



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

289

CRM-M No.44065 of 2024 (O&M)
Reserved on: 19.02.2025
Pronounced on: 27.02.2025

Meenu

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Saini, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab and
Mr. Rishabh Singla, AAG, Punjab.

Mr. Anureet S. Sindhu, Advocate
for respondent No.2.

HARPREET SINGH BRAR J. (Oral)

1. The present petition is preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS') seeking quashing of FIR No.128 dated 12.12.2019 registered under Sections 323, 341 and 506 of IPC, at Police Station Dhakoli, District SAS Nagar and all subsequent proceedings arising out of the same.
2. Briefly, the facts are that on 29.11.2019, respondent No.2-complainant came to know that her husband, who was in an extra marital relationship with the petitioner married her. When respondent No.2 confronted her husband, he refused to disclose anything. On 02.12.2019, respondent No.2 went to her mother, Prem Lala, and together, they visited the petitioner's salon in Dhakoli to reason with her.

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However, upon seeing them, the petitioner became aggressive, grabbed the mother of respondent No. 2 by the neck, and pulled her hair. When respondent No.2 tried to intervene, the petitioner attacked her as well, scratched her face, twisted the little finger of her right hand, and slapped her. After this altercation, respondent No.2 and her mother proceeded to Dhakoli Police Station to file a complaint on the basis of which the instant FIR was registered.

3. Learned counsel for the petitioner *inter alia* contended that the petitioner was not even aware of the existence of the FIR (*supra*). It was brought to her notice when she was detained at IGI Airport, New Delhi on 31.07.2024 by virtue of the Look out Circular issued in connection with the instant FIR. Admittedly, the FIR (*supra*) was registered against the petitioner on 12.12.2019, wherein it was alleged that a scuffle ensued between the parties on 2.12.2019. A DDR No.31 was registered in this regard on 03.12.2019. Pertinently, even after a lapse of 04 years and 08 months, the learned trial Court is yet to take cognizance *qua* the alleged occurrence. Amongst the alleged offences i.e. Sections 323, 341 and 506 of IPC, the maximum sentence for the offence under Section 506 IPC is 02 years. As such, since as per Section 468 of Cr.P.C., the limitation period for taking cognizance is 03 years, the present proceedings *qua* the petitioner became barred by limitation. Lastly, it was argued that there was an inordinate delay of about 10 days in the registration of the FIR (*supra*).

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4. Per contra, learned counsel for respondent No.2 assisted by the learned State counsel submit that after recording the statement of complainant, DDR No. 31 dated 03.12.2019 was registered and after receiving the medical record and conducting the preliminary inquiry into the matter, the instant FIR was registered. Therefore, the delay in the registration of the FIR is clearly explained. Further, it was averred that the investigation was completed and the Final Report has already been presented before the learned trial Court on 31.08.2024 and charges have been framed against the petitioner on the same date. Consequently, the reliance on Section 468 of Cr.P.C. would not be applicable in the present case.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the alleged incident occurred on 02.12.2019 and the matter was reported to the police on 03.12.2019. Subsequently, upon the conclusion of the preliminary inquiry, the present FIR was registered on 12.12.2019. With regard to the invocation of Section 468 of Cr.P.C. the argument advanced by the learned counsel for the petitioner is liable to be rejected. The Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew Vs. Institute of Cardio Vascular Disease and Others 2014(14) RCR Criminal 10***, has categorically held that for the purpose of calculating the period of limitation under Section 468 of Cr.P.C. the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance



or the date of issuance of process by the Court. Since the prosecution was instituted on 03.12.2019 i.e. upon the registration of the DDR, Section 468 of Cr.P.C. cannot come to the aid of the petitioner.

6. Gainful reference in this regard can also be made on the judgment rendered by a two Judge Bench of the Hon'ble Supreme Court in ***Amritlal vs. Shantilal Soni and Others, (2022) 13 SCC 128***, wherein, speaking through Justice Dinesh Maheshwari, the following was opined:

*“9. In **Sarah Mathew**, the Constitution Bench of this Court examined two questions thus: -*

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?

*3.2. (ii) Which of the two cases i.e. **Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121]** or **Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559]** (which is followed in **Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]**), lays down the correct law?*

10. The Constitution Bench answered the aforesaid questions as follows: -

*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]** which is followed in **Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]** 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.*

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(emphasis supplied)

11. Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt 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 of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.

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13. A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration. It remains trite that the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein [**Somawanti & Ors. v. The State of Punjab & Ors.: AIR 1963 SC 151** (para 22)]. This is apart from the fact that a bare reading of the decision in Sarah Mathew (supra) would make it clear that every relevant aspect concerning Chapter XXXVI CrPC has been dilated upon by the Constitution Bench in necessary details. As a necessary corollary, the submissions made with reference to other decision of this Court, which proceeded on its own facts, are of no avail to the respondents. Thus, the submissions made on behalf of the contesting respondents stand rejected in absolute terms.”

7. In view of the discussions made hereinabove, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.02.2025
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No