

263 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-5168-2012 (O&M)

Reserved on :13.07.2023

Date of Decision: 18.07.2023

Mafoi Management Consultants Ltd.

...Petitioner

Vs.

State of Haryana and Others

...Respondents

**Coram : Hon'ble Mr. Justice N.S.Shekhawat**

Present: Mr. Rajesh Lamba, Advocate  
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

Mr. Vikas P. Singh, Advocate  
for respondent No.2.

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**N.S.Shekhawat J.**

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing of an FIR No. 143 dated 24.07.2011 under Section 338 of IPC registered at Police Station Sahlawas, District Jhajjar (Annexure P-1) alongwith all the consequential proceedings arising therefrom.

2. As per the case of the prosecution, the FIR in the present case was got registered on the basis of the statement made by Manoj son of Jai Kishan. As per the complainant, on 16.07.2011, he was working as an electrician in Tiejun Company, Jharli. At about 03:30/04:00 AM, he went on deputation to Shandong Tiejun Electric Power Engineering Company Limited (herein after referred to as the "Shandog Electric") for night duty from his company Mafoi Management Consultants Limited and was not able to join on duty till evening. At that time, he went to urinate near the sub station of their company and after urinating, he had raised his hands to relax himself and the electricity wire was so low that his hands touched it and he became unconscious. When he got up

later, he called his company's friend namely Lal Singh and told him about the incident. Later on, Lal Singh and other officials of the company came there and took him to PGI Rohtak and he remained admitted there for 4/5 days. The officials of the company did not allow him to lodge the FIR and later on, his father got him admitted in Jaipur Golden Hospital, Delhi on 20.07.2011 and he informed the police and got his MLC conducted. As per him, had the company got him treated in time and would not have been careless, then both his hands could be saved. With these broad averments, the complainant got the FIR registered under Section 338 of IPC.

3. Learned counsel for the petitioner submits that the petitioner had entered into agreement dated on 01.04.2009 with Shandog Electric. Learned counsel further submits that the respondent No.2/complainant used to work under the Shandong Electric and the site, where the respondent No.2 was working was also under the active control of Shandong Electric. As per the agreement, the responsibility of the petitioner management were clearly defined. As per clause 2.1, the Shandong Electric was to forward the requirements specified in the form of Annexure 1 to the petitioner company and the petitioner company was to provide qualified candidates resumes pursuant to Annexure 1 issued by the Shandong Electric. Further, the duty of the petitioner management was only to supply the labour to the Shandong Electric and they used to work under the direct and active control of the Shandong Electric. He further contends that the incident in question had taken place, while respondent No.2 was relaxing in the accommodation provided by the Shandong Electric and he accidentally touched a live electric wire there. Even from the admitted case of the respondent No.2/complainant, the site, where the accident had

occurred, was owned and was under the active control of the Shendong Electric. Thus, no criminal liability can be fastened on the petitioner company. Apart from that, as per the report prepared at the site, even the wire was more than nine feet above the ground and it was not possible to touch the wire. Consequently, there must be some negligence on the part of the respondent No.2/complainant. Apart from that, the FIR in the instant case was registered under Section 338 of IPC, which is punishable with a maximum sentence of two years. Consequently, no Court was in a position to take cognizance of the offence after a period of 03 years from the date of occurrence.

4. Reply has been filed by Superintendent of Police, Jhajjar on behalf of respondent No.1. Even though the respondent No.2 was served, but no formal reply was filed by respondent No.2. Learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner and contended that the petitioner was a contractor and was liable to be prosecuted for the accident in question. Apart from that, the wires had not been placed on a proper height and due to the negligence, respondent No.2 had suffered grievous hurt. Apart from that, even the responsibility of the petitioner is apparent from the fact that they had handed over a sum of Rs.50,000/- to respondent No.2 for medical treatment.

5. I have heard learned counsel for the parties and with their assistance, I have perused the material available on record. Section 338 IPC has been reproduced as follows:-

***338.Causing grievous hurt by act endangering life or personal safety of others:-***

*Whoever causes grievous hurt to any person by doing*

*any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.*

6. I find sufficient force in the submissions made by learned counsel for the petitioner. Section 468 Cr. PC clearly provides that no Court shall take cognizance of an offence after the expiry of the period of limitation and the period of limitation shall be 03 years, if the offence is punishable with an imprisonment for a term exceeding 01 year, but not exceeding 03 years and the period of limitation shall commence from the date of the registration of the FIR in the present case i.e.24.07.2011. Even it is apparent from the record that even till today, a formal charge-sheet has not been filed by the police and the cognizance in the present case shall be barred by the period of limitation. It has been held by the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Sarwan Singh, AIR 1981 (SC) 1054 :**

2. Section 468 (2) (c) may be extracted thus:-

Section 468 (2) (c):

*“Three years, if the offence is punishable with imprisonment for a term exceeding one but not exceeding three years.”*

3. Section 469 (1) (a) and (b) may be extracted thus:-

Section 469 (1) (a):

*“(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.”*

*In the instant case as the charge-sheet clearly*

*mentions that the offence was committed on the 22<sup>nd</sup> August, 1972, the bar of limitation contained in section 468(2)(c) clearly applies and the prosecution, therefore is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would be so according to charge-sheet on January 5, 1975 (or 1973) ? the date when the audit report was made. Even if this extreme position be accepted, the prosecution would still be barred by limitation under section 469 (b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab was unable to assail the point of law derived by the High Court regarding the interpretation of section 468. The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is non est. For these reasons given above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds. Appeal dismissed.*

7. Still further, from the admitted case of the parties, it is apparent from the agreement Annexure P-2 that the petitioner company was engaged only to supply the workers to the Shendong Electric. As per the terms of the agreement Annexures P2, the Shendong Electric was required to put forward the requirements specified in the form of Annexure 1 to the petitioner company and the petitioner company was to provide the qualified candidates to the Shendong Electric, pursuant to Annexure 1. However, when the employees/workers were performing their duties at the site of the Shendong Electric, the criminal liability could be fastened only on the Shendong Electric and not on the contractor, who had sent the employees/workers at their site. Even the factual submissions could not be controverted by learned State counsel as well as learned counsel for the respondent No.2 in this regard. Apart from that, the FIR in the present case was registered on 24.07.2011 and till date no cognizance has been taken by the competent Court of law. Consequently, in view of the provisions contained in Section 468 Cr. PC, the prosecution is apparently barred by limitation.

8. In view of the following discussions and various authoritative pronouncements of the Hon'ble Supreme Court as well as this Court, this petition is allowed. Resultantly, FIR No. 143 dated 24.07.2011 under Section 338 of IPC registered at Police Station Sahlawas, District Jhajjar (Annexure P-1) alongwith all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

(N.S.SHEKHAWAT)  
JUDGE

18.07.2023  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No