

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-21685-2014 (O&M)

Date of decision: 09.01.2023

Yash Pal

.....Petitioner

Versus

Charan Singh Saini

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vivek Singla, Advocate
for the petitioner.

Mr. S.K. Rattan, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking quashing of complaint No.104 dated 18.05.2009 titled as 'Charan Singh Saini Vs. Yash Pal' (Annexure P-1) which is pending adjudication before the Court of Judicial Magistrate, SAS Nagar, Mohali. A further prayer has also been made for quashing of the summoning order (Annexure P-2) dated 03.10.2011 passed by learned Chief Judicial Magistrate, SAS Nagar, Mohali along with order dated 09.06.2014 (Annexure P-3) passed by learned Additional Sessions Judge, SAS Nagar, Mohali.

Learned counsel appearing for the petitioner has vehemently urged that the impugned complaint is nothing but an abuse of the process of law and even the order dated 03.10.2011 (Annexure P-2) passed by the learned Trial Court whereby the petitioner was summoned to face trial under Section 499/500 of the IPC on the face of it suffers from patent illegality and thus deserves to be set aside.

While drawing the attention of this Court to the impugned

complaint (Annexure P-1), learned counsel for the petitioner has vehemently submitted that the respondent/complainant therein has levelled allegations that the petitioner with an intent to harass and defame him had successfully managed to get his promotion withdrawn as a result of which the complainant was reverted vide order dated 05.03.2003. Learned counsel, therefore, submits that the allegations attracting the mischief of Section 499/500 of the IPC, though not admitted, pertained to the year 2003 and the complaint in question (Annexure P-1) had been filed by the complainant after 6 years i.e. much beyond the period of limitation prescribed in such cases. He submits that even if for the sake of arguments it is believed that the order dated 05.03.2003 had been communicated to the respondent/complainant only on 23.01.2004, still the impugned complaint would be barred by limitation as the period of limitation of 03 years in the circumstances, would have expired on 23.01.2007.

Learned counsel for the petitioner has argued that learned Revisional Court gravely erred in ignoring the provisions of Sections 468 and 469 of the Cr.P.C. and in its order dated 09.06.2014 wrongly concluded that the date of limitation would have to be counted from the date when the last representation dated 27.08.2007, was given by the complainant to the authorities concerned.

It has still further been contended by learned counsel for the petitioner that the respondent/complainant had not approached the Court with clean hands as he had concealed the factum of the dismissal of a civil suit which had been filed by him seeking damages on the same cause of action. Learned counsel has, thus, vehemently argued

that it is obvious that the impugned complaint had not only been filed with an ulterior motive to harass the petitioner coupled with the fact that from a bare perusal of its contents it did not even remotely disclose the commission of any offence much less under Section 499/500 of the IPC. In support of his submissions, learned counsel has placed reliance upon ***Krishna Lal Chawla and others Vs. State of U.P. and another : 2021(2) RCR (Criminal) 300 and M/s Sangrur Agro and another Vs. State of Punjab : 2020(1) RCR (Criminal) 455.***

Per contra, learned counsel appearing for the respondent while vehemently controverting the submissions made by the counsel opposite has contended that the present petition is in fact an abuse of the process of law as it has been filed with a malicious intent to just delay the conclusion of the trial. He submits that the averments made in the impugned complaint clearly disclose the commission of an offence under Section 499 of the IPC and hence in the circumstances, the impugned complaint should not be quashed.

It has also further been vehemently contended by learned counsel for the respondent that the complaint was filed within the prescribed period of limitation and the Revisional Court did not err in holding that the period of limitation would commence from the date when the last representation was made on 27.08.2007. He submits that even otherwise the procedural laws are hand-maid of justice and not its mistress, therefore, the impugned complaint cannot be thrown out merely on the ground of delay. In support of his submissions, learned counsel has placed reliance upon ***Balbir Singh Vs. The State and another : 2010(6) RCR (Criminal) 735; Narsh Sachdeva Vs. Balraj***

Singh : 1997(2) RCR (Criminal) 403; Hari Jai Singh Vs. Suresh Kumar Gupta : 2004(4) RCR (Criminal) 875; Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Admn.) and another : 2009(2) RCR (Criminal) 520.

I have heard learned counsel for the parties and perused the relevant material on record.

The first and foremost question that arises for consideration of this Court is as to whether the complaint in question (Annexure P-1) was filed by the respondent/complainant within the prescribed period of limitation or not?

The impugned complaint was instituted by the respondent/complainant levelling allegations of defamation under Section 499 of the IPC against the petitioner (punishable under Section 500 of the IPC). It would be, therefore, apposite to reproduce Section 500 of the IPC, which reads as under:-

“500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

It would also be relevant to reproduce Section 468 of the Cr.P.C. which prescribes the period of limitation for taking cognizance of various offences and the same reads as under:-

“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.”

A perusal of the above reproduced statutory provisions makes it abundantly clear that the period of limitation for taking cognizance of an offence punishable under Section 500 of the IPC is 03 years since the maximum punishment provided therein is imprisonment of 02 years.

Section 469 of the Cr.P.C. which provides for commencement of the period of limitation is also reproduced hereinbelow:-

“469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offence, 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.”

