
(2010) 10 DEL CK 0108

In the Delhi High Court

Case No : Criminal M.C. No. 1810 of 2007

Chanchal Bhatti and Others

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 167, 167(5), 167(6), 173
Penal Code, 1860 (IPC) — Section 379, 397

Citation : (2010) 9 AD 681 : (2011) CriLJ 1195 : (2010) 4 Crimes 491 : (2010) 174 DLT 496 : (2011) 1 ILR Delhi 243 : (2011) 3 RCR(Criminal) 329

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : S.C. Sagar, for the Appellant; Fizani Hussain, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioners, Chanchal Bhatti, Ranvijay and Kalu, by this Petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code, for short) have prayed for quashing of FIR No. 173/2003 dated 23rd February, 2003 u/s 379 of the Indian Penal Code, 1860 (hereinafter referred to as IPC, for short). They have also prayed for setting aside of the order dated 26th March, 2007 passed by the Metropolitan Magistrate issuing non-bailable warrants and the subsequent proceedings thereafter. The petitioners further pray for setting aside of the order dated 19th April, 2007 initiating of proceedings under Sections 82 and 83 of the Code against the petitioners.

2. FIR No. 107/2003 u/s 379, IPC was registered at P.S. Shalimar Bagh on 23rd February, 2003 on a complaint made by one Navdeep Khurana that his car bearing No. DL-2CG-1022 was stolen in the night intervening 18/19th February, 2003. It is submitted that the petitioners and one Rakesh were arrested in FIR Nos. 167, 168 and 169/2003 P.S. Kavi Nagar, Distt. Ghaziabad, U.P. along with the said car on 1st March, 2003. An unnumbered FIR had also been registered against Ranvijay Singh. Intimation of the arrest of the petitioners was given to

P.S. Shalimar Bagh with reference to FIR No. 107/2003 vide D.D. entry 40B dated 4th March, 2003. Possession of the stolen car was taken by the Investigating Officer on 21st March, 2003 and warrant was issued by the Metropolitan Magistrate u/s 72 of the Code on 27th March, 2003. However, the petitioners could not be arrested as they were released on bail on 13th March, 2003 from the Ghaziabad jail. Thereafter no steps were taken by the Investigating Officer to arrest the petitioners or conduct further investigation till H.C. Satbir Singh wrote a note dated 5th June, 2006 that the earlier Investigating Officer H.C. Dinesh Singh had not carried out any proceedings, had not written the case diary or arrested the accused persons. This note was addressed to ACP Rohini and permission was sought to order reinvestigation.

3. An application dated 16th March, 2007 was made to the court of Metropolitan Magistrate for issue of non bailable warrants. It was stated in the application that the petitioners could not be arrested and were absconding. Learned Metropolitan Magistrate issued non bailable warrants for 19th April, 2007 vide order dated 26th March, 2007. The petitioners could not be arrested and the court was informed that non bailable warrants could not be executed and an application u/s 82 of the Code was filed on 19th April, 2007. On this application, order dated 19th April, 2007 was passed by the Metropolitan Magistrate for initiation of proceedings under Sections 82 and 83 of the Code against the petitioners.

4. The contention raised by the petitioners is that the offence u/s 397 IPC is punishable with imprisonment of three years and therefore in view of Section 468 of the Code, Metropolitan Magistrate is not competent to take cognizance of the offence u/s 397 IPC after expiry of three years. It is submitted that the trial court could not therefore have issued non-bailable warrants or initiated proceedings under Sections 82 and 83 of the Code. It is submitted that the investigation by the police is barred and prohibited as the court cannot now take cognizance in view of the limitation period prescribed in Section 468 of the Code.

5. To decide the said contention, provisions of Chapter XXXVI - "Limitation for taking cognizance of certain offences" relating to limitation are required to be examined.

6. Sections 468, 469, 470, 472 and 473 of the Code are reproduced below:

Section 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.]

Section 469. Commencement of the period of limitation...(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

Section 470. Exclusion of time in certain cases....(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation....In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender...

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Section 472. Continuing offence....In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Section 473. Extension of period of limitation in certain cases....Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take 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.

7. Section 468(1) of the Code stipulates that no court shall take cognizance of an offence after the period of limitation prescribed in Sub-section (2) has expired. Thus there is a bar or prohibition on the court from taking cognizance. The term "cognizance" has not been defined in the Code. It is well settled that "cognizance" means judicial notice of an offence taken by a Magistrate, in order to initiate proceedings in respect of such offence. It requires application of mind by the Magistrate to the content or the allegations made in the charge sheet or the complaint or suo motu on the information received by the court. Taking of cognizance of an offence by the Magistrate depends upon the facts and circumstances of the particular case. It has been observed in *S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others*, that cognizance of an offence u/s 190 of the Code is said to have been taken by the Magistrate, when he applies his mind not only to the content of the complaint or police report but also when he has done so for the purpose of proceeding u/s 200 of the Code. On the other hand, when the Magistrate has applied his mind only to the extent of ordering for an investigation u/s 156(3) or issue of search warrant for investigation, it cannot be said that he has taken cognizance of the offence.

