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

+ CRL.M.C. 3263/2021, CRL.M.A. 19640/2022 & CRL.M.A. 35942/2024

SHRI RAJU KISHIN CHAINANI

.....Petitioner

Through: Mr. Sandeep Gupta, Ms. Kanchan Gupta and Mr. Chakit Singhal, Advs. along with petitioner.

versus

GHAN SHYAM CHAINANI & ORS.

.....Respondents

Through: Mr. Harsh Prabhakar, Adv. as *Amicus Curiae* with Mr. Dhruv Chaudhry and Mr. Adeeb Ahmad, Advs. for R-1 along with R-1.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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10.02.2025

1. The present petition has been filed seeking quashing of Complaint Case No.3760/2017, titled as *Ghan Shyam Chainani v. Laxman K. Chainani & Anr.* under Sections 120B read with Section 500 IPC pending before the court of learned Metropolitan Magistrate, NI Act (East), Karkardooma Courts, Delhi.
2. The principal ground on which the quashing of the complaint has been sought is that the learned Metropolitan Magistrate has taken cognizance of the offence under Section 120B read with Section 500 IPC and subsequently summons has also been issued to the accused/petitioner to stand trial for the said offence ignoring the bar contained in Section 468 CrPC, which provides that no court shall take cognizance of an offence after the expiry of period of



limitation provided therein.

3. Mr. Sandeep Gupta, the learned counsel appearing on behalf of the petitioner submits that the complaint under Section 120B read with Section 500 IPC filed by the respondent no.1 has been premised on the allegation that a false FIR being FIR No.446/2002 under Sections 454/380 IPC at P.S. Shakar Pur, Delhi came to be registered at the instance of the respondent no.2 herein i.e. Laxman K. Chainani. It is alleged that the allegations contained in the FIR were not only false but the same were also defamatory.

4. He submits that the trial in the said FIR culminated into acquittal of the respondent no.1 *vide* judgment dated 12.08.2015 and he filed the complaint alleging offence under Section 120B read with Section 500 IPC only on 23.12.2016. He submits that the punishment prescribed for the offence under Section 500 IPC is for a period of two years, therefore, the period of limitation for filing the complaint case as prescribed in Clause (c) of sub-section (2) of Section 468 of CrPC would be three years. He submits that beyond the said period, the learned Metropolitan Magistrate was not competent to take cognizance of the offence under Section 120B read with Section 500 IPC. He, therefore, urges that the complaint filed by the respondent no.1 be quashed.

5. *Per contra*, Mr. Harsh Prabhakar, the learned *Amicus Curiae* appointed by this court, appearing on behalf of the respondent no.1 submits that even assuming that the complaint was filed beyond the period of limitation, as prescribed under Section 468 CrPC but it was obligatory on the part of the learned Metropolitan Magistrate to have examined the reasons for delay and the same are condonable under Section 473 CrPC.

6. In rejoinder, Mr. Sandeep Gupta submits that the benefit of Section 473 CrPC which permits extension of period of limitation in certain cases was



never sought by the respondent no.1/complainant.

7. In response, Mr. Prabhakar submits that a formal application seeking condonation of delay may not be necessary in view of the decisions of the Hon'ble Supreme Court in ***Surinder Mohan Vikal v. Ascharaj Lal Chopra, (1978) 2 SCC 403.***

8. Section 468 CrPC which bars taking of cognizance of offence after the expiry of limitation reads as follows:

“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.*

9. It is not in controversy that the punishment prescribed for the offence under Section 500 IPC is two years, therefore, the period of limitation in the present complaint would be three years, as prescribed in Clause (c) of sub-section (2) of Section 468 CrPC.

10. The next question which arises for consideration of this court is as to from which date, the limitation period will start running for the purpose of



taking cognizance in terms of Section 468 CrPC.

11. The controversy is no more *res integra* inasmuch as the Hon'ble Supreme Court in ***Surinder Mohan Vikal*** (*supra*) dealing with similar facts observed that when a complaint is filed for an offence of defamation alleging false allegations were made in the FIR, the starting point for the purpose of calculating three years period will be the date of FIR and not the date of acquittal. The relevant part of the said decision reads thus:

“5. It will be recalled that the complaint for the commission of the offence under Sections 406/420 IPC was filed on March 15, 1972. It has specifically been stated in the respondent's complaint under Section 500 IPC that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under Section 500 IPC was committed on March 15, 1972, which was the date of the offence within the meaning of Section 469(1)(a) of the Code, and the period of three years' limitation would be calculated with reference to that date for purposes of the bar provided by Section 468. But, as has been stated, the complaint under Section 500 IPC was filed on February 11, 1977, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

6. The High Court ignored the bar of limitation on the ground that the “cause of action for proceeding for defamation could not arise before he (respondent) was acquitted by the Court of Session”. As the respondent was acquitted on April 1, 1975, it appears that the High Court took the view that the “protection of Section 468(c)” was not available to the appellant. We are constrained to say that the question of “cause of action” could not really arise in this case as the controversy relates to the commission of an offence. As has been stated, sub-section (1) of Section 469 of the Code specifically provides that the period of limitation prescribed in Section 468, in relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of offence was March 15, 1972, when the defamatory complaint was filed in the Court of the



Magistrate, and that was the starting point for the purpose of calculating the three years' period of limitation. The High Court clearly erred in taking a contrary view.

