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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 28.11.2023

+ CRL.M.C. 4620/2017 & CRL.M.A. 18409/2017

BALBIR SINGH & ORS

..... Petitioners

Through: Mr. Rajat Wadhwa, Ms. Dhreti Bhatia
and Mr. Gurpreet Singh Gill, Advs.

versus

THE STATE GOVT OF NCT OF DELHI RespondentThrough: Mr. Pardeep Gahlot, APP for State
with Insp. Naveen Kumar, PS.
Samaypur Badli.
Mr. Hari Kishan, Adv. for R-2.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed under Section 482 CrPC seeking quashing of impugned order dated 14.02.2017 and the FIR No. 304/2016 under Sections 285/338/34 IPC registered at Police Station Samaipur Badli whereby the present petitioners were summoned by the learned MM to stand the trial.
2. The learned counsel for the petitioners submits that the impugned order *vide* which the cognizance has been taken by the learned MM-02, (North), Rohini Courts is dated 14.02.2017, whereas, the incident in



question is of 28.11.2012.

3. In support of his contention, he invites the attention of the Court to the FIR wherefrom it is clearly borne out that the incident in which the complainant was electrocuted is of 28.11.2012.

4. The learned counsel submits that in so far as the offence under Section 285 IPC is concerned, the maximum punishment that could be awarded for the offence is six months and a fine of upto one thousand rupees whereas, for the offence under Section 338 IPC, the maximum punishment is of two years and a fine of upto one thousand rupees.

5. He submits that in view of the bar contained in Section 468 CrPC, the learned Magistrate could not have taken cognizance of the offence alleged, in as much as, a period of three years had elapsed from the date of accident and in view of the provisions of Section 469 CrPC, the limitation would commence on the date of offence. He further submits that there is a specific provision for condonation of delay under Section 473 CrPC whereunder the Court may take cognizance of an offence after the expiry of the period of limitation after condoning the delay which has been properly explained, or in the interest of justice. He submits that the condonation of delay must precede the taking of cognizance by the learned MM.

6. In support of his submissions, he has placed reliance on two decisions of the Hon'ble Supreme Court in "**Surinder Mohan Vikal vs. Ascharaj Lal Chopra**", (1978) 2 SCC 403 and "**P.K. Choudhary vs. Commander, 48 BRTF (GREF)**", (2008) 13 SCC 229 and a decision of this Hon'ble Court in "**Vinod Kumar Jain vs. Registrar of Companies**", 1985 (9) DRJ 232.

7. *Per contra*, the learned APP submits that in fact, the State had filed a closure report and the petitioner was kept in column no.12 of the final



report. In support of his contention, the attention of the Court is invited to the final report filed under Section 173 CrPC wherein, it has been clearly mentioned that the petitioners/accused have not been chargesheeted for want of evidence.

8. Mr. Hari Kishan, learned counsel for the respondent no.2/complainant submits that because of the accident, the respondent no.2 had to suffer a lot. However, on a query put by the Court, he fairly concedes that the respondent no.2 has been compensated, in terms of the statutory provisions of the Employees Compensation Act, 1923.

9. I have heard the learned counsel for the petitioners, the learned APP for the State, as well as, the learned counsel for the respondent no.2/complainant and have also perused the record.

10. It is not in dispute that the offence in the present case took place on 28.11.2012 and post investigation a closure report was filed but notwithstanding the observation made therein to the effect that the petitioners are not being chargesheeted for want of evidence, the learned Trial Court has proceeded to take cognizance *vide* impugned order dated 14.02.2017.

11. Evidently, *vide* impugned order cognizance has been taken by the learned MM after a period of more than three years from the date of offence which admittedly took place on 28.11.2012.

12. At this stage, it will be apt to refer to the provision of Sections 468, 469 and 473 CrPC which reads thus:-

Section 468 of CrPC. 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*

1. 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). *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 of CrPC. 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 473 CrPC

“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.”

13. Section 468 CrPC clearly mandates that no Court shall take cognizance of an offence after the period of limitation of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

14. Section 469 CrPC also makes it amply clear that the period of limitation, in relation to an offender, shall commence on the date of the offence.

15. The Hon’ble Supreme Court in ***Surinder Mohan Vikal (supra)*** had an occasion to consider the scope and ambit of Sections 468 and 469 CrPC. The Hon’ble Supreme Court observed as under in the context of Section 468 CrPC:-

“....4. Chapter XXXVI of the Code of Criminal Procedure, 1973, dealt with limitation for taking cognizance of certain offences. For purposes of that chapter, Section 467 defines the expression “period of limitation” to mean the period specified in Section 468, for taking cognizance of an offence. In its turn, Section 468, which bars the taking of cognizance of an offence after the expiry of period of limitation, reads as follows:

“468. (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.”

