

(2009) 05 DEL CK 0073
In the Delhi High Court
Case No : Criminal M.C. 4843 of 2003

Balbir Singh

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 397, 397(1), 397(3)
Penal Code, 1860 (IPC) — Section 322, 323, 34, 341, 342
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2009) CriLJ 3674 : (2009) 160 DLT 575

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Madhu Kapoor, for the Appellant; Arvind Kr. Gupta, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This petition arises out of an order passed by the ASJ, dismissing the second revision petition filed by the petitioner u/s 397 Cr.P.C. whereby he assailed the order passed by Magistrate dismissing his application u/s 468 of Cr.P.C. after the deletion of charges u/s 504 IPC in case FIR No. 247/98 of P.S. Seema Puri.

2. The charge sheet in this case was filed u/s 323/342/347/379/427/504 IPC. The Metropolitan Magistrate after hearing arguments on the question of charge deleted the offences u/s 347/379/427 IPC but directed the petitioner to face trial with respect to offences u/s 323/342/504 IPC. The petitioner then filed a revision petition u/s 397/399 Cr.P.C. which was allowed in part and the offences u/s 504 IPC were also deleted.

3. Subsequently the petitioner filed an application before the MM concerned u/s 468 of the Code of Criminal Procedure alleging that the challan filed in this case registered on 25.04.1998 on a report filed on 24.04.1998 could not have proceeded further for the offences which were left to be tried u/s 322/323 of the

IPC after the order of Additional Sessions Judge deleting the charges u/s 504 IPC, the case has become time barred. By the impugned order the ASJ, Karkardooma who dismissed the revision petition filed second time by the petitioner after his application u/s 468 Cr.P.C. was dismissed, it has been observed that:

Thus, it is seen from the record that in the instant case investigation was carried out against the accused by the investigating Agency in the abovesaid case FIR No. 247/98 dated 25.04.1998 for offences punishable under Sections 323/342/347/379/504 as also 427 IPC on the basis of which police report/challan under the provisions of Section 173 Cr.P.C. was filed by the investigation agency in the Id. Trial Court on 27.09.99 on which date the challan was admittedly not time barred for the offences for which it had been filed against the accused as per the provision of Section 468 Cr.P.C.

5. Admittedly, also in the instant case the Id. Trial court has framed charges under Sections 323/341/504 IPC against the accused vide its order dated 28/07/01 and as per the provision of Section 468(3) Cr.P.C. 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. Thus, it can be said in no uncertain terms that the cognizance had been taken by the Id. Trial Court for offences u/s 323/343/504 IPC against the accused on the date on which the challan for the said offences as on said date. It was only on 12/10/01 that charge u/s 504 IPC was dropped against the accused by the Revisional Court on revision by the accused as abovesaid. In my opinion, the said dropping of charge u/s 504 IPC against the accused vide order dated 12/10/01 of the Revisional Court would not render the prosecution of the accused for the remaining offences under Sections 323/342 IPC vide the impugned challan time barred as has been alleged by the Id. Counsel for the revisionist/accused since the impugned challan for the offences for which it had been filed against the accused on the relevant date as above said was not time barred as on said date as per the provision of Section 468 Cr.P.C., as also cognizance of the same had been taken by the Id. Trial Court within the period of limitation for the offences under Sections 323/342/504 IPC against the accused. 6. I find from the record that the Id. Trial court vide its impugned order has also held that it is a settled law that the period of limitation will be reckoned according to the offence charged any order of discharge passed against the accused during the course of trial cannot have retrospective effect to render the summoning order of the Id. Trial Court illegal. On the date when the Id. Trial court took cognizance of the offence, chargesheet was not time barred and was well within the period of limitation. Any subsequent development during the course of trial cannot change its position retrospectively.

4. The petitioner has now filed the present petition u/s 482 of the Cr.P.C. The questions which arise for consideration by this Court are:

i) Whether the police report filed by the respondents in this case was beyond limitation period as prescribed u/s 468 of Cr.P.C.

ii) Whether the limitation is to be considered from a back date if no charge is framed on some of the offences alleged in the challan by the Magistrate or by the Higher Courts like the Court of ASJ.

iii) Whether a petition u/s 482 Cr.P.C. can be entertained in the facts of this case after dismissal of the revision petition filed by the petitioner aggrieved from the order of the Magistrate in having dismissed his application u/s 468 Cr.P.C.

5. Before proceeding further, it would be appropriate to take note of the provision contained u/s 468 of the Code of Criminal Procedure which reads under:

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.

6. A bare reading of sub Clause 3 of Section 468 Cr.P.C. makes it abundantly clear that for the purpose of limitation in relation to a joint trial of the offences to be tried together, reference has to be made to the offence which is punishable with more severe punishment. Thus, applying the aforesaid provision to the facts of this case, apparently at the time when the challan was filed, some of the offences levelled against the accused were providing a limitation of two years. Thus, the challan per se was within limitation.

