

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE BIVAS PATTANAYAK

CRR 934 of 2015

IA No.: CRAN/6/2019 (Old No.: CRAN/4216/2019)

Anusua Roy Chowdhury

Vs.

Anjurani Naru

For the Petitioner: Mr. Sandipan Ganguly, Senior Adv.
Mr. Dipanjan Dutt, Adv.

Heard on: 29.06.2022.

Judgment on: 23.08.2022.

BIVAS PATTANAYAK, J. : –

1.This revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') for quashing of the proceeding being case no.AC-2692 of 2014 under Sections 500/211 of the Indian Penal Code (hereinafter referred to as 'IPC') pending before Learned Judicial Magistrate, 3rd Court, Alipore, 24-Parganas (South).

2.The brief fact of the case is as follows.

- (i) The petitioner as an authorized representative and president of M/s *Swapnakalpa*, a society registered under Societies Registration Act, 1961, filed a complaint in court against opposite party being AC No. 180 of 2008 under Sections 427/448/504/506 of the Indian Penal Code.

(ii) The opposite party was acquitted of the charges labelled against her under Section 255(1) of the Criminal Procedure Code in the aforesaid proceeding by the learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South) on 28.02.2014.

(iii) Thereafter on being acquitted the opposite party on 25.08.2014 filed a complaint case being case no.AC-2692 of 2014 before the learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South) against the petitioner under Section 500 read with Section 211 of IPC and the learned Additional Chief Judicial Magistrate, Alipore, took cognizance of such offence and transferred the case to the file of learned Judicial Magistrate, 3rd Court, at Alipore for enquiry and disposal.

(iv) The learned trial Magistrate upon examination of opposite party-complainant under Section 200 of the Code issued summons upon the petitioner in respect of offence under Sections 500/211 of the Indian Penal Code.

3. Being aggrieved by and dissatisfied with such proceeding the petitioner has preferred the present revision.

4. In spite of service of notice none appeared on behalf of opposite party-complainant.

5. Mr. Sandipan Ganguly, learned Senior advocate appearing on behalf of the petitioner strenuously disputed the cognizance taken by the trial court and

issuance of process thereon against the petitioner-accused under Section 500 read with Section 211 of the Indian Penal Code on two fold grounds. *Firstly*, the allegation with regard to section 211 of IPC made in the petition of complaint relates to a court proceeding and as per provisions contained in section 195(1)(b) of the Code a Magistrate can take cognizance of such offence only on a complaint in writing of that court or by such officer of the court duly authorized in writing in this behalf or of some other court to which that court is subordinate and not by any private complainant. *Secondly*, the cognizance taken in respect of offence under Section 500 of IPC is barred by limitation inasmuch as the allegations in the complaint relates to period before 22nd December, 2007 till the judgment was pronounced on 28.02.2014 in earlier complaint case no. AC no. 180 of 2008 filed by the petitioner and in terms of Section 468 sub-clause (2) of the Code, cognizance of the such offence can only be taken within a period of three years from the date of filing of the earlier complaint at the instance of the petitioner and not from the date of knowledge of the opposite party-complainant or from the date of disposal of the earlier complaint. The petitioner filed the earlier complaint case being no. AC 180 in the year 2008. The instant complaint has been filed by the opposite party-complainant in the year 2014. Thus after a lapse of almost six (6) years the opposite party-complainant filed the instant complaint, which is beyond the period of limitation as prescribed under the Code for such offences and hence it was not at all permissible for the Magistrate to take cognizance of such offence after the expiry of the prescribed period. He has placed reliance on the decision

of the Hon'ble Supreme Court passed in **Surinder Mohan Vikal versus Ascharaj Lal Chopra**¹; and of Madras High Court passed in **P.M Kathiresan versus Shanmugham, Retired Captain**² in relation to his aforesaid contention. In the light of the above his aforesaid submissions, he prayed for quashing of the proceeding in question pending before the trial court.