7. An attempt was made to argue before us that the respondent was, at any rate, entitled to the exclusion of time under sub-section (1) of Section 470 of the Code in computing the period of limitation. The sub-section reads as follows;

“470. (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.”

It is an essential requirement of the sub-section that the person who seeks its benefit should be able to establish that he was “prosecuting” another prosecution in one court or the other referred to in the sub-section. But it is not the case of the respondent that he was prosecuting the appellant in any other prosecution. It is also not his case that that prosecution related to the “same facts” within the meaning of the proviso to the sub-section. The provision of sub-section (1) of Section 470 cannot therefore avail the respondent, and he is not entitled to the exclusion of any time thereunder. It may be mentioned that the respondent has not sought the benefit of Section 473 which permits the extension of the period of limitation in certain cases.”

[emphasis supplied]

12. It is also apposite to refer to the decision of a coordinate bench of this court in ***Romi Khanna v. State (Govt. of NCT of Delhi) New Delhi & Ors., 2011 SCC OnLine Del 2664***, wherein unlike dealing with similar



circumstances, it was observed as under:

“10. In Surinder Mohan Vikal (supra), Supreme Court, in the similar facts, has held that a complaint under Section 500 IPC for defamation will be barred if filed three years after the commission of the offence. Where in a complaint under Section 500 IPC it is alleged that the defamatory matter was contained in a complaint under Sections 406/420 IPC against the complainant, the period of limitation for filing complaint under Section 500 IPC would commence from the date of the complaint under Sections 406/420 IPC and not from the date when complainant was finally acquitted of offences under Sections 406/420 IPC. Sub-Section (1) of Section 469 Cr.P.C. specifically provides that the period of limitation prescribed in Section 468, in relation to an offence, shall commence, inter alia, on the date of the offence and the question of ‘cause of action’ having arisen on account of acquittal, would not arise in such cases as the controversy relates to the commission of an offence. In Ghanshyam Dass (supra) the facts involved were more or less similar to the facts of this case. Petitioner Ghanshyam Dass had lodged an FIR against Shyam Sunder Lal. In a case arising out of said FIR, Shyam Sunder was acquitted. Thereafter, he lodged a complaint under Section 500 IPC against Ghanshyam Dass alleging therein that defamatory statements had been made in the FIR. The complaint was filed by Shyam Sunder Lal after about 7 years from the date of registration of the FIR but within 3 years from the date of acquittal. As Magistrate took cognizance of offence, Punjab and Haryana High Court held that Magistrate at pre-cognizance stage has to apply his mind to the question of limitation. Having failed to do so, the proceedings become without jurisdiction and were liable to be quashed. It was further held that the period of limitation for filing the complaint under Section 500 IPC would commence from the date of registration of FIR containing defamatory statements and not from the date of acquittal. In PM Kathresai (supra) Madras High Court has held that if any offence is made out in a complaint under Section 500 IPC for defamation, Section 468(2) Cr.P.C. is attracted and cognizance of offence should be taken within a period of three years from the date of occurrence. Thus, where the date of offence under Section 500 IPC was identified, inasmuch as,



defamatory remarks were made in a complaint filed before the police by the accused, the starting part of limitation would be the date of complaint and not the date on which the evidence was given by the party nor the date of knowledge of the appellant about filing of such complaint.

11. In view of the above discussions, impugned order dated 8th September, 2009 as also the complaint case titled “Davinder Singh @ Tinku v. Romy Khanna” is quashed.”

[emphasis supplied]

13. Thus, it is beyond cavil that the limitation period for three years for filing complaint in the present case would run from the date when the FIR came to be registered and not from the date of the acquittal of respondent no.1/complainant. Thus calculated, the complaint filed by the respondent no.1 is clearly beyond limitation and the learned Metropolitan Magistrate was not within his jurisdiction to take cognizance of the same.

14. Insofar as the contention of the learned counsel for the respondent no.1 that the learned Magistrate ought to have considered the circumstances under which the delay had occurred and granted benefit of Section 473 CrPC to the respondent no.1 is concerned, suffice it to say that the respondent no.1 did not seek the benefit of Section 473 CrPC which permits extension of period of limitation in certain cases.

15. Even otherwise, if at all the delay was to be condoned, the same could be condoned by the learned Metropolitan Magistrate before proceeding to take cognizance and summoning the accused persons, that too by a well reasoned order.¹

¹ *State of H.P. v. Tara Dutt & Anr, (2000) 1 SCC 230*
Vinod Kumar Jain v. Registrar of Companies, (1985) 9 DRJ 232.



16. The upshot of the aforesaid discussion is that the complaint filed by the respondent no.1 was beyond the period of limitation as prescribed under Section 468 CrPC and the Magistrate was not competent to take cognizance of the same.
17. Concomitantly, the present petition deserves to be allowed and the Complaint Case No.3760/2017 entitled *Ghan Shyam Chainani v. Laxman K. Chainani & Anr.* under Sections 120B read with Section 500 IPC pending before the court of learned Metropolitan Magistrate, NI Act (East), Karkardooma Courts, Delhi, is quashed.
18. It would be remiss of this Court to not thank Mr. Harsh Prabhakar, learned *Amicus Curiae*, for his able assistance in the present case.
19. The petition stands disposed of in the above terms.
20. Consequently, the pending applications stand disposed of.
21. Order be uploaded on the website of this court.

VIKAS MAHAJAN, J

FEBRUARY 10, 2025

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