
(2007) 08 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 9761 of 2007

Basdeo Bhagat and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2)(c), 473, 482
Penal Code, 1860 (IPC) — Section 323, 324, 34, 341, 504

Citation : (2009) 4 PLJR 400

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Ranjan Kumar Jha and Sanjay Kumar Jha, for the Appellant; Nurul Hoda for O.P. No. 2 and Mr. Gopesh Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard the learned counsel for the petitioners and the counsel appearing for the State. No one appears on behalf of the O.P. No. 2 in spite of valid service of notice. This application u/s 482 of the Cr.P.C. has been filed to quash the order dated 28.12.2006 passed by Chief Judicial Magistrate, Banka in Dhoraiya P.S. Case No. 93/99 (G.R. No. 1378/99) thereby cognizance under Sections 341, 323, 324, 504 and 34 of the Indian Penal Code has been taken against the petitioners.

2. The short submission of the learned counsel for the petitioners is that cognizance is barred by limitation u/s 468(2)(c) of the Cr.P.C. It is submitted that the maximum punishment provided u/s 324 of the I.P.C, is three years and in other Sections the punishment is less than three years. As per 468(2)(c) of the Cr.P.C. the limitation for taking cognizance is only three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. It is further submitted that the police after investigation submitted charge-sheet after seven years of the institution of the case and accordingly, cognizance was also taken after lapse of much more than three years which is

the period of limitation.

3. Considered the submissions of the learned counsel for the petitioners, perused Section 468 of the Cr.P.C. as well as the fardbeyan. It appears that the aforesaid police case was registered under Sections 324, 323, 504/34 of the I.P.C, on the basis of fardbeyan lodged by Opposite Party No. 2 on 3.12.99 but police after investigation, submitted charge-sheet under Sections 341, 323, 324, 504/34 of the Penal Code. Maximum punishment u/s 324 of the I.P.C, is three years. Under other sections, the maximum punishment is less than three years. u/s 468 of the Cr.P.C. the limitation is provided for taking cognizance in certain nature of the cases. In sub-clause 2(c) of Section 468 Cr.P.C. the limitation of three years has been provided for taking cognizance in such nature of the cases in which punishment is for a term exceeding one year but not exceeding three years. In the present case, the court below has taken cognizance after lapse of more than three years without condoning the delay as provided u/s 473 of the Cr.P.C.

4. Thus, having regard to the facts and circumstances, it is quite clear that taking cognizance after a period of limitation is illegal and bad in law. Accordingly, this application is allowed. The order dated 28.12.2006 passed by the Chief Judicial Magistrate, Banka in Dhoriya P.S. Case No. 93/99 is, hereby, quashed.