6.The first point that has fallen for consideration by this court is whether in the instant case cognizance of an offence under Section 211 of IPC included in the complaint filed by opposite party-complainant against the petitioner was rightly or wrongly taken by the Trial Magistrate. In dealing with this question of law, the point of time at which the legality of cognizance taken has to be judged is the time when cognizance is actually taken under Section 190 of the Code, which is the only provision for taking cognizance under the Criminal Procedure Code which applies to trial of such cases. Section 195 of the Code which follows that Section is in fact a limitation on the unfettered power of the Magistrate to take cognizance under Section 190 of the Code. Sub-section(1) of Section 195 which is relevant for the present purpose is reproduced herein below:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance –

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code(45 of 1860), or

(ii) of any abetment of , or attempt to commit, such offence, or

¹ (1978) 2 SCC 403

² 1995 Cri LJ 2508

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199,200, 205 to 211 (both inclusive) and 228,when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476,of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause(i) or sub-clause(ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.....”

6.1. This sub-section puts a restriction upon any court from taking cognizance of offences mentioned in Clauses (a) and (b) upon satisfaction of conditions laid down therein. As far as offence punishable under Section 211 of IPC is concerned the mandatory direction is that no Court shall take cognizance of any offence punishable under this Section when such offence is alleged to have been committed in, or in relation to any proceeding in any Court, except on the complaint in writing of such Court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which such Court is subordinate. Thus, the provisions embodied under Section 195(1)(b) of the Code is clearly a limitation on the power of the Court to take cognizance under Section 190 of the Code. Therefore, the trial Magistrate while taking cognizance under Section 190 of the Code must examine facts of that

complaint before him and determine whether his power of taking cognizance under Section 190 of the Code has or has not been taken away by Section 195(1)(b) of the Code. A proper interpretation of the provisions of 195(1)(b) of the Code requires that each ingredients in it be separately examined. The provision bars taking of cognizance if all the following circumstances exist namely (i) that the offence in respect of which the case is brought falls under Section 211 of IPC; (ii) that there should be a proceeding in any court; and (iii) that the allegation should be that the offence under Section 211 of IPC was committed in or in relation to such a proceeding. Thus unless all the aforesaid three ingredients exist the bar of Section 195(1)(b) of the Code against taking cognizance by the Magistrate except on a complaint in writing of a Court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which such Court is subordinate, will not come into operation.

6.2. Now let me analyze whether the ingredients as indicated above were in existence at the time when the learned Judicial Magistrate proceeded to take cognizance of the offence under Section 211 of IPC against the petitioner. As far as the first aspect is concerned, upon perusal of the petition of complaint it is found that an allegation of offence under Section 211 of IPC has been made by the opposite party-complainant against the petitioner. Therefore, the first ingredient clearly existed. With regard to the second ingredient concerning existence of a proceeding it is found that such proceeding in relation to which the alleged offence under Section 211 of IPC has been made has already been

concluded. The question which arises at this juncture is whether a concluded proceeding shall be taken into consideration while determining the applicability of section 195(1) (b) of the Code. While dealing with the component that there should be proceeding in any court, there may occasion three situations, *firstly*, there may be no proceeding in court at all, *secondly*, a proceeding may actually be pending at the time when cognizance of offence under section 211 of IPC was sought to be taken and *thirdly*, there may be no proceeding pending in any court in which or in relation to which offence under section 211 of IPC could have been committed, there may have been a proceeding which had already been concluded and offence under section 211 of IPC may be alleged to have been committed in or in relation to the said proceeding. The present case is precisely covered by the third situation where allegation under section 211 of IPC has been made in respect of a proceeding which has already been concluded. Even if that be the case where there was at one stage a proceeding in any court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) of the Code arises the bar under that provision would apply if it is alleged that the offence under Section 211 of IPC was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) of the Code does not require that the proceeding in any court must actually be pending at the time of applying this bar arises. **(See *Shri M.L.Sethi versus Shri R.P.Kapur and Another*)³**. The third ingredient is also satisfied to the extent that the

³ AIR 1967 SC 528

allegations under Section 211 of IPC of false charge relates to an earlier complaint case filed at the instance of the petitioner being AC 180 of 2008. Thus, all the aforesaid ingredients for application of provisions under Section 195(1)(b) of the Code are satisfied. Accordingly, the cognizance taken by the learned trial Magistrate in respect of offence under Section 211 of IPC made by a private complainant namely the opposite party herein relating to an earlier proceeding in court, which has already been concluded, is barred by the aforesaid provisions contained under Section 195(1)(b) of the Code and is bad in law.