8. The term "investigation" has been defined in Section 2(h) of the Code and includes all proceedings under the Code for collection of evidence conducted by the police officer or any person, other than the Metropolitan Magistrate, who has been authorized by the Metropolitan Magistrate in this behalf. The term "investigation" has been interpreted by the Supreme Court in *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, and it has been held;

5. ...Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure

of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet u/s 173....

9. The Code also deals with investigation of offences by the police in Chapter XII. Section 167 of the Code deals with the procedure when investigation cannot be completed within 24 hours. Sections 167(5) and (6) of the Code reads as under:-

Section 167. Procedure when investigation cannot be completed in twenty-four hours....

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxxxx

(5) If in any case triable by Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under Sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under Sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

10. u/s 167(5) of the Code time limit of six months from the date the accused is arrested, has been fixed for investigation in summons cases. A magistrate can, for special reasons and in the interest of justice, permit investigation even after six months. In case of refusal and stoppage of investigation the State can approach the Sessions Court. No such time limit has been fixed in non-summon cases. Offence u/s 379 IPC is punishable upto three years and is therefore a warrant case and not a summons case. In any case, the accused in the present petition were not arrested and therefore Section 167(5) of the Code has no application.

11. It is clear from the above, that Section 468 of the Code only deals with cognizance of offences and does not prescribe any limitation period for investigation of offences. Section 468 of the Code does not bar investigation of offences by the police even if the period of limitation, prescribed under the said section, for taking cognizance by the court, has expired.

12. There is a good reason why Section 468 of the Code cannot be applied and should not be interpreted as fixing an outer time limit for investigation of offences. Section 469 of the Code states when the period of limitation for an offence shall commence. In some cases, it may be doubtful and debatable as to which of the three clauses u/s 469(1) is applicable. This determination or dispute has to be decided by the courts and not by the police. Similarly, Section 470 of the Code provides for exclusion of time in certain cases. Again whether or not time should be excluded has to be determined and adjudicated by the court and not by the police.

13. For the purpose of the present case, Clause (b) of Section 470(4) may be noted. The said clause stipulates that for computing the period of limitation the time during which an offender has avoided arrest by absconding or concealing himself has to be excluded. The said clause may be applicable in the facts of the present case as FIR u/s 397 IPC was registered in February, 2003 but the petitioners were not apprehended or arrested. The case of the police/State is that the petitioners were absconding. This aspect/question can be decided by the court when it decides whether or not cognizance should be taken. However, investigation by the police cannot be stopped or barred.

14. Disputes can also arise whether an offence is a continuing offence. This again is a matter for the court to be decided and not for the police to make self judgment.

15. Section 473 of the Code is a non-obstante provision and gives liberty to the court to take cognizance of an offence after expiry of the period of limitation, if it is satisfied that in the said case delay has been properly explained or it is necessary to take cognizance in the interest of justice. The two conditions stipulated in Section 473 of the Code are in alternative and distinct and not conjoint. An order u/s 473 of the Code is to be passed by a court and not by the police. Till investigation is done and a chargesheet u/s 173 of the Code is filed by the police, the stage of taking cognizance by the court does not arise. It is at the stage of taking cognizance that the court decides whether or not delay should be condoned u/s 473 of the Code and till that stage, the court cannot condone delay.

16. In view of the aforesaid reasoning, the contention of the petitioners that investigation should be stopped and FIR should be quashed cannot be accepted. In the present case, it is noticed that on the applications filed by the police on 16th March, 2007 and 19th April, 2007, the Metropolitan Magistrate had passed an order for issue of non-bailable warrants against the petitioners on 26th March, 2007 and proceedings under Sections 82 and 83 of the Code on 19th April, 2007. Sometimes while the FIR is pending investigation the police/Investigating Officer can move applications before the court with the prayer for orders or directions. The court while deciding any application does not act as a rubber stamp of the prosecution and orders are passed after due consideration and discretion is exercised keeping in mind the relevant facts including contentions raised, public interest, case of the prosecution, statutory and constitutional rights of the victim

and accused, delay in investigation, reasons thereof etc. In a given case, delay in investigation etc. may be a relevant consideration for the exercise of discretion by the court. However, at this stage, the court does not consider and decide the question of cognizance, whether or not cognizance should be taken. Application of provisions of Chapter XXXVI of the Code is to be decided by the court at the time of taking cognizance.

17. With the aforesaid observations, the present petition is dismissed. It is clarified that the observations made in this order are for the purpose of disposal of the present petition and will not be construed as observations on merits/facts binding on the trial court. This Court has not expressed any opinion on whether or not proceedings under Sections 82 and 83 of the Code are justified and valid. The petitioners will have to approach the trial court for the said purpose at the first instance.