

(2010) 07 PAT CK 0066
In the Patna High Court

Dineshwar Lal Karn

APPELLANT

Vs

The State of Bihar and S.S. Kishori

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Citation : (2011) 7 RCR(Criminal) 849

Final Decision : Allowed

Judgement

Anjana Prakash, J.—Heard learned Counsel for the petitioner, State and the CBI.

2. By order dated 27.2.2009, the petitioner was required to restrict his prayer to challenging only one prayer and the petitioner now restricts the same to the order dated 02.08.2004, by which Judicial Magistrate, 1st class, Samastipur, has refused to discharge the petitioner in T.R. No. 177 of 2004, which he had sought on the point of limitation.

3. The prosecution case is that on 28.06.1995, the opposite party No. 2 conducted a raid in the railway premises, Samastipur, where the petitioner was allegedly caught red handed demanding and accepting bribe to the tune of Rs. 200/- from one Harshnath Mazumdar. In course of it, when the petitioner was arrested and kept in custody a mob compromising of staff and officers of DRM office, Samastipur, obstructed in discharge of the official duty and snatched the petitioner from police custody. Upon this, the First Information Report was instituted on 29.6.1995 for the offence under Sections 224, 225, 353, 323/34 Indian Penal Code. The matter was investigated and thereafter finally chargesheet was submitted on 16.3.2002 for the offence under Sections 224, 225, 353, 323, 379 and 511 Indian Penal Code and cognizance was also taken under the said sections on 9.8.2002.

4. There is no dispute that Sections 224 and 225 Indian Penal Code has the maximum sentence of two years prescribed in law, Section 323 Indian Penal Code one year and Section 353 has two years, whereas, Section 379 and 511 Indian Penal Code 1-1/2 years.

5. Learned Counsel for the petitioner has submitted that the cognizance has been taken beyond the period of limitation and there is no express order condoning the delay which is required u/s 473 Cr.P.C. In support of his contention, learned Counsel for the petitioner has cited a decision reported in *State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others*, wherein, it has been held that notice to the accused is a requirement before condoning the delay. The next decision he has banked upon is reported in *Ramesh Chandra Sinha and Others Vs. State of Bihar and Others*, wherein, it has been held that the grounds for condonation of delay should be proper. The same view has been reiterated in *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*,

6. The learned APP has feebly tried to resist the application stating therein that the offence was serious in nature and, therefore, the matter should not be quashed for reasons of limitation alone.

7. There is no doubt that Section 468 Cr.P.C. expressly states that no Court shall take cognizance of an offence of the category specified after the expiry of period of limitation which is set as

(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.

8. Just as it has been expressly laid down that cognizance shall not be taken beyond the period of limitation, it is also express in the Code of Criminal Procedure that the period of limitation can be condoned by the court taking cognizance in case the delay has been properly explained or it is necessary to do so in the interest of justice.

9. I may, here, cite a decision reported in AIR 1981 1054 *State of Punjab v. Sarwan Singh*, wherein, it was held that:

The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions were clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India." It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation.

10. However, in a recent decision reported in AIR 2007 2762 *Japani Sahoo v. Chandra Sekhar Mohanty*, the Hon''ble Supreme court held that:

The general rule of criminal justice is that "a crime never dies." The principle is reflected in the well-known maxim *nullum tempus aut locus occurrit regi* (lapse of time is no bar to Crown in proceeding against offenders.) The Limitation Act does not apply to criminal proceedings unless there are express and specific provisions to that effect. A criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.

11. But after saying so the Hon''ble Supreme Court also said:

But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at "any time" for "any crime" irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offence".

12. The Hon''ble Supreme Court elaborated further on the issue and in my opinion differentiated criminal prosecution launched upon a complaint and stated:

So far as complainant is concerned, as soon as he files a complaint in a competent Court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.

13. Siding with the complainant in a situation when a complaint has been filed well within time but cognizance beyond time, the Hon''ble Supreme Court lastly held that:

If the action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence.

14. However, in the present case, when the police itself had instituted the present First Information Report on 29.06.1995, a duty had been enjoined upon them to investigate the matter and submit the chargesheet because they were still required to conclude that that the petitioner was the offender. And they were required to do so on time or bear the consequences of the delay. Since the police still had control over the matter, their lapse could not be equated to a proceeding which had been embarked upon a complaint which situation the Hon''ble Supreme Court had viewed in the decision quoted above. Since the investigating agency failed to keep track of the time factor it would have to face the consequence of the prosecution being held not maintainable on grounds of limitation. Moreover, there is no explanation as to why such a simple matter took

seven years in its investigation and why no petition was filed for condonation of delay. Such a cavalier attitude, in my opinion, should not be condoned in a court of law or else it would frustrate the purpose of Sections 468