 years, Occu:Service,
R/o Flat No.9, Shri Narayan
Apartment, Vijaynagar Baramati,
Tq. Baramati, Dist.Pune.
- 2] Bhanudas s/o Vithal Jagdale
Age : 34 years, Occu : Service,
R/o A-29, Post Colony, Walchand
Nagar, Dist.Pune.
- 3] Ramesh s/o Baburao Kekan,
Age 40 years, Occu : Service,
R/o Gangaram Baba Society,
Rui MIDC, Tq. Baramati
Dist.Pune.
- 4] Sandeep s/o Chandrakant Jadhav
Age : 35 years, Occu : Service,
R/o 519, Onkar Niwas, Tambe Nagar
Mahila Society, Tandulwadi,
Tq. Baramati, Dist.Pune.
- 5] Sandeep s/o Jagannath Kadam,
Age : 37 years, Occu : Service,
R/o 519, Onkar Niwas, Tambe Nagar
Mahila Society, Tandulwadi,
Tq. Baramati, Dist.Pune.
- 6] Balasaheb s/o Sarjerao Thorat
Age 60 years, Occu : Retired,
R/o Flat No.7, Jaishri Apartment,
Suryanagari, Tq. Baramati,
Dist.Pune.

.. PETITIONERS

VERSUS

The State of Maharashtra
Through Police Station
Karjat, Dist. Ahmednagar,

.. RESPONDENT

.....
Mr. V.D.Sapkal h/f Choudhari Yuvraj S. Advocate for the petitioners
Mr. B.V.Virdhe, APP for respondent State .
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CORAM : MANGESH S. PATIL, J.
RESERVED ON : 19.09.2019
PRONOUNCED ON : 16.10.2019

JUDGMENT :-

Heard both the sides. Rule. Rule is made returnable forthwith. The learned APP waives service for the respondent State. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The petitioners are accused nos.3 to 8 from Crime No.14/2010 registered with Karjat Police Station, Ahmednagar for the offences punishable under Sections 304-A, 338, 279, 221, 223, 348, 201 read with Section 34 of the I.P.C. and for the offences punishable under Sections 184 and 177 of the Motor Vehicles Act. They are challenging the order passed by the learned Magistrate on 14/8/2018 thereby allowing the application filed by the Investigating Officer and condoning the delay in filing the charge sheet and taking cognizance after expiry of period of limitation, by invoking the powers under Section 473 of the Cr.P.C.

3] The learned advocate for the petitioners submitted that the alleged

incident had taken place on 16/6/2009. The deceased was an accused in connection with a crime registered with Baramati Police Station bearing Crime No.99/2009 for the offences punishable under Sections 380, 454, 457 of the I.P.C. The accused no.1 was the incharge of the Police Station as Police Inspector, whereas the accused no.2 was carrying out the investigation. The present petitioners were posted at the relevant time as Constables in that Police Station. In connection with the investigation in that crime, the accused nos.1 and 2 had directed the present petitioners to take the deceased to the place of his sister in law for recovery of stolen articles. Accordingly they all had gone to Jamkhed, Dist.Ahmednagar and had recovered the stolen articles from the place of his sister in law. While returning from Jamkhed to Baramati, they halted at a road side Dhaba at Mahi Jalgaon, Tq. Karjat, Dist.Ahmednagar. Between 7 to 7.15 p.m. the deceased under the pretext of easing himself tried to flee and met with an accident wherein a truck passing by the road knocked him down causing him serious injuries.

4] The learned advocate for the petitioners submitted that none of the offences was punishable for more than 3 years. Consequently by virtue of provisions of Section 468(2) (c) of Cr.P.C., the Magistrate could have taken cognizance only within 3 years from the date of commission of the crime. Since Section 469 of the Cr.P.C. provides that the period of limitation commences from the date of the offence and where the offence is not known to the person aggrieved, from the date it comes to his knowledge or the knowledge of the Police Officer concerned. Therefore, the Magistrate in the normal course could not have taken cognizance since the offence was committed almost 6 years prior to the filing of the charge sheet.

5] The learned advocate would then submit that since the petitioners were not removable by the State Government but were removable by the Superintendent of Police being Constables, no previous sanction as contemplated under Section 197 of the Cr.P.C. was necessary since they were not public servants within the meaning of Section 21 of the I.P.C. Even if it is assumed that sanction was necessary still, even excluding the period required for obtaining sanction as is permissible under Section 470 of the Cr.P.C., there was delay of more than 4 years.

6] The learned advocate would then submit that by virtue of provisions of Section 473 of the Cr.P.C. a Magistrate can exercise the discretion and take cognizance even after expiry of period of limitation, if the delay is properly explained or that it is necessary to do so in the interest of justice. By referring to the decision in the case of Shrinivas Pal V/s Union Territory of Arunachal Pradesh; A.I.R. 1988 S.C. 1729, the learned advocate would submit that the Supreme Court has held that the offences punishable under Sections 304-A, 279, 338 of the I.P.C. cannot be said to be a grave or heinous offence nor are the offences against community and therefore, the Supreme Court had held that in these circumstances, the Magistrate could not have exercised the discretion under Section 473 of the Cr.P.C.

7] The learned A.P.P. submitted that under Section 473 of Cr.P.C. it is the discretion vested in the Magistrate to take cognizance even after expiry of the period of limitation on 2 counts; firstly when there are sufficient grounds to condone the delay or secondly when he feels that it is necessary to take cognizance after expiry of period of limitation in the interest of justice. Taking note of all the relevant considerations, by assigning detail and cogent

reasons, the Magistrate has decided to take cognizance. The discretion has been exercised judiciously and cannot be lightly interfered with by invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India or by using inherent powers under Section 482 of the Cr.P.C.

8] I have carefully gone through the entire charge sheet and the papers. There cannot be dispute about the fact that since none of the offences are punishable for more than 3 years, the Magistrate could have taken cognizance of the offence within 3 years of its commission. The incident had taken place on 16/6/2009 and the Crime No.14/2010 was registered on 24/1/2019, whereas the Magistrate has decided to take cognizance by the impugned order on 14/8/2011.

9] It is the submissions of the learned advocate for the petitioners that the petitioners are not public servants within the meaning of Section 21 of the I.P.C. and therefore, the previous sanction under Section 197 of the Cr.P.C. was not necessary *qua* them. It is necessary to note that whether in law any such previous sanction is necessary under Section 197 of the Cr.P.C. for prosecuting the petitioners is altogether a different issue. The fact remains that apparently under such *bona fide* impression the Investigating Officer had spent some time in obtaining the sanction and it is only after such sanction was obtained that he apparently decided to proceed further. Therefore, by virtue of the provision of Section 470 of the Cr.P.C., the time spent in obtaining the sanction deserves to be excluded.

10] There is one more aspect. It is not only the petitioners but even their superiors were arrayed as accused nos. 1 and 2 and it is not the submission of

the learned advocate for the petitioners that sanction was not necessary even *qua* the accused nos.1 and 2 and they were not public servants within the meaning of Section 21 of the I.P.C. If such is the state of affairs, it is imperative for the Investigating Officer to have solicited such previous sanction under Section 197 of the Cr.P.C. at least in respect of accused nos.1 and 2 and without which he could not have proceeded further to file the charge sheet in piecemeal manner only against these petitioners. Therefore, even for this reason, the submission of the learned advocate for the petitioners that the time consumed in obtaining sanction cannot be excluded is not factually and legally tenable.

11] The next submission of the learned advocate for the petitioners is that the offence being not grave or heinous, or against the community, the Magistrate could not have exercised the discretion under Section 473 of the Cr.P.C. At the first blush, referring to the decision in the case of Shrinivas Pal (*supra*) the submission of the learned advocate seems attractive. However, a careful reading of the entire material and the impugned order passed by the Magistrate would clearly demonstrate that indeed the Magistrate was right in taking cognizance by condoning the delay, in public interest.

12] It is pertinent to note that the allegations against these petitioners and the co-accused are of peculiar nature. They were Police Officers posted at Baramati Police Station at the material time. The deceased was in their custody in connection with a crime registered there for the offences punishable under Sections 380, 454, 457 of the I.P.C. In connection with the investigation in that crime, he was taken from Baramati to Jamkhed, District Ahmednagar. After some recovery of stolen articles, he was being taken back

to Baramati. The police party had halted at a Dhaba and it is alleged that while attempting to flee, the deceased was knocked down by a truck and was seriously injured between 7 and 7.15 p.m. In spite of such episode, it is alleged, that the accident was not immediately reported to the concerned Police Station at Karjat within the jurisdiction of which the incident had taken place, nor was any attempt made to take the deceased, who was seriously injured, to a nearby hospital to provide him medical treatment. Instead, he was all the way carried to Baramati in the same vehicle in which petitioners were travelling and it is after a lapse of around 4 hours, for the first time he was got examined from a Doctor who declared him dead. It is indeed *prima facie* a serious matter. Assuming that the petitioners and the other accused were carrying out investigation in connection with crime, still if the accident had occurred in the manner suggested by the petitioners and as is mentioned in the charge sheet, at the first instance it was the responsibility of the petitioners to secure medical aid to the deceased and to inform the nearest Police Station about the occurrence. Nothing of the sort had happened and the deceased, in a seriously injured condition, was carried all the way to Baramati and was taken to a Doctor at Baramati after 3 to 4 hours. Irrespective of what was transpired the fact remains that it is not a simple case of rash and negligent driving although Sections 279, 338 and 304-A of the I.P.C. are being charged. For this reason alone, the matter in hand is peculiar and the petitioners cannot draw any parallel with the decision of the Supreme Court in the case of Shrinivas Pal (*supra*).

13] In this regard, it is further pertinent to note that everything does not seem to have proceeded smoothly. It appears that the wife of the deceased had to approach this Court seeking direction for carrying out proper

investigation into the incident. She had to file Criminal Writ Petition No.1795 of 2011 and it is pursuant to the orders passed therein that the investigation was handed over to Pune Crime Branch and in spite of the orders of this Court, the investigation was not completed with the expected urgency.

14] It is in view of such peculiar state of affairs, I find no apparent impropriety or illegality in the observations of the learned Magistrate that when the wife of the deceased has been all the while trying to persuade Police machinery to carry out the investigation into the incident and when the accused are the Police Officers and the investigation has been carried out by their brotheren, it would indeed be a situation where it would tantamount to denial of justice to her if for the lapse on the part of the investigating machinery, due to which the delay has occasioned, to refuse to take cognizance. Therefore, in my considered view, when the Magistrate has considered all the aforementioned aspects in the proper perspective and has for the plausible reasons exercised the discretion in condoning the delay under the powers vested in him under Section 473 of the Cr.P.C. the circumstances do not warrant any interference by this Court in this Writ Petition.

15] The Writ Petition is dismissed. The Rule is discharged. The Criminal Application No.2542 of 2019 is disposed of.

[MANGESH S. PATIL, J.]