Based on the aforesaid provisions, this Court would now proceed to decide as to when the cause of action accrued and the question of limitation in the instant case.

No doubt, limitation is a mixed question of law and facts,

and it can be ascertained only after the parties have led their evidence, however, there is an exception to the general rule and question of limitation can also be decided at the threshold in view of the admitted and undisputed facts so as to save precious judicial time and prevent further abuse of the process of law.

A perusal of the averments made in the impugned complaint (Annexure P-1) reveal that the respondent/complainant is mainly aggrieved on account of his reversion/withdrawal of his promotion on account of a mischief allegedly played by the petitioner which caused his status to be lowered in the society and also adversely affected his reputation and integrity. It is not disputed rather it is a matter of record that the respondent/complainant's order of reversion was passed on 05.03.2003 and the said order was communicated and supplied to the respondent/complainant on 23.01.2004. Therefore, in the circumstances, the period of limitation to institute a complaint as provided for under Section 469(1)(b) of the Cr.P.C. would commence from the date on which the order of reversion was communicated to the respondent/complainant and on which date the commission of the alleged offence came to his notice i.e. 23.01.2004. In the circumstances, since the impugned complaint was instituted only on 18.05.2009 there can be no manner of doubt that it was instituted much beyond the prescribed period of limitation i.e. 03 years.

The respondent/complainant has also alleged that the petitioner had misbehaved and insulted him prior to 05.05.2004 as a result of which he had made a complaint against him to the officiating Managing Director. Thus, even if the date of limitation for the sake of

arguments is taken from 05.05.2004 i.e. when a complaint qua misbehaviour etc. was made against the petitioner to the authorities concerned, it would still be hopelessly time barred.

There is no dispute qua the settled principle of law that the procedure is hand-maid of justice and not its mistress, however, the Courts of law cannot be oblivious to the intent of the legislature behind the enactment of statutory provisions and the purpose sought to be achieved by them. The purpose and object behind prescribing a definite period of limitation for taking cognizance of certain offences is for shutting out any belated claims so as to prevent unnecessary harassment to an accused.

It would be pertinent to notice here that though one of the general principles of criminal justice is “*nullum tempus aut locus occurrit regi*” (lapse of time is no bar to crown proceeding against offenders), however, at the same time no person can be kept under endless angst, with a sword hanging over his head that he could be prosecuted for any crime at any time, thereby depriving him or her of a peaceful and harmonious existence. Still further, it cannot be over-emphasized that “law helps the vigilant and not the dormant”(*vigilantibus non dormientibus jura subveniunt*). In the case in hand, the respondent/complainant has miserably failed to satisfy this Court or come up with any reasonable justification qua the huge delay in filing the complaint against the petitioner before this Court. Not only this, even before the learned Trial Court the respondent/complainant admittedly did not seek condonation of delay in filing the complaint in question, before cognizance of the offences alleged, was taken by it.

The Hon'ble Supreme Court in ***Hasmukhlal D.Vora and another Vs. State of Tamil Nadu : 2023 AIR (Supreme Court) 102*** has observed that in absence of any explanation qua the extraordinary delay (4 years in that case) in filing of the complaint would prompt the Court to infer some sinister motive behind initiating the criminal proceedings. The Hon'ble Supreme Court in para 28 of the said judgment has also observed as under:-

“.....While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.”

The Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathews Vs. The Institute of Cardio Vascular Diseases by its Director-Dr. K.M. Cherian and others : 2013 AIR (SC) 448*** while dealing with the scope of Section 468, 469 and 470 of the Cr.P.C. has categorically held that a Magistrate can take cognizance of an offence only if the complaint in the said regard is filed within the prescribed period of limitation. However, he would be entitled to exclude such time as is legally excludable.

This Court, in the above circumstances, finds no merit in the submissions made by learned counsel for the respondent/complainant that the period of limitation would commence only from the date when the last representation was made by him on 27.08.2007. Section 469 of the Cr.P.C. is very categoric in the said regard and there can be no room for any ambiguity whatsoever. The

Revisional Court definitely fell into error by ignoring the provisions of Section 469 of the Cr.P.C. while passing the order dated 09.06.2014.

It would also be relevant to point out here that the promotion of the respondent/complainant was withdrawn as a consequence of the opinion given by the Financial Commissioner, Punjab as well as A.G., Punjab and not solely on account of any act of the petitioner. Therefore, merely because the promotion of the respondent/complainant was withdrawn due to an act of the petitioner in discharge of his official functions, that would not by itself be sufficient to attract the mischief of Section 499 of the IPC.

Hence, in view of the facts and circumstances as enumerated hereinabove coupled with the observations of the Hon'ble Supreme Court cited hereinabove, this Court has no hesitation in observing that the continuation of criminal proceedings against the petitioner would be an abuse of process of law and to secure the ends of justice the impugned complaint as well as the summoning order dated 03.10.2011 deserve to be quashed. The case laws relied upon by learned counsel for the respondent/complainant would not come to his rescue as they do not relate to the issue in question at all.

Accordingly, the instant petition is allowed and the impugned complaint along with consequential proceedings arising out of the same including summoning order dated 03.10.2011 and order dated 09.06.2014 are quashed.

09.01.2023

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes