

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

CRIMINAL APPLICATION NO. 2068 OF 2020

- 1] Krushna s/o Vijay Lalbegi,
Age : 33 years, Occu. Labour.
- 2] Vijay s/o Sompal Lalbegi,
Age : 60 years, Occu. Business.
- 3] Sohan s/o Vijay Lalbegi,
Age : 40 years, Occu. Business,
Applicant No. 1 to 3 R/o. JJ Galli,
Mangal Gate Road, ST Colony Gate,
Ahmednagar, District Ahmednagar.
- 4] Dhiraj s/o Vishnuraj Nakwal,
Age : 45 years, Occu. Service,
R/o. Mahatma Colony, Bhingar,
Ahmednagar, District Ahmednagar.

...Applicants

Versus

- 1] The State of Maharashtra
- 2] Balraj s/o Kisan Kandare,
Age : 40 years, Occu. Service,
R/o. JJ Galli, Mangal Gate Road,
ST Colony Gate, Ahmednagar,
District Ahmednagar.

...Respondents

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Mr. D. A. Bide, Advocate for the applicants
Mr. S. J. Salgare, APP for respondent/State
Mr. S. R. Andhale, Advocate for respondent no. 2
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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : SEPTEMBER 21, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] : -

1. By means of this application filed under Section 482 of the Code of Criminal Procedure, the applicants seek quashing of the F.I.R. No. I-125/2012 dated 05.12.2012 registered with Bhingar Camp Police Station for the offences punishable under Sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code and the Charge-sheet which culminated into Cri. M. A. No. 1034/2021, on the ground of delay of more than eight years in filing the charge-sheet.

FACTS :

2.1] Respondent no. 2 lodged complaint against the applicants vide Crime No. I-125/2012 at Bhingar Camp Police Station for having committed the offences punishable under sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code, alleging that the applicants assaulted him by means of a sharp edged weapon and sticks.

2.2] In view of the FIR dated 05.12.2012, the Investigating Officer of the Bhingar Camp Police Station, Ahmednagar, had arrested the accused nos. 1, 3 and 4 on 20.06.2013 and produced before the learned Judicial Magistrate First Class, Ahmednagar on the same day with the remand report. Thereafter, the applicants had preferred an application for bail before the learned JMFC, Ahmednagar, on the same day and they were released on bail. Subsequently, applicant no. 2 himself appeared before the police and thereafter filed an application for bail before the court of learned Judicial Magistrate First Class, Ahmednagar. Later on, he was also released on bail by the court of ld. JMFC.

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2.3] After the applicants were released on bail, they had visited the concerned police station and sought the information in respect of the further investigation in the said crime, however, the concerned police did not respond to the request of the applicants. On 27.08.2020, the applicants tendered an application seeking investigation papers and the copy of charge-sheet, if any, as well as further progress of the investigation in the crime but they have not been provided anything except the communication dated 12.01.2015 and the receipt of the bail bond/security bond amount.

2.4] The applicants thereafter presented an application under Right to Information Act seeking documents filed before the court, if any, by the Investigating Agency but, no action as yet has been taken on the said application. Being aggrieved and dissatisfied, they have approached this Court for quashing of the FIR and the consequent charge-sheet.

2.5] On 18.08.2021, it was reported by the learned APP of this Court that although the applicants came to be arrested in connection with the said crime and subsequently released on bail, the Investigating Officer has not submitted the charge-sheet and now he has been transferred to Police Headquarters at Ahmednagar. This Court had directed learned APP to take instructions in this regard, in view of Section 324 of IPC. On 29.09.2021, learned APP informed the Court that the concerned Police Head Constable had missed the papers of investigation and, therefore, departmental enquiry has been initiated against him. Even separate Crime bearing No. 399/2021 for the offence punishable under Sections 188 and 217 of the IPC has been registered against concerned Investigating Officer.

2.6] On 13.10.2021, learned APP of this Court had further submitted, on instructions, that after reconstructing the file, the charge-sheet in the matter has been filed on 05.10.2021.

2.7] On presentation of the charge-sheet before the Court, an application for condonation of delay in filing the charge-sheet came to be filed. The learned Magistrate after finding the reasons genuine for the delay caused in filing charge-sheet, allowed the said application vide order dated 08.09.2022 and directed that the charge-sheet be registered as Warrant Case (RCC) Case. Accordingly, the charge-sheet in the matter has been filed on 05.10.2021.

3.1] In the Criminal Application, the applicants stated that the applicant no. 1 is trying to get compassionate appointment in the Municipal Corporation at Ahmednagar but due to the pendency of this case, he is unable to get Character Certificate.

3.2] The applicants further stated that the alleged crime has, in fact, not taken place. The FIR in question has been filed with an ulterior motive and with a view to harass the applicants. Further, there had been no progress in the investigation in the crime for almost eight years. There is an inordinate delay in filing the charge-sheet, which is not permissible as per the provisions of law so also the decisions rendered by the Hon'ble Apex Court.