7. However, it is the contention of the petitioner that after deletion of the charges u/s 347/379/427 IPC by the Magistrate and deletion of charge u/s 504 IPC by the Sessions Court, the offences which remained to be tried were only those offences for which limitation prescribed is one year and therefore the proceedings could not have been continued thereafter. Thus, the order of the Magistrate as well as the order of the ASJ needs to be set aside. In this regard he has relied upon the following judgments:

i) Vipin Kalra and Anr. v. State 2002 (1) JCC 307

ii) Ramesh Chandra Sinha and Others Vs. State of Bihar and Others,

8. In the case of Vipin Kalra and Anr. v. State (supra) it was observed:

3. Learned Counsel for the petitioners argued that as per the allegations in the charge-sheet, no offence u/s 506 IPC was made out; that this Section was

deliberately added to fill up the lacunae in the prosecution case and to avoid the bar of limitation; charge-sheet was filed in a mechanical manner and the impugned order dated 16th November, 1998 directing framing of notice u/s 341/323/34 IPC is not sustainable as the same is barred by limitation. Learned Counsel for the petitioner also argued that before the magistrate can be said to have taken cognizance of an offence u/s 190 Cr.P.C., it must be shown that he applied his mind to the contents of the challan for the purpose of proceeding in a particular way, as indicated in the Code. Merely releasing the accused on bail and supplying him copies would not amount to taking cognizance. Reliance was placed on the decision in Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, .

4. The question which arises for consideration is whether in this case cognizance was taken within the period of limitation as prescribed u/s 468 Cr.P.C." Section 468 Cr.P.C. creates a bar for taking or cognizance of the offence after lapse of the period of limitation prescribed in the section; Clause (b) of Sub-section (2) of this section provides the period of limitation as one year if the offence is punishable with imprisonment for a term not exceeding one year. Sub-section (3) of Section 468 Cr.P.C. provides that limitation in relation to the offence being tried together shall be determined with reference to the offence which is punishable with more severe punishment. The offence u/s 323 IPC is punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs. 1,000/- or with both. Thus, valid cognizance of the offence could be taken within the period of one year from the date of commission of offence. In this case, the offence was committed on 10th January, 1997. Police submitted the charge-sheet on 23rd March, 1998, i.e., after the expiry of period of one year. Prosecution also did not file any application for extension of the period of limitation u/s 473 Cr.P.C. In view of the unexplained delay, cognizance could not be taken after the lapse of period of limitation.

9. However, the aforesaid judgment is not applicable to the facts of this case inasmuch as, taking cognizance is dependent upon the facts disclosed in the challan. In this case, the Magistrate was satisfied that the challan did make out a case even u/s 504 IPC for which limitation prescribed is 2 years and accordingly the Magistrate not only took the cognizance of the challan but also framed the charges for the offences u/s 323/342/504 IPC against the petitioner.

10. The other judgment cited by the petitioner, i.e., Ramesh Chandra Sinha and Ors. v. State of Bihar and Ors. (Supra) has no application to the facts of this case.

11. At this juncture reference can also be made to a judgment of the Apex Court delivered in the case of State of H.P. v. Tara Dutt and Anr. (2000) 1 SCC 250 where it has been held:

5. ...This being the position, in the case in hand, when the respondents were charged u/s 468 read with Section 120B for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is

punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. The High Court in recording its conclusion relied upon the decision of this Court in the case of State of Punjab Vs. Sarwan Singh, . In the said case, the respondent was charged u/s 406 for misappropriation. The challan was presented on October 13, 1976 and therein it was clearly mentioned that the offence was committed on August 22, 1972. The learned trial Judge acquitted the accused of the charges u/s 468 but convicted him of the charge u/s 406 of the CrPC. This Court came to the conclusion that since the charge-sheet itself mentions that the offence was committed on August 22, 1972, the cognizance was barred u/s 468(2)(c) of the Code. At the outset it may be stated that in the aforesaid case the Court had not considered the provisions of Sub-section (3) of Section 468 which was in fact not there on the statute book when the alleged offence was held to have been committed. But in view of the provisions of Sub-section (3) of Section 468 which we have already considered this decision will be of no application and the High Court committed error in relying upon the aforesaid decision to come to the conclusion that in the case in hand the cognizance itself was barred by limitation.

12. It would also be appropriate to take note of the another judgment of the Apex Court delivered in the case of Gurubachan Singh Gill v. (2005) 13 SCC 381 where it has been held:

3. By the impugned order, the High Court affirmed order dated 24-3-2004 passed by the learned Metropolitan Magistrate, New Delhi whereby he dismissed the complaint petition holding that the same was barred by limitation. In view of the stand taken by both the parties on the point of limitation from the very beginning, we are of the view that in the facts of the present case the question of limitation is not a pure question of law, but a mixed question of law and facts and for deciding the said question certain disputed questions of facts have to be adjudicated after giving opportunity to the parties to adduce evidence. The said procedure having not been adopted, the trial Court committed an error in dismissing the complaint on the ground that the same was barred by limitation and the High Court was not justified in upholding the said order.

