

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2952-2017 (O&M)
Reserved on 30.07.2024
Pronounced on 29.10.2024

Ashok Kumar Mittal

... Petitioner

VS.

Sat Kamal Pathak & Ors.

... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. PS Hundal, Sr.Advocate with
Mr. Ankush Chauhan, Advocate for the petitioner

None for respondents No.1 & 4

Respondent No.2-died

Mr. JS Toor, Advocate and
Mr. Adhiraj Toor, Advocate for respondent No.3

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment dated 24.01.2017 passed by Addl.CJM, Jind vide which the complaint filed by the petitioner under Sections 211/220/344/346/500/120-B IPC has been dismissed.

(2). The petitioner-complainant was running a business of wholesale and retail of tractors and Three-wheelers under name and style of M/s Eshma Tractors as attorney of his wife. He had business dealings with respondent No.1 who was running business of dealership in tractors at Shahbad Markanda under the name and style of M/s Lal Dayal Ji Auto Mobiles. During the course of business, a sum of Rs.7,50,000/- was to be paid by respondent No.1 and in discharge of his debt liability, he gave a cheque No.280702 dated 1.7.2003 of the said amount but the same was dishonoured. The petitioner initiated

proceedings under Section 138 of Negotiable Instruments Act against respondent No.1 before the civil court at Secunderabad, Telangana in August, 2003 wherein he chose not to appear but he filed a petition for quashing the said proceedings before the High Court of Andhra Pradesh.

(3). As a counter-blast to the above proceedings initiated by the petitioner, the respondent No.1 even filed a complaint which culminated in registration of FIR No.173 dated 18.6.2005 U/S 379/420/467/468/471 and 120B IPC registered against the petitioner and his wife at Police Station Shahabad, Kurukshetra alleging that the petitioner and his wife had stolen the cheque from his business premises and forged it to their advantage.

(4). The petitioner after having remained in custody from 03.07.2005 to 16.07.2005 filed a petition for quashing the FIR No.173 dated 18.06.2005 and this Court vide order dated 30.08.2011 passed in CRM-2504-M-2007 quashed the said FIR. The petitioner having suffered physical and mental cruelty and loss of reputation etc. on account of malicious prosecution, filed the subject complaint under Section 340 CrPC against respondents for committing perjury. The trial court vide impugned judgment dated 24.01.2017 dismissed the said complaint on the ground that the petitioner-complainant should have filed the complaint upto 24.05.2008 or 03.07.2008 and since the same was filed on 05.05.2012, it is barred by limitation. Hence this petition.

(5). Learned counsel for the petitioner contends that respondent No.3 and respondent No.4 – being police officials of PS Shahabad hurriedly put up the report under Section 173 CrPC in the Court against the petitioner knowing fully well that it was a case of dishonouring of cheque and that proceedings

therein were pending before the trial court and as such, the petitioner could not be prosecuted before the decision of the said complaint.

(6). It is further argued that the trial court did not take into consideration Section 220 IPC inasmuch as the sentence provided therein is 7 years and all the other offences were to be tried together in view of Section 468(3) which provides that the period of limitation, in relation to the offences which may be tried together, is required to be determined with reference to offence which is punishable with more severe punishment.

(7). He further exhorted that the trial court did not consider the fact that the FIR filed by respondent No.1 against the petitioner was impugned by the petitioner and the said FIR was quashed by this Court vide order dated 30.08.2011 and as such, the limitation was to be computed from the date of quashing of the FIR and not the from the date of registration of FIR.

(8). Learned counsel for the respondent No.3 submits that the the limitation of offence for defamation has to be computed and as such it commences from the date of filing of the complaint under Section 500 IPC and not from the date of acquittal of the accused and as such, the trial court has rightly dismissed the complaint filed by the petitioner being time barred.

(9). Heard learned counsel for the parties and gone through the record.

(10). The FIR No.173 dated 18.06.2005 was lodged by the respondent No.1 under Sections 379/420/467/468/471/120-B, the maximum punishment under Section 120-B IPC is life imprisonment. The complaint was filed by the petitioner under Sections 211/220/344/346/500/120-B on 05.05.2012 and the said complaint was dismissed vide impugned order dated 24.01.2017 by

the trial court on the ground that prosecution for offences under Sections 211/344/346/500 IPC was barred by limitation as the FIR in question was registered by the respondent No.1 on 18.06.2005 and the limitation is computable from the date of filing of the FIR by respondent No.1 i.e. on 18.06.2005 or from the date when petitioner was arrested on 03.07.2005.

(11). The Supreme Court of India in **Pepsi Foods Limited Vs Special Judicial Magistrate AIR 1998 SC 128** held that “summoning in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.” Similar view was reiterated in **M/S GHCL Employees Stock Option Trust Vs M/s India Infoline Limited 2013 (2) RCR (Criminal) 519** wherein it was held that it is to be seen whether sufficient ground to summon the accused for committing offences in question is made out or not.

(12). It was the petitioner’s own case that the FIR was filed against the petitioner and his wife by respondent No.1 and as such, cognizance for committing offence under Section 211 IPC can only be taken on the complaint of the Court or such officer of the Court authorized in this behalf under Section 195(1)(b)(i) CrPC and in the present case no such complaint appears to have been filed by the Court in terms of Section 211 IPC.

(13). Respondent No.2 made a statement supporting the claim of respondent No.1 in the criminal case registered against the petitioner and his wife, respondent No.3 was the Investigating Officer of that case who arrested the petitioner allegedly without proper investigation and respondent No.4 prepared challan implicating the petitioner in the case without proper verification.

(14). According to Section 468(1)(c) of the Code of Criminal Procedure, the period of limitation is three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years and according to Section 469 (1) of the Code, the period of limitation in relation to an offender shall commence (a) on the date of the offence; or (b) where the commission of 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.

(15). In the present case, offence under Section 344 IPC is punishable with imprisonment for three years and fine while offence under Section 346 IPC is punishable with imprisonment for two years and offence under Section 500 IPC is punishable with imprisonment for two years or fine or both. Admittedly, the offence of wrongful confinement against the petitioner was committed from 3.7.2005 to 16.7.2005 and the reputation of the complainant was adversely affected on 03.07.2005 when he was arrested in public view. However, the trial court did not consider the fact that the instant FIR was quashed by this Court vide order dated 30.08.2011 and therefore, the limitation was computable not from the date of registration of FIR but from the date when the FIR was quashed. The cause for filing of the complaint had arisen with the petitioner on the date when the FIR was quashed meaning thereby that the cause of action for filing of a complaint under Section 550 IPC was the date when the FIR was quashed which was held to be based on false allegations by this Court.

(16). The trial court ought to have firstly dealt with Section 220 IPC before quashing the complaint filed by the petitioner as it was incumbent

before the trial court to prove as to whether the ingredients of 220 IPC have been proved which the trial court did not allow the petitioner by way of adducing evidence.

(17). Accordingly, this petition is allowed and the order dated 24.01.2017 is hereby quashed and the matter is remanded back to the trial court to decide the complaint afresh, in accordance with law.

(18). Ordered accordingly.

29.10.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No