

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 232 OF 2020**

Kadir Kadar Memon

..Applicant.

Versus

The State of Maharashtra

..Respondent

Mr. Lokesh Zade i/b. Mr. Adwait Bhonde for Applicant.

Mr. K. V. Saste, APP for State/Respondent.

CORAM : NITIN JAMDAR AND  
SARANG V. KOTWAL, JJ.

DATE : 2 DECEMBER 2021

P.C. :

. Heard the learned counsel for the parties. Taken up for disposal.

2. The Petitioner has filed this Application seeking to quash the Charge-sheet and the proceedings of S.C.C. No. 2006 of 2017 pending on the file of Judicial Magistrate, First Class, Cantonment Court, Pune.

3. A police constable filed the F.I.R. No. 3019 of 2015 on 21 February 2015 in which it was stated that, altercation was going on on the street wherein one girl and aged lady and main were quarreling and pulling each others clothes. The people present and the police constable separated them. On this allegation, invoking section 160 of the Indian Penal Code, F.I.R. was lodged against the Petitioner.

Thereafter the Charge-sheet is filed and the case is pending before the learned J.M.F.C.

4. The Petitioner has sought to quash the F.I.R. on the ground of bar of limitation. The learned counsel for the Petitioner submits that, in the light of section 468(2)(b) of the Code of Criminal Procedure, cognizance could not have been taken after a period of one year and no application was made by the prosecution under section 473 of the Cr.p.c. The learned counsel for the Applicant has relied upon the decision of the Apex Court in the case of *P. K. Choudhury Versus Commander, 48 BRTF (GREF)*<sup>1</sup> to contend that, even if the delay has to be condoned, the Hon'ble Supreme Court has held that the person has to be put to notice as to why delay should not be condoned.

5. In the present case, Crime No.3019 of 2015 was registered under section 160 of the IPC against the Applicant on 21 February 2015. On 30 January 2017 summons was issued by the Lashkar Police station to the Applicant to remain present. The Applicant was arrested on 30 April 2017 and released on bail on the same day. The charge-sheet was filed in the court of J.M.F.C. Cantonment, Pune in S.C.C.No.2006 of 2017 on 2 May 2017. By order dated 25 September 2017 the learned Magistrate issued process against the accused including the Applicant. The charge-sheet was

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1 (2008) 13 Supreme Court Cases 229

thus filed after the period of 2 years, 2 months and 12 days.

6. Section 160 of the Code provides punishment for committing affray. The punishment provides for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

7. The relevant portion of section 468(2)(b) reads thus:

*“468. Bar to taking cognizance after lapse of the period of limitation -*

*(1) .....*

*(2) .....*

*(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;*

*(c) .....*

*(3) .....*

X X X

”

However, section 473 of the Cr.p.c. states that, notwithstanding anything contained in the foregoing provisions of this Chapter, the Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interests of justice. This provision, therefore, stipulates that even beyond the period of limitation the Court can take cognizance of an offence, provided there is proper explanation or interests of

justice, so requires.

8. Admittedly, in this case the prosecution did not file any application properly explaining the delay. The order passed by the learned Magistrate after perusing the report under section 173 of the Code was only referring to material sufficient to issue process under section 160 of the IPC, but makes no reference to the fact that the period of limitation has expired.

9. In the present case, therefore, the cognizance has been taken beyond the period of limitation without any reference to the expiry of period of limitation. There was legal bar to take cognizance of the offence. Therefore, case is made out for grant of relief as prayed for in this Application.

10. Accordingly, the Application is allowed in terms of prayer clause (a) which reads thus:

*“a. This Hon’ble Court may be pleased to quash and set aside the Charge-Sheet and the resultant proceedings in S.C.C.No.2006/2017 pending at the files of the Judicial Magistrate First Class, Cantonment Court, Pune.”*

11. Order accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)