13. I may also refer to another judgment of the Apex Court in the case of Harnam Singh Vs. Everest Construction Co. and Others, where also similar question was discussed and the Apex Court rejected the contention of the appellant that question of cognizance should not be looked into only at the time of filing of the complaint and it was held:

6. We are unable to perceive any legal basis for the observation quoted above. The bar against cognizance after the lapse of the prescribed period of limitation is laid down u/s 468 of Cr.P.C. It is within the parameters of that provision that the Court called upon to take cognizance of the offence should act. Most of the offences alleged against the respondents viz., Sections 420, 467, 471 & 474 IPC

are punishable with imprisonment for a term exceeding three years and therefore as contended by the learned Counsel for the appellant, the bar of limitation u/s 468 is not attracted. The complaint cannot therefore be thrown out at the threshold on the ground of limitation. If, apart from the question of limitation, the effect of delay if any in instituting the complaint is necessary to be determined for considering the merits of the charge, that can only be done at the stage of trial on the basis of the evidence on record. Obviously, the High Court did not bear in mind the explicit provision contained in Section 468 and the allied provisions of chapter XXXVI of Criminal Procedure Code.

14. Thus, in view of the aforesaid following conclusions can be reached:

i) In view of Section 468(3) Cr.P.C. cognizance of an offence can be taken by the Magistrate/ASJ taking into consideration that if it is a case of joint trial then the limitation prescribed for the offence which is punishable with the highest punishment has to be considered.

ii) The question of Limitation is to be considered only on the basis of averments made in the complaint/challan.

iii) Merely, because subsequent to the filing of the challan/complaint some of the offences are held to be not made out either by the Magistrate or the ASJ this would not make the filing of the complaint/challan barred by limitation even if the remaining offence had a lesser limitation.

iv) Question of limitation is both a question of fact as well as the question of law.

v) If prima facie the Court is satisfied that the challan/complaint has been filed within the period of limitation as per the provisions contained u/s 468(3) Cr.P.C. then cognizance of the challan/complaint can be taken.

vi) Even if there is a delay in filing of the complaint/challan beyond limitation then also the Court has a power to condone the delay by applying the principals laid down u/s 473 Cr.P.C.

vii) If prima facie the complaint/challan appears to be within limitation taking into consideration the offences alleged, the challan/complaint cannot be thrown out at the threshold on the plea of limitation and the question of limitation can be determined at the time of considering the merits of the charge or at the stage of trial on the basis of evidence which may come on record.

viii) The language of Section 468(3) makes it imperative that the limitation provided for taking cognizance is in respect of the offence charged and not in respect of offence finally proved.

15. In view of the aforesaid, the first two questions framed in this matter are decided against the petitioner.

16. At this juncture, reference can also be made to a judgment delivered by the Apex Court in the case of Kailash Verma Vs. Punjab State Civil Supplies

Corporation and Another, where it has been held:

5. It may also be noticed that this Court in *Rajathi Vs. C. Ganesan*, said that the power u/s 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred u/s 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court u/s 397(1) of the Criminal Procedure Code as it is prohibited u/s 397(3) thereof. However, the High Court can entertain a petition u/s 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

17. I may also refer to a judgment of this Court in *Crl.M.C. 4024/2008* titled as *Gajraj Singh Tomar v. State and Ors.* decided on 02.02.2009, where this Court held as under: 11. The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers vested in this Court u/s 482, 483 of Cr.P.C. whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 in view of the bar created u/s 397(3) Cr.P.C. once the petitioner has already availed the remedy of revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482, 483 Cr.P.C. are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked by the Sessions Court on a petition filed by the petitioner u/s 397(1) of the Cr.P.C. but it has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of Court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed or sentence imposed requires correction.

18. Applying the aforesaid principal to the facts of this case, I find that it is not a fit case to exercise the powers u/s 482 Cr.P.C. for the reasons that the petitioner is simply trying to misuse the process of Court inasmuch as firstly he invoked the revisional jurisdiction before the Sessions Court when charges u/s 504 IPC were deleted then again he approached the revisional Court on the issue of limitation which point he could have taken before the First Revisional Court. In any case after failing before the Sessions Judge, the petitioner has again filed the present petition which is certainly in the nature of third revision petition and thus is clearly barred u/s 397(3) Cr.P.C.

19. Applying the aforesaid legal principal to the facts of this case, the petition is dismissed.

20. Parties to appear before the Trial Court on 25.05.2009.

21. TCR, if received, be sent back along with a copy of this order.