

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.985 of 2012

Santosh Kumar Jena and another ***Petitioners***

Mr. Samir Kumar Mishra, Advocate
-versus-

State of Odisha ***Opposite Party***

Mr. J. Katikia, AGA

**CORAM:
THE CHIEF JUSTICE**

ORDER
06.05.2022

Order No.

05. 1. The FIR was lodged against the Petitioners at Police Station (P.S.) Laxmisagar, District Khurda on 27th November, 2008 under Sections 188, 186, 294 read with Section 34 IPC.
2. Admittedly, these are offences punishable with less than one year's imprisonment. The further undisputed fact is that the charge-sheet in Final Form was filed on 24th July, 2010 whereas cognizance was taken only on 30th January, 2012. Contending that this is barred by limitation in terms of Section 468(2)(b) of the Code of Criminal Procedure, the Petitioners have filed the present petition.
3. The plea that the complaint was barred by limitation was negatived by the trial Court by relying on the decision of the Supreme Court in *Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 38 OCR (SC) 309. However, on perusal of the said judgment, it appears that the decision was on the basis that the delay in taking cognizance was on account of the Court and not on

account of the parties. It is accordingly held that the party should not be suffered for the action of the Court.

4. However, in the present case, the delay in initiation of the proceedings was not on account of the Court. This distinction has been noticed in a subsequent judgment of this Court in *Amulya @ Kalia Behera v. State of Orissa*, (2010) 47 OCR—134 where the decision in *Japani Sahoo* (*supra*) was noticed and was distinguished.

5. The present case stands on the same footing as *Amulya @ Kalia Behera* (*supra*). Accordingly, the impugned order dated 30th January, 2012 of the SDJM., Bhubaneswar in G.R. Case No.4424 of 2008 is hereby quashed. The petition is allowed.

6. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

M. Panda