

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

CRM-M-43675-2021
Date of Decision:-3.7.2023

Kulwinder Singh @ Kinda

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. Chaman Lal Pawar, Addl. A.G. Punjab.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner for quashing of FIR No.166 dated 3.11.2009 registered under Sections 323, 324, 341, 148, 149 IPC at Police Station Kartarpur, District Jalandhar.
2. The brief facts of the case are that FIR in the present case was registered on 3.11.2009 against the petitioner, Sandeep, Ranjit Singh and Bobby on the basis of statement of complainant-Baljit Singh, wherein the complainant alleged that on 31.10.2009 at about 9:00 a.m., he was present along with his friend Satbir Singh in the premises

of Cheema Gas Agency, Ambgarh where petitioner armed with sword, Sandeep armed with baseball bat, Ranjit Singh @ Happy and Bobby both armed with *Datars* accompanied by 2 other unidentified persons attacked and caused injuries to him. The matter was reported to the police and consequently the impugned FIR was registered against the petitioner and his accomplices.

3. During investigation, the petitioner, Sandeep and Ranjit Singh @ Happy were arrested. However, the police failed to arrest Bobby.
4. The counsel for the petitioner while challenging the impugned FIR has *inter alia* contended that the petitioner has been falsely implicated in the present case at the instance of the complainant and that the petitioner who was arrested on 1.12.2010, fully cooperated with the police during investigation of the case. The counsel for the petitioner has further contended that as per the reply filed by the State, the police presented challan against the accused persons including the petitioner in the learned trial Court on 3.1.2022. The counsel for the petitioner has further contended that it is evident that police failed to present challan within the prescribed period of limitation as provided under Section 468 Cr.P.C. The counsel for the petitioner has further contended that the delay in filing of the challan is not covered under the exceptions carved in provisions of Sections 469, 470, 471 and 472 of Cr.P.C. So prayer is made that the present petition be allowed.
5. The petition is resisted by the State who filed reply by way of affidavit of Sukhpal Singh, DSP, Sub-Division Kartarpur District Jalandhar.

6. The State counsel while opposing the present petition has submitted that the challan in this case was prepared by the concerned SHO and was sent for its submission before the Court concerned on 31.5.2011. The State counsel has further submitted that later on it was found that the challan in the present case was never presented before the Court concerned and on getting this information, the challan was presented in the learned trial Court on 3.1.2022 and the Court concerned has taken its cognizance. The State counsel has further contended that there was delay in presentation of challan against the petitioner only due to the negligence of the concerned SHO. It has been further contended that in the given circumstances, no ground is made out to quash the FIR, which was registered against the petitioner and his companions, who assaulted complainant Baljit Singh with different weapons on 31.10.2009 and immediately thereafter on receiving the information regarding said incident, FIR in the instant case was registered by the police on 3.11.2009.
7. I have considered the submissions made by the counsel for the parties.

The relevant provisions of law are reproduced here-in-below:-

“Section 468 in The Code Of Criminal Procedure, 1973

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

(Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.)

- (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 term exceeding one year but not exceeding three years.
- (3)¹ 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.]

Section 469 in The Code Of Criminal Procedure, 1973

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.

Section 470 in The Code Of Criminal Procedure, 1973

470. Exclusion of time in certain cases.

- (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
- (2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(1. Ins. by Act 45 of 1978, s. 33 (w. e. f. 12- 12- 1978).
- (3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or

sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

- (4) In computing the period of limitation, the time during which the offender-
- (a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or
- (b) has avoided arrest by absconding or concealing himself, shall be excluded.

Section 471 in The Code Of Criminal Procedure, 1973

471. Exclusion of date on which Court is closed. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens. Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

Section 472 in The Code Of Criminal Procedure, 1973

472. Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Section 473 in The Code Of Criminal Procedure, 1973

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.”

8. Now adverting to the facts of the present case, the occurrence in question had taken place on 31.10.2009 and thereafter impugned FIR was registered against the petitioner and other persons under Sections 323/324/341 read with Section 149 IPC and under Section 148 IPC in

Police Station Kartarpur District Jalandhar on 3.11.2009. The maximum sentence provided for the said offences is 3 years. So as per the provisions of Section 468 Cr.P.C. period of limitation provided for taking cognizance of offences in the present case comes out to be 3 years. Section 469 Cr.P.C. provides that the period of limitation shall commence on the date of the offence. In the instant case the offence had taken place on 31.10.2009 and thus the limitation period started from that very date. The offences being punishable under Sections 323/324/341 read with Section 149 IPC and Section 148 IPC, there was no requirement of obtaining the consent or sanction of any authority to prosecute the accused persons and further there was no order of any Court whereby presentation of challan against the petitioner and other accused was stayed. In the instant case no plea has been taken on behalf of the State that at the relevant time the petitioner was absconding or not available in India or that the limitation period is to be condoned in the light of the provisions of Sub-Section 1 of Section 470 Cr.P.C.. So the State cannot take any benefit of the provisions of Section 470 Cr.P.C.. Admittedly offences under Sections 323/324/341 read with Section 149 IPC and Section 148 IPC are not continuing offences and as such provision of Section 472 Cr.P.C. is also not applicable to the instant case.

9. Further as per the law laid down by the Hon'ble Apex Court in **Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director 2014(2)SCC 62**, for the purpose of computing the period of limitation under Section 468 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.

10. Admittedly in the present case challan was presented in the learned trial Court on 3.1.2022 against the petitioner and other accused persons and as such the relevant date for computation of period of limitation would be 3.1.2022. Undoubtedly the crime had taken place on 31.10.2009. So there was inordinate delay in presentation of challan and the said delay has not been explained by the prosecution by giving plausible reasons for the same. As per the reply filed on behalf of the State, the concerned investigating officer, Rameshwar Singh was negligent and responsible for the delay in submission of challan against the petitioner. No other reason has been given by the prosecution for delay in filing of the challan against the accused persons. Thus, this Court is of the view that the prosecution has been unable to properly explain the delay in presentation of challan in the instant case beyond the prescribed period of limitation of 3 years against the petitioner.
11. In the light of the above, this Court is of the view that the trial Court is barred from taking cognizance of offences against the petitioner in the instant case in the light of the embargo provided in Section 468 Cr.P.C. So the continuance of the prosecution of petitioner in the instant case would amount to process of abuse of Court as well as that of law. Thus this is a fit case to exercise powers under Section 482 Cr.P.C. to prevent the abuse of process of Court and to secure ends of justice.

12. In the result the petition is allowed. FIR No.166 dated 3.11.2009 registered under Sections 323, 324, 341, 148, 149 IPC at Police Station Kartarpur, District Jalandhar is hereby quashed along with all the consequential proceedings arising thereof, qua the petitioner only.
13. The higher police authorities are directed to take departmental action against the delinquent police official as per rules.

3.7.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No