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

+ **CRL.M.C. 56/2022 & CRL.M.A. 231/2022**

PRITHVI PAL SINGH & ORS.Petitioners
Through: **Mr. Suraj Rathi, Advocate**
alongwith **Petitioner-in-**
Person.

versus

STATE OF NCT OF DELHI & ANR.
& ORS.Respondents
Through: **Mr. Utkarsh, APP for the**
State.
SI Nidhi Yadav (P.S. Preet
Vihar).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
21.11.2024

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1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**'), *inter alia*, challenging the order dated 19.03.2021 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), East District, Karkardooma Courts, Delhi, in CR No. 262/2018.
2. By the impugned order, the learned ASJ dismissed the revision petition and upheld the order dated 05.02.2018, in FIR No. 159/2007, registered at Police Station New Ashok Nagar, whereby the learned Trial Court took cognizance and summoned the petitioners for the offences under Sections 323/341/506/34 of the Indian Penal Code, 1860 ('**IPC**').
3. The brief facts of the case are as follows:



3.1. On 19.08.2006, at around 10 PM, when the complainant was returning back to his house, the accused persons along with their associates stopped the complainant's car and dragged him out of his car. It is alleged that on the instructions of Petitioner No.2, Petitioner No.3 along with his associates gave beatings to the complainant with iron rods, hockey sticks and other weapons. Petitioner No.2 also allegedly held a revolver to the complainant's head and threatened to kill the complainant and his entire family. It is alleged that Petitioner Nos. 2 and 3 threatened the complainant to ask his father to step down from the post of Pradhan of Shri Sanatan Dharam Mandir as well.

3.2. Someone informed the family members about the incident who rushed to the place of occurrence and made a call to the police control room.

3.3. A written complaint in relation to the incident was given to the police authorities on 22.08.2006, however, when no action was taken, the complainant preferred an application under Section 156(3) of the CrPC. By order dated 12.02.2007, the learned Trial Court directed the concerned SHO to register an FIR in relation to the incident.

3.4. Pursuant to the same, the FIR No. 159/2007 was finally registered on 02.03.2007 for offences under Sections 323/325/307/341/506/34 of the IPC and Sections 25/27 of the Arms Act, 1959. The chargesheet was filed only against Petitioner No.1 for the offences under Sections 323/341 of the IPC.

3.5. The cognizance was ultimately taken by the learned Trial Court on 05.02.2018. The learned Trial Court issued summons to all the petitioners after observing that Petitioner Nos. 2 and 3 have been specifically named by the complainant, Sanjay, Mahi



Pal, Pankaj Gupta and SheeshPal Bharadwaj in their statements as the persons who caused injuries to the complainant. It was noted that there was sufficient ground for proceeding against the accused persons for the offences under Sections 323/341/506/34 of the IPC.

3.6. The order dated 05.02.2018 was challenged by the petitioners before the learned ASJ. The learned ASJ, by the impugned order, upheld the order dated 05.02.2018 and rejected the argument of the petitioners that the learned Trial Court was barred by limitation from taking cognizance of the concerned offences in terms of Section 468 of the CrPC.

4. The learned counsel for the petitioners submits that the learned Trial Court erred in taking cognizance on 05.02.2018 beyond the period of limitation. He submits that the charge sheet is barred by limitation as it was filed beyond the period prescribed in terms of Section 468 of the CrPC.

5. He submits that the date on which the complaint was made to the police under Section 154 of the CrPC cannot be construed to be the relevant date for computing limitation in terms of Section 468 of the CrPC.

6. *Per contra*, the learned Additional Public Prosecutor submits that the learned ASJ has taken the correct view that the relevant date for computation of limitation is the date on which the complaint was made.

7. I have heard the counsel and perused the record.

8. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power



under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

9. The Hon'ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

(emphasis supplied)

10. In the present petition, the petitioners have assailed the summons issued to them essentially on the ground of limitation.

