

(2012) 04 JH CK 0102
In the Jharkhand High Court
Case No : Criminal Revision No. 97 of 2011

Aftab Khan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2)
Forest (Bihar Amendment) Act, 1990 — Section 33
Penal Code, 1860 (IPC) — Section 414

Citation : (2012) 3 JLJR 468

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Amrita Banerjee and Mr. A.K. Sahani, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel for the State. The petitioner has challenged the order dated 25.11.2010, passed by Shri M.K. Srivastava, learned A.C.J.M., Khunti in G.R. Case No. 485 of 2007 arising out of Khunti P.S. Case No. 114 of 2007, whereby, the application filed by the petitioner for discharge was rejected.

2. It appears that the petitioner, Aftab Khan was made accused in Khunti P.S. Case No. 114 of 2007 for the offence u/s 414 of the Indian Penal Code and Section 33 of the Indian Forest (Bihar Amendment) Act and the said case was instituted on 06.09.2007. When the cognizance of the offence could not be taken within the period of three years, the petitioner filed an application for discharge in the Court below on the ground that cognizance in the offence was now barred u/s 468 of the Cr.P.C., as the maximum punishment prescribed for the offence was imprisonment for three years. However, said application was rejected by the court below stating that the charge sheet had been filed on 23.11.2010 and the cognizance of the offence was taken against the accused persons, including the

petitioner, on 23.11.2010 itself, and accordingly, the application filed by the petitioner was not maintainable.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the court below is absolutely illegal, in as much as, it is apparent from the impugned order as well as from the F.I.R. itself that the case was instituted on 06.09.2007, whereas the charge sheet in the court below was filed on 23.11.2010 and cognizance was also taken on the same date, which is beyond the period of three years. Learned counsel for the petitioner has submitted that taking cognizance of the case after expiry of the period of three years is barred u/s 468 of the Cr.P.C., and as such, the impugned order cannot be sustained in the eyes of law.

4. Learned counsel for the State, on the other hand has submitted that there is no illegality in the impugned order in as much as, one of the accused persons was absconding due to which there was delay in filing the charge sheet. Learned counsel for the State has submitted that in that view of the matter, the impugned order is not vitiated and cannot be interfered with.

5. Section 468 of the Cr.P.C. 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.

6. Out of the offences, for which the case was instituted against the petitioner, the maximum punishment is provided for the offence u/s 414 of the Indian Penal Code, which is punishable with the maximum period of imprisonment for 3 years. In that view of the matter, there is clear bar u/s 468(2)(c) of the Cr.P.C. in taking cognizance of the offence after the lapse of the period of 3 years. The Impugned order clearly shows that charge sheet has been submitted in the case and cognizance has been taken against the petitioner after the lapse of the period of three years. In that view of the matter, impugned order is absolutely illegal and wholly without jurisdiction and the same cannot be sustained in the eyes of law. In view of the aforesaid discussions, the impugned order dated 25.11.2010, passed by Shri M.K. Srivastava, learned A.C.J.M., Khunti in G.R. Case No. 485 of 2007 arising out of Khunti P.S. Case No. 114 of 2007, is hereby, set aside and the petitioner is discharged from the case. -This application is accordingly,

allowed.