SUBMISSIONS : -

4.1] Learned counsel for the applicants submits that the complaint has been lodged by the complainant on 05.12.2012, however, the charge-sheet came to be filed on 05.10.2021. Learned

counsel submits that the delay in filing the charge-sheet has not been properly explained. He further submits that in view of the bar of Section 468 of the Cr.P.C., no cognizance of such a case after the lapse of period of limitation, can be taken for an offence of the category as specified in sub-section 2 of section 468 of the Cr.P.C. He further submits that the period of limitation in the instant case is maximum 3 years considering the maximum punishment prescribed for the offence punishable under section 324 of the Indian Penal Code. Learned counsel submits that the charge-sheet is filed after the expiry of the said period without explaining the delay or without giving justifiable reasons for condonation of such inordinate delay. The Court may take cognizance of an offence after the expiry of limitation in terms of provisions of section 473 of the Cr.P.C. if the Court is satisfied on the facts and circumstances of the case that the delay has been properly explained. The prosecution agency has to give reasons for the delay and only if the Court is satisfied about the delay or if it finds that it is necessary in the interest of justice to do so, it may condone the delay and take cognizance of the case beyond the period of limitation. In the instant case, the prosecution agency has not explained the delay to the satisfaction of the Court nor pointed out any special reasons necessary in the interest of justice, to condone such an inordinate delay in filing the charge-sheet. Hence, he prayed for allowing the application.

4.2] Learned APP for respondent no.1/State submits that the Five Judge Bench of the Supreme Court has dealt with this issue in the case of **“Sarah Mathew & Ors. Vs. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & Ors.** reported in 2014 Cri. L.J. 586.

4.3] Learned APP submits that in the present case the respondent no.2/original complainant has lodged the complaint in the concerned Police Station on the date of the alleged incident itself and the Investigating Officer has submitted the charge-sheet in the year 2021. Though apparently, there is delay of almost 8 years and 10 months in filing the charge-sheet before the Court, in the light of the observations made by the Hon'ble Five Judge Bench of the Supreme Court, for the purpose of computing the period of limitation under section 468 of the Cr.P.C., the relevant date is the date of institution of the prosecution and not the date on which the Magistrate takes cognizance. Learned APP further submits that Section 473 of the Code of Criminal Procedure lays down that, any Court may take cognizance of the offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do in the interest of justice. Considering the same, the Magistrate has rightly allowed the said application. There is no substance in the Criminal Application and thus it is liable to be dismissed.

4.4] While concluding argument, learned APP placed before the Court, photocopy of Order dated 08.09.2022 passed by learned JMFC, in the proceedings before the Lower Court, thereby condoning the delay in filing the charge-sheet.

ANALYSIS : -

5] In the instant case, the respondent no.2/complainant has immediately lodged the complaint in the concerned Police Station on the date of the alleged incident itself. Thus, the date of institution of the prosecution is material and, therefore, there is no question of delay as such in institution of prosecution. In computing period of

limitation under section 468 of the Cr.P.C., the relevant date is the date of institution of the prosecution and not the date on which the Magistrate takes cognizance on the basis of charge-sheet filed before it. Therefore, as per Section 468(2)(c), the period of limitation is 3 years for filing Charge-sheet in present case.

6] The F.I.R. is lodged on 05.11.2012, under Sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code. Section 324 IPC relates to voluntarily causing hurt by dangerous weapon; wherein the maximum punishment can be imposed to the extent of 3 years.

7] Learned Judicial Magistrate First Class, Ahmednagar has passed the following order, on 08.09.2022, copy of which was produced by APP at the time of arguments.

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Heard Ld. APP and Ld. Advocate for the accused. Perused the say filed by the accused on record. Considering the reasons stated in the application, it appears that the reasons quoted for delay in filing charge-sheet is justified. Therefore, the delay caused in filing the charge-sheet is hereby condoned. The charge-sheet be registered as Warrant Case (RCC) case.

Sd/-
08.09.2022
JMFC”

8] Section 473 of the Code of Criminal Procedure reads thus: -

“473. **Extension of period of limitation in certain cases.** - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.”

9] If we go through the order passed by learned Judge of the trial Court thereby condoning the delay in filing charge-sheet by order dated 08.09.2022, we do not find error in the same since Section 473 of the Code of Criminal Procedure lays down that “any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained”. Therefore, the JMFC has power to condone the delay, which it has exercised.

10] The applicants have filed the present Criminal Application on 28.10.2020 for quashing F.I.R. dated 05.12.2012. The Criminal Application is filed almost after 8 years. In para no. 6 of the present criminal application it is stated that “the applicants are law abiding citizens and more particularly the applicant no. 1 is trying to get service in government agency and because of the pending Crime i.e. bearing F.I.R. No. I-125/2012, dated 05.12.2012, is unable to get the character certificate for his future service, therefore, the applicants are before this Hon’ble Court praying to quash and set aside the said F.I.R. bearing No. I-125/2012, which is lodged by the informant”. Hence, it seems from the above stated reasons that the Applicants have filed the Criminal Application after 8 years, which clearly suffers from delay and latches.

11] In view of above discussion, we do not find any substance in the present Criminal Application. Hence, no case is made out to quash the FIR and the charge-sheet and the proceedings arising therefrom on the ground of delay in filing the charge-sheet. There is no merit in the application. The applicants should face trial. Hence, we proceed to pass the following order : -

ORDER

[i] Criminal Application is hereby rejected.

**[RAJESH S. PATIL]
JUDGE**

**[SMT. VIBHA KANKANWADI]
JUDGE**