

(2011) 05 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition (Cr.) No. 1587 of 2011

Akshay Jain

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Citation : (2011) 3 MPHT 49

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the Petitioner seeks a direction to quash the Criminal Complaint Case No. 18/2011 (State v. Jai Bhagwan Agrawal and Ors.) pending in the Court of Judicial Magistrate First Class, Sakti and cognizance taken by the Trial Court in the said criminal case, which was supported by an application u/s 473 of the Code of Criminal Procedure, 1973 (for short "the Cr.PC").

2. The facts, in narrow compass, are that the Respondent No. 5 filed a complaint against the Petitioner on 10-1-2011 after a delay of 5 years from the date of taking samples, before the Court of Judicial Magistrate First Class, Sakti, u/s 473 of the Code of Criminal Procedure, which was taken cognizance by the Judicial Magistrate.

3. According to the Learned Counsel appearing for the Petitioner, the Petitioner is the stockist of Dabur Products. On 18-2-2006, the Respondent No. 6/ Food Inspector visited the shop of Jai Bhagwan Agrawal to purchase the sample of Dabur Anmol Shudha Nariyal Tel for analysis. 3 packets were purchased and receipt thereof was given to Jai Bhagwan Agrawal. Thereafter, the Panchnama was prepared vide Annexure P-5. Jai Bhagwan Agrawal filed an affidavit before the Respondent No. 3 on 16-5-2006 stating that he had purchased the said

product from Mamta General Stores, Vyapar Vihar, Bilaspur. Subsequently, the complaint was filed by the Respondent No. 5, which was taken cognizance by the Court of learned Judicial Magistrate First Class, Sakti, District Janjgir-Champa. Thus, the complaint case as well as the order taking cognizance of the case on the basis of the complaint, may be dismissed on the ground that the same was filed after a period of 5 years.

4. Shri Verma, Learned Counsel appearing for the Petitioner, submits that u/s 468 of the Cr.PC there is a bar to take cognizance of an offence punishable for 3 years after a period of 5 years.

5. The issue for consideration before this Court is as to whether the High Court can interfere and quash the criminal proceedings in exercise of its power under Article 226 of the Constitution of India wherein the complaint has been lodged and cognizance has been taken after 5 years from the date of taking of the sample of the goods.

6. It is for the Trial Court to consider the issue of limitation, as it depends on the nature of offence and punishment thereon. The Petitioner, without appearing before the Trial Court, had straightaway approached this Court, which cannot be entertained at this stage.

7. The Trial Court has to consider other factors also except the period of limitation, i.e., when the date of incident has been taken and what steps have been taken by the officers on the basis of samples collected from Jai Bhagwan Agrawal. Thus, on a simple ground that there was a delay of 5 years from the date of taking sample is not sufficient to decide the period of limitation having regard to the above stated facts.

8. The Supreme Court in *Bharat Damodar Kale and Another Vs. State of A.P.*, in respect of taking cognizance after the alleged period of limitation, observed as under:

10. ...All these provisions indicate that the Court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the Court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of Court. The legal phrase "*actus curiae neminem gravabit*" which means an act of the Court shall prejudice no man, or by a delay on the part of the Court neither party should suffer, also supports the view that the Legislature could not have intended to put a period of limitation on the act of the

Court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the earlier decision of this Court in the case of Rashmi Kumar.

9. It is well settled proposition of law that the writ jurisdiction is not available for quashing the criminal investigation/proceedings unless there is error apparent on the face of the record or the proceedings can be termed to be malafide in nature. Mere lapse of time ought not to be permitted to be meant for intervention of the Writ Court to quash a proceeding. [See: State of Maharashtra v. Narain Singh Yadav and Anr., (2009) 16 SCC 392.

10. The Supreme Court in State through State through CBI Vs. Dr. Narayan Waman Nerukar and Another, , observed as under:

8. As was observed in P. Ramachandra Rao case, at the most periods of time prescribed in those decisions can be taken by the Courts in seisin of the trial or proceedings to act as reminder when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration several relevant factors as pointed in A.R. Antulay case, and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not be treated by any Court as a bar to further trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused.

11. There is no error apparent on the face of record and also there is no allegation of malafide in nature. Thus, on the ground of alleged lapse of time in filing the complaint and the cognizance being taken thereafter, the High Court should be loath to quash the criminal proceedings.

12. It is for the Trial Court wherein the complaint has been filed and the cognizance of the same has been taken to apply judicial mind to the facts and circumstances of the case and also to the substance and contents of the complaint and to take decision thereon, in accordance with law.

13. For the reasons mentioned hereinabove, the writ petition is dismissed. However, the Petitioner is at liberty to raise the issue before the Trial Court where the trial is pending consideration, if so advised.