7.Mr. Ganguly, learned Senior advocate appearing on behalf of the petitioner has assiduously argued putting reliance on the decision of the Hon'ble Supreme Court passed in **Surinder Mohan Vikal (supra)** and Madras High court passed in **PM Kathiresan (supra)** that the cognizance taken by the learned trial Magistrate in respect of offence under Section 500 of IPC is barred by limitation. In order to deal with such proposition it will be profitable to reproduce Section 468 of the Code which bars taking of cognizance of an offence after expiry of the period of limitation which reads as follows:-

“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 a term exceeding one year but not exceeding three years.....”

The aforesaid provisions contained in Chapter XXXVI of the Code not only raises bar of limitation but also prescribes the period thereof. The other allegation in the instant complaint relates to offence under Section 500 of IPC which enshrines punishment with simple imprisonment for a term which may extend to two years or with fine or with both, therefore the period of limitation would be three years as prescribed in clause (c) of sub-section(2). In order to determine the question of limitation one has to advert to the starting point when such limitation would said to have commenced for the purpose of the present case. Section 469(1)(a) of the Code provides that the period of limitation, in relation to an offender, shall commence on the date of the offence.

The Hon’ble Supreme Court in ***Surinder Mohan Vikal (supra)*** observed as follows:-

“ 5. It will be recalled that the complaint for the commission of the offence under Section 406/420 I.P.C. was filed on March 15,1972. It has specially been stated in the respondent’s complaint under Section 500 I.P.C. that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under Section 500 I.P.C. was committed on March 15, 1972, which was the date of the offence within the meaning of Section 469 (1) (a) of the Code, and the period of three years’ limitation would be calculated with reference to that date for purposes of the bar provided by Section 468. But, as has been stated, the complaint under Section 500 I.P.C. was filed on February 11, 1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation”.

Bearing in mind the aforesaid observation of the Hon'ble Court, for the purpose of considering the date of offence under Section 500 of IPC the averment made in the complaint is to be looked into. Upon going through the statements made in the complaint it is found that it relates to allegations of defamation pertaining to a complaint case filed at the instance of the petitioner sometime in the early part of 2008. Thus, the limitation in the present case in respect of offence under Section 500 of IPC started to run since early part of 2008. It appears that the present complaint has been filed on 25.08.2014, which is much after the expiry of the period envisaged under Section 468 of the Code. Therefore it was not permissible for the learned trial Magistrate to take cognizance of the offence under Section 500 of IPC after the expiry of the period of limitation. The decision of Madras High Court in **PM Kathiresen (supra)** also fortifies that cognizance taken after expiry of the period of limitation is impermissible.

8.In view of the above discussion, as the taking of cognizance in respect of offence under section 211 of IPC is barred under section 195(1)(b) of the Code and that of offence under Section 500 of IPC is barred by limitation, hence the proceeding before the trial court if allowed to continue will be abuse of process of court and accordingly is liable to be quashed in exercise of inherent power under section 482 of the Code.

9.In the result the revisional application being **CRR 934 of 2015** is allowed. The proceeding being AC 2692 of 2014 pending before learned Judicial

Magistrate, 3rd Court, at Alipore, 24-Parganas (South) stands quashed. The impugned orders of the learned trial magistrate taking cognizance of offence under section 500/211 of IPC and issuing process against the petitioner is accordingly set aside.

10. All connected applications stands disposed of.

11. Interim orders, if any, stand vacated.

12. Let a copy of this order be sent to the learned trial court for information.

13. Urgent Photostat Certified copy, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J)