
(2002) 12 AHC CK 0164
In the Allahabad High Court
Case No : Criminal M.W.P. No. 1292 of 2001

Awadhesh Pandey and Others

APPELLANT

Vs

Vth Additional District Judge and Others

RESPONDENT

Date of Decision : 07-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 468

Citation : (2003) 1 ACR 636

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : Namwar Singh and Sanjiv Singh, for the Appellant; A.G.A., for the Respondent

Judgement

K.N. Sinha, J.—Heard learned Counsel for the Petitioners and learned A.G.A.

2. The contention raised by the learned Counsel for the Petitioner is that the Respondent No. 4 filed an application u/s 156(3), Cr. P.C., which was dismissed by the learned Magistrate on 19.1.1990. After dismissal of the said application Respondent No. 4 filed a complaint on 8.2.1990 before the Court of Magistrate but the same was dismissed by the IVth Additional Magistrate on 27.1.1992. The Respondent No. 4 filed a second complaint with regard to same incident which was registered as Criminal Case No. 829 of 1992. The said complaint petition was heard by the learned Magistrate who ordered for summoning of the accused on 6.5.1994. According to the Petitioner, the cognizance was taken after 4 years and three month twenty days, which is barred by limitation as provided u/s 468, Cr. P.C. The Petitioner filed an application u/s 468, Cr. P.C. on 4.7.1998, for dismissing the complaint on the ground of limitation. The Respondent No. 4 filed an objection on 20.8.1998, against this application but the same was rejected by Respondent No. 2 on 28.11.1998. Against the said order, a revision was filed which was also dismissed on 8.11.2000 by Respondent No. 1. The present petition has been filed for quashing the orders dated 28.11.1998 and 8.11.2000 (Annexures-9 and 10 to the writ petition).

3. I have perused the various orders passed by the concerned Court. The petition u/s 156(3), Cr. P.C. was filed by Respondent No. 4 but the same was dismissed by the Court on 19.1.1990, holding that the Respondent No. 4 can file a complaint. Consequently, a complaint was filed but on 27.1.1992, the complainant/ Respondent No. 4 was absent even after lunch hour, hence the complaint was dismissed. In this dismissal order, it is very much clear that the counsel for the accused/Petitioner was present in the Court. After dismissal of this complaint, a fresh complaint was filed in the year 1992 whereupon the order for summoning the accused was passed on 6.5.1994.

4. On a perusal of the above-mentioned date, it shows that the occurrence has taken place on 13.1.1990 and the application u/s 156(3), Cr. P.C. was filed which was dismissed by the learned Magistrate on the ground that no F.I.R. has been lodged and the learned Magistrate also observed that the complainant may file a complaint. Consequent upon this order, a complaint was filed on 8.2.1990. This complaint was dismissed on 27.1.1992. The second complaint is not barred if the complaint is dismissed in the absence of the complainant. Hence, immediately another complaint was filed on which the order for summoning of the accused was passed on 6.5.1994. When the complaint was registered and if two years time had elapsed in the Court, the complainant cannot be held liable for the same. The cognizance was taken in the year 1992 and thereby it was within time of the limitation of the complaint. The second complaint after dismissal of the first complaint would not amount to the filing of first complaint nor it can be treated to be beyond limitation. The order of the learned Magistrate and that of revisional court does not suffer from any illegality and the writ petition is devoid of any force and dismissed at the admission stage itself.

5. With the above observation, the writ petition is dismissed.