

238 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31221-2021

Date of Decision:13.12.2022

DHANNA SINGH

..... Petitioner

Versus

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ajit Pal Singh Pakka, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C is seeking quashing of FIR No.37 dated 02.05.2016 registered at Police Station Raman, Bathinda, under Sections 279, 337, 338 and 427 of IPC and all consequently proceedings arising therefrom.

2. Learned counsel for the petitioner submits that FIR in question was registered on 02.05.2016 and it was registered under Sections 279, 337, 338 and 427 of IPC. The maximum sentence prescribed under all these sections is 2 years and as per Section 468 Cr.P.C, the Court cannot take cognizance beyond 3 years, if maximum sentence prescribed for commission of offences is upto 3 years. In the case in hand, the FIR was registered on 02.05.2016, as per respondent challan was prepared on 10.08.2019 and it was presented before Trial Court on 04.10.2019 and thereafter Trial Court framed charges on 04.03.2020. Learned Trial Court has proceeded without adverting with question of limitation in true spirit. The question of limitation is a pure

question of jurisdiction and in the absence of adjudication of question of limitation, the Court was barred from proceedings ahead.

3. Learned State counsel supporting the case of the prosecution submits that there was no delay and an appropriate application in terms of Section 473 Cr.P.C was filed alongwith challan and Court has rightly framed the charges.

4. With the able assistance of both sides, I have perused the record and heard arguments of both sides.

5. Before delving into issue involved, it would be appropriate to look at Section 468, 469 and 473 Cr.P.C. which are reproduced as below:

“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.

(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.

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 interests of justice.”*

6. It would be pertinent to notice here that sections invoked in FIR and challan neither fall in the schedule annexed to The Economic Offences (Inapplicability) of Limitation) Act, 1974 nor there is any State amendment making Section 468 inapplicable to afore-cited sections of IPC.

7. From the perusal of afore-stated sections, it is quite evident that Trial Court can take cognizance within 3 years if a maximum sentence prescribed is 3 years. In case of continuing offence, the

limitation prescribed under Section 468 Cr.P.C is not applicable.

8. The findings recorded by learned Trial Court are as below:

"I have heard the contention advanced by the both the counsels and have perused the file. It is relevant to import decision of Hon'ble Supreme Court in the present case to decide the matter at hand. In case of Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director (SC) 2014 (1) RCR (Criminal) 590 the Hon'ble Supreme court held that date of institution of prosecution is relevant for computing the period of limitation under section 468 CrPC and not the date of taking cognizance.

The relevant para is adduced as under:-

"41 In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance..."

In light of above decision this court finds that the arguments advanced by defence counsel are not tenable in the present case and hence denied. The relevant date to compute period of limitation under Section 468 Cr.PC is not the day on which court takes cognizance but when the prosecution is instituted. Hence, this court is not barred by section 468 CrPC to take cognizance in the present case. There is prima facie case made out against the accused. Charges are framed accordingly. Charges are read over and explained to the accused to which he pleaded not guilty and claimed trial. Now case is adjourned to 28.04.2020 for prosecution evidence. Notice to witnesses at serial no.1 and 2 be also issued for date fixed."

9. From the reading of above quoted findings of learned Trial Court, it appears that learned Trial Court has considered argument of petitioner-accused, however, no finding *qua* Section 473 Cr.P.C has been returned. The Trial Court has simply considered that the date of presentation of challan is relevant and date of taking actual cognizance is not relevant. In the case in hand, challan was prepared on 10.08.2019 and it was presented on 04.10.2019. As per impugned order as well as averments of the State counsel, the challan was presented alongwith an application under Section 473 Cr.P.C seeking condonation of delay. Learned Trial Court has not returned findings *qua* application filed Section 473 Cr.P.C thus, impugned order deserves to be set aside and accordingly set aside.

9. Learned Trial Court, keeping in mind date of alleged offence, date of presentation of challan, is directed to pass order afresh on the application filed by the State under Section 473 Cr.P.C.

10. Disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

13.12.2022

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>