
(1977) 08 AP CK 0022
In the Andhra Pradesh High Court

Bharat Hybrid Seeds and Agro Enterprises and Another	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision : 01-08-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 468, 473, 482
Seeds Act, 1966 — Section 19, 7

Citation : (1978) CriLJ 61

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Judgement

Sambasiva Rao, J.—This petition for quashing the entire proceedings in C. C. No. 17 of 1977 on the file of the Special Judicial Second Class Magistrate, Kurnool, is filed u/s 482 Cr.PC. The petitioner, a firm and its Managing Partner, were charged with the offence u/s 7 read with Section 19(a), Seeds Act. The offence is alleged to have been committed on 7th Sept. 1973. The complaint was lodged on 8th Nov. 1976. The punishment that can be imposed for the alleged offence, even if it is proved and a conviction is based thereon, is only a fine; and, therefore, as prescribed by Section 468 (2) (a), the period of limitation for taking cognizance of such an offence is only six months. In this case, there is no doubt that the case has been filed long after the expiry of the period of six months which is the period of limitation. However, the Court took cognizance of the case. The present petitioners, when they appeared as accused, filed CrI. M. P. No. 66 of 1977 for throwing out the complaint as time-barred and to acquit them. The Lower Court refused to comply with this application and so the accused have filed the present application for quashing the entire proceedings.

2. Sri S. Venkata Reddy appearing for the petitioners, contends that, admittedly, the cognizance of the offence for which a period of six months is fixed as limitation, was taken long after the expiry of that period. The complainant did not give satisfactory explanation for the long delay that elapsed between the commission of the offence and the filing of the complaint. What all was stated in the complaint is,

The inquiry has been conducted in different places in Andhra Pradesh and Karnataka States, and thus there was delay in filing the complaint.

The learned Magistrate, while rejecting CrI. M. P. No. 66 of 1977, observed that while taking cognizance of the complaint, he had taken into consideration that investigation had to be made at Kurnool, Yellandu, Kothagudem and Bangalore which were situated in two States and that he was satisfied that delay in filing the complaint was unavoidable and properly explained. Since the accused were not then present on the scene and he took cognizance, he did not pass any specific order in writing. He took cognizance of the complaint u/s 190(1)(a), CrI. P. C. He said that the actual reason for extending the period of limitation and taking cognizance of the complaint, though it was presented after the prescribed period of limitation, could be given at a later stage when the point was raised and after giving opportunity to both sides to be heard. He concluded the order saying that delay in filing the complaint was properly explained and it was necessary to take cognizance of the offence in the interests of justice. He accordingly condoned the delay u/s 473 Cr.PC

3. Section 473, Cr.PC enables the court to extend time while taking cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

4. In the present case, there is no doubt that the lower court was satisfied on the facts and in the circumstances of the case that the delay had been properly explained. Since investigation had to take place in several places in the States of Andhra Pradesh and Karnataka, the delay occurred. I do not think I would be justified in interfering with this judicial exercise of the discretion vested in the Lower Court. However there must be a well-laid practice in the matter of extending the period of limitation.

5. The Cr.PC does not contain any procedure for condoning the delay in filing the complaint and extending time of the period of limitation. Section 468 and other provisions prescribe the period of limitation for taking cognizance. In fact, Section 468 imposes a bar on the Court in taking cognizance of offences which are brought to its notice after the prescribed period of limitation. However, Section 473 enables the Court to extend that period if it is satisfied that the delay has been properly explained. It must be noted that once the period of limitation prescribed under the Code or any other law for launching a prosecution has expired, certain rights would accrue to the accused to the effect that there would be no prosecution thereafter. It is true that the Court is clothed with power to extend time if it so thinks fit on the basis of the evidence adduced by the complainant. When the Court extends that time, it means it is interfering with the rights of the accused which have vested in him by virtue of the expiry of the period of limitation. Therefore, even though there is no rule of law requiring the court to issue notice to the proposed accused and to give him an opportunity for meeting the case of the complainant in regard to the extension of time, interests

of justice and principles of natural justice require that the condonation of the delay and extension of time can be done only after giving a reasonable opportunity to the proposed accused. It would be violating the very principles of natural justice and, in fact, the very spirit of the administration of justice, if a party is prosecuted in a Court of law after the period prescribed for the launching of the prosecution has been over and without giving him an opportunity to explain his case as to why the delay should not be condoned. Absence of a rule of law shall not enable the Courts to extend time for filing prosecution without hearing the proposed accused. This rule of practice which is necessarily a rule of justice, must always be followed. I am supported in this view by a decision of the Madhya Pradesh High Court in *Krishna Sanghi and Others Vs. The State of Madhya Pradesh*,

6. However, the decision of the Calcutta High Court in *C. R. Irani v. State* 1977 Cri LJ 160 (Cal) lays down that reasons for the extension of time can be given by the Court even in a later stage when the accused enter their appearance and object to the prosecution having been barred by: limitation. As I have said it is not only desirable but also essential in the interests of justice that even before cognizance of the offence is taken by the Court after the period of limitation, it should be given notice and opportunity to the proposed accused and satisfy itself as to the adequacy of the reason for the delay. This rule of practice should always be followed by Courts.

7. Now, having laid down the procedure as to how to extend the period of limitation after the expiry of the prescribed period, the question arises as to whether the proceedings in this case should be quashed. As far as I am aware, there are no decided cases of this Court on this aspect. Consequently, the Lower Court thought that reasons for condonation of the delay could be given after the accused entered their appearance, though it was satisfied that the delay was satisfactorily explained even at the time of taking cognizance of the offence. Going by its finding that it was satisfied about the explanation given for the delay even at the time of taking cognizance of the offence, I dismiss this petition for quashing the proceeding. I am certain that the Courts will hereafter follow the procedure which I have indicated above while taking cognizance of the offence.