

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31190-2019

Date of Decision: 07.07.2023

Balwinder Singh and Anr.

...Petitioners

Vs.

State of Punjab and Anr.

...Respondents

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

Present: Mr. Ashok Paul Batra, Advocate
for the petitioners.

Mr. Amish Sharma, AAG, Punjab.

Mr. A.K Khunger, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. The present petition has been filed by the petitioner with a prayer to quash the order dated 20.03.2019 (Annexure P-3) passed by learned SDJM, Abohar, vide which a final report under Section 173 Cr. PC was ordered to be registered. A further prayer has been made to quash the order dated 04.06.2019 Annexure P-4, and the charge-sheet dated 04.06.2019 Annexure P-5, whereby the petitioners have been ordered to be charge-sheeted for the offences punishable under Sections 309, 109 and 114 IPC.

2. Learned counsel for the petitioners contends that the respondent No.2 got a FIR No.117 dated 16.07.2014 under Sections 309, 109 and 114 IPC Police Station registered against the present petitioners (Annexure P-1). Learned counsel further contends that in the present case, after conducting the investigation, a final report under Section 173 Cr.PC was presented before the

Court of Learned SDJM on 20.03.2019 and the learned SDJM was not competent legally to take cognizance of the said challan. However, vide the order Annexure P-4 and Annexure P-5, the learned Trial Court directed the framing of charges under Sections 309, 109 and 114 IPC against the present petitioners. Learned counsel for the petitioners contends that the offence under Section 309 IPC is punishable with a simple imprisonment, which may extend to one year or fine or with both. Even the punishment for the offences punishable under Section 109 IPC and 114 IPC, which may extend to simple imprisonment for a term, of one year or with fine or with both. Consequently, in view of the provisions contained in Section 468 Cr. P.C, no Court shall be able to take cognizance of such an offence after the expiry of period of one year. Even in the present case, the offence was allegedly committed on 15.07.2014, whereas the challan itself had been presented against the petitioners on 20.03.2019, when the cognizance was completely barred. Thus, the charges have been wrongly framed against the present petitioner by the Learned SDJM, Abohar.

3. On the other hand, after issuance of notice, no reply was filed either on behalf of State of Punjab or respondent No.2, despite repeated adjournments. However, the controversy in the present case is based on interpretation of settled legal propositions only; the submissions have been made by learned counsel appearing on behalf of the State as well as by learned counsel for respondent No.2. Learned State counsel submits that in the present case, the cognizance has already been taken by the Court of learned Magistrate and the plea of limitation can be examined by the Trial court at the time of final disposal of the matter and the present petition deserves to be dismissed by this

Court.

4. Section 190 Cr. PC provides for the cognizance of the offences by the Magistrate and the same has been reproduced below:-

190. Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.

5. It is apparent that section 468 Cr. PC provides the period of limitation for taking cognizance by the Court and the provisions of Section 468 Cr. PC are reproduced 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.

6. I have heard learned counsel for the parties and with their able assistance; I perused the record.

7. I find sufficient force in the submissions made by learned counsel for the petitioner. It is apparent from the record that the offence had taken place on 16.07.2014 and after conducting the investigation, the final report under Section 173 Cr.PC was presented before the Court of Learned SDJM on 20.03.2019 i.e after a period of 05 years. In the present case, the petitioners were charged for the offences punishable under Sections 309, 109 and 114 of IPC and the maximum sentence provided for the said offences under the statute was one year. Consequently, no Court could take cognizance against the accused after a period of one year, in view of the bar created by the statute under Section 468 Cr. PC. However, the charges were ordered to be framed against the petitioners vide the order and charge-sheeted dated 04.06.2019.

Thus, on the day when the charges were ordered to be framed, learned SDJM

Abohar was not competent to take cognizance of the offences against the present petitioner and the impugned order and charge-sheet Annexure P-4 and P-5 are liable to be set aside by this Court and the petitioners are ordered to be discharged.

07.07.2023
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(N.S.SHEKHAWAT)
JUDGE

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