11. Insofar as the issue of limitation is concerned, it is relevant to refer to Section 468 of the CrPC. The same reads as under:

“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.”

12. The issue of relevant date for the purpose of calculating period of limitation under Section 468 of the CrPC was considered by the Constitutional Bench of the Hon'ble Apex Court in the case of ***Sarah Mathew v. Institute of Cardio Vascular Diseases : (2014) 2 SCC 62*** has observed as under:

“3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

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5.2. Section 468 CrPC has to be read keeping in view other provisions particularly Section 473 CrPC. A person filing a complaint within time cannot be penalised because the Magistrate did not take cognizance. A person filing a complaint after the period of limitation can file an application for condonation of delay and the Magistrate could condone delay if the explanation is reasonable. If Section 468 is interpreted to mean that a Magistrate cannot take cognizance of an offence after the period of limitation without any reference to the date of filing of the complaint or the institution of the prosecution it would be rendered unconstitutional. A court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than accepting an interpretation which may make such provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra [(2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000] .)

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35. ...Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 CrPC is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.

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37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not



will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra [(2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000] .)

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Conclusion

50. Having considered the questions which arise in this reference in the light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC, primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 CrPC in that judgment. It does not refer to Sections 4 and 5 CrPC which carve out exceptions for the special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984



SCC (Cri) 277] , in our opinion, was not apt. In *Antulay '1984' case* [A.R. *Antulay v. Ramdas Srinivas Nayak*, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] this Court was dealing *inter alia* with the contention that a private complaint is not maintainable in the Court of the Special Judge set up under Section 6 of the Criminal Law (Amendment) Act, 1952 ("the 1952 Act"). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 CrPC. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 CrPC or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in *Antulay '1984' case* [A.R. *Antulay v. Ramdas Srinivas Nayak*, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] : since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 CrPC at all, in our opinion, the said judgment could not have been usefully referred to in *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] while construing provisions of Chapter XXXVI CrPC. For all these reasons, we are unable to endorse the view taken in *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] .

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC 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. We further hold that *Bharat Kale* [*Bharat Damodar Kale v. State of A.P.*, (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in *Japani Sahoo* [*Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. *Krishna Pillai* [*Krishna Pillai v. T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

52. The reference is answered accordingly. The Registry may



list the matters before the appropriate courts for disposal.”
(emphasis supplied)

13. The learned ASJ, in the impugned order, relied upon the judgment in the case of ***Sarah Mathew v. Institute of Cardio Vascular Disease*** (*supra*), and observed that the relevant date for computation of limitation under Section 468 of the CrPC is the date of filing of the complaint or initiating proceedings and not the date of taking cognizance.

14. As noted in ***Sarah Mathew v. Institute of Cardio Vascular Disease*** (*supra*), the complainant cannot be prejudiced on account of any delay caused by the prosecuting agency in filing the chargesheet or the learned Court in taking cognizance.

15. In the present case, the incident took place on 19.08.2006 and the complainant had given a written complaint to the police authorities on 22.08.2006 itself.

16. It is argued that the complaint preferred by the complainant to the police cannot be construed to be the relevant date for computation of limitation. This Court does not consider it apposite to examine the said argument in detail as the complainant had also diligently preferred an application under Section 156(3) of the CrPC in the year 2006 itself within the prescribed period of limitation.

17. It is not the case of the petitioners that the chargesheet was delayed due to Respondent No.2 in any manner. In such circumstances, stifling the proceedings at this stage would cause gross miscarriage of justice and defeat the purpose of the remedy available to Respondent No.2, who had been diligent in filing the complaint in time. Respondent No.2 cannot be left remediless due to the delay caused by the prosecution. In view of the same,



this Court finds no merit in the argument of the petitioners in this regard.

18. In view of the aforesaid discussion, this Court finds no reason to interfere in the impugned order or the summoning order dated 05.02.2018.

19. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 21, 2024

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