The section thus not only raises the bar of limitation, but also prescribes the period thereof. It is not in controversy before us that the period of limitation in the present case would be three years as prescribed in clause (c) of sub-section (2). The question is when the period of limitation could be said to commence for purposes of the present case? That is a matter which falls within the purview of Section 469. Clause (a) of sub-section (i) of that Section provides that the period of limitation, in relation to an offender, shall commence:

“(a) on the date of the offence.”

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8. It would thus appear that the appellant was entitled to the benefit of sub-section (1) of Section 468 which prohibits every court from taking cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under Section 468 of the Code of Criminal Procedure and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case.”...

(emphasis supplied)

16. A similar view has been taken by the Hon’ble Supreme Court in *P.K.Choudhary (supra)*, wherein it was held that a Court cannot take cognizance of an offence, if it is barred by limitation. It was further held that



if the delay is not condoned, the Court will have no jurisdiction to take cognizance. The relevant part of the decision reads thus:-

“...15. As an option to get the appellant tried in a ordinary criminal court had been exercised by the respondent, there cannot be any doubt whatsoever that all the prerequisites therefor in regard to the period of limitation as also the necessity to obtain the order of sanction were required to be complied with. A court of law cannot take cognizance of an offence, if it is barred by limitation. Delay in filing a complaint petition therefore has to be condoned. If the delay is not condoned, the court will have no jurisdiction to take cognizance. Similarly unless it is held that a sanction was not required to be obtained, the court's jurisdiction will be barred.”...

17. Clearly, the delay in taking cognizance can be condoned under Section 473 CrPC but the same has to be done at the pre-cognizance stage. It has been so observed by this Court in *Vinod Kumar Jain (supra)*, the relevant part of which reads thus:-

“...8. It is thus manifest that if a complaint is prima facie barred by time when it is filed, it becomes necessary for the prosecuting agency to explain the delay and seek condonation of the same. Unless the delay is condoned the court cannot take cognizance of the complaint. In other words, the Magistrate has to apply his mind to the question of limitation at the pre-cognizance stage and satisfy himself that delay has been properly explained or that it is necessary to condone the delay in the interests of justice. The Magistrate cannot hasten to issue the process without first recording his satisfaction that the delay was satisfactorily explained to him or that he was of the view that the condonation of delay was in the interests of justice. It is highly doubtful that the court can condone the delay and thus extend limitation subsequent to the taking of cognizance of the offence. Of course, the condonation of delay may be implied from the act of the Magistrate in taking cognizance after the expiry of the period of limitation and proceeding with the case but the order must be clear and categorical in this respect. He has no power or authority to condone the delay provisionally or ex facie as has been seemingly done in the



instant case.

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15. It is thus manifest that the weight of authority supports the view that the Magistrate must apply his judicial mind to the question of condoning the delay before taking cognizance of the offence and he cannot, after taking cognizance, rectify the illegality by passing an order under Section 473 so as to operate retrospectively.

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17. Certainly the accused has a right to challenge his prosecution when cognizance of the offence has been taken by a Magistrate without prior notice to him and without deciding the question of condonation of delay under Section 473 of the Code on the ground that it is barred by time. However, that does not relieve the Magistrate or the court taking cognizance of the offence from applying its judicial mind to this aspect of the matter when the complaint is apparently barred by limitation at the time of its institution. Surely he cannot drag the accused to face the music by passing a mindless order at the time of taking cognizance. It will certainly amount to avoidable harassment, expense and hardship to the accused. In the instant case, the respondent has challenged the order of the learned Magistrate taking cognizance at the threshold. Hence, there is no reason why the same be not quashed if it is found to be bad in law.”...

(emphasis supplied)

18. In view of the settled law, the learned MM could not have taken cognizance of the offence after three years from the date of offence as the offences alleged under Sections 285/338 IPC, are punishable with maximum sentence of six months and two years, respectively. Further, perusal of the impugned order shows that the learned MM did not condone the delay in terms of Section 473 CrPC before taking cognizance, therefore, the impugned order is without jurisdiction.



19. This being the position, I am of the view that the petition deserves to be allowed. Ordered accordingly.
20. Consequently, the impugned order dated 14.02.2017 and the FIR No. 304/2016 under Sections 285/338/34 IPC registered at Police Station Samaipur Badli and all other consequential proceedings, emanating therefrom are quashed.
21. The petition stands disposed of.

VIKAS MAHAJAN, J

NOVEMBER 28, 2023/dss