

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33172-2019 (O&M)
Date of Order:05.09.2019

Mahavir Kumar Sood

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mahipal S. Yadav, Advocate, for the petitioner.
Mr. SPS Tinna, Addl. A.G., Punjab

ANIL KSHETARPAL, J(Oral)

Interesting issue needs determination. Question is what would be the starting point when the limitation would commence to run with respect to offence under Section 182 IPC? Whether it will be the date on which the complaint filed against him has been found to be false or the date on which person against whom false complaint was moved files an application for proceeding under Section 182 IPC is filed?

It is undisputed that a complaint was filed by Mahavir Kumar Sood, petitioner herein, which after enquiry was found to be false by the police officer on 04.07.2017 and final report is dated 22.12.2017 while granting liberty to the complainant to take action in accordance with law against the petitioner.

Petitioner moved an application before the Investigating Agency on 22.10.2018 and kalandra under Section 182 IPC was registered against the petitioner on 05.06.2019.

Learned counsel for the petitioner contends that in view of the

fact that on 22.12.2017 and rather on 04.07.2017, the Investigating Agency had found that the application moved by the petitioner was false, the period of limitation commenced to run.

On the other hand, learned counsel for the State has submitted that the point of commencement of period of limitation would be on the date when Ajit Singh (aggrieved person) approaches the police by way of application.

Before analyzing the submissions of learned counsels for the parties, it would be appropriate to refer to Sections 468 and 469 of the Code of Criminal Procedure dealing with the aforesaid subject. Sections 468 and 469 Cr.P.C. are extracted 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 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.]

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not

known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

The maximum punishment under Section 182 IPC is 6 months.

Therefore, it will be covered by Section 468(2)(b) of the Code of Criminal Procedure. According to clause (b) of sub-Section (2) of Section 468, the period is one year.

Now the next question which arises is what would be the point for commencement for period of limitation.

Section 469 Cr.P.C. details out 3 different periods of time on which the period of limitation in relation to an offence shall commence.

This Court considers that the present case at the most can fall within clause (b) of sub-Section (1) of Section 469 Cr.P.C which provides that the period would commence from the date such offence comes to the knowledge of such person or to any police officer whichever is earlier. So on the date police after investigation found that the complaint made by the petitioner was false i.e. on 04.07.2017, the period of limitation began to commence. One can stretch it to 22.12.2017 when final report was prepared. If the date of final report is taken from where period of limitation commences, the period would come to an end on 21.12.2018. Of course, the complaint was lodged by the aggrieved person against the petitioner was within limitation, however, Section 468 Cr.P.C. deals with the cognizance not with regard to filing of the complaint with the police.

In the case of *Gammi @ Gama vs. State of Punjab and another, 2009(2) RCR(Criminal) 1*, it has been held that the period of limitation would commence from the date of offence or from some other dates depending upon the knowledge about the offence or identity of the offender.

This Court is conscious of the judgment passed by the Constitution Bench in the case *Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases, (2014) 2 SCC 62* wherein the Hon'ble Supreme Court held that the relevant date for the purpose of Section 468 Cr.P.C. is the date of filing of the complaint or the date of institution of the prosecution and not the date on which the Magistrate takes cognizance.

The word 'complaint' has a definite connotation in Cr.P.C. Complaint has been defined in Section 2(d) of the Code of Criminal Procedure. Complaint means any allegation made orally or in writing to a Magistrate. The complaint cannot be equated with the information given to the Police. Still further, as per the scheme of Section 182 IPC, it is apparent that the person against whom a false complaint was lodged is not supposed to inform the public servant about the false information. It is the public servant which has to form his opinion independently. In other words, Kalendra under Section 182 can only be filed by public servant and not by the person against whom false information with intent to cause public servant to use his lawful power to the injury had been given.

In view of the aforesaid, even judgment passed in the case of *Mrs. Sarah Mathew(supra)* does not come to rescue the State. Even otherwise, complaint before the Magistrate was filed after the expiry of period of limitation. The complaint is to be made to the Magistrate and not

to the public servant.

In view of the aforesaid, the proceedings initiated under Section 182 IPC are beyond the period prescribed. Kalandra/DDR No.31, registered under Section 182 IPC, dated 05.06.2019, at Police Station Nayagaon, District SAS Nagar Mohali and all other consequential proceedings arising therefrom are quashed.

Hence, the present petition is allowed.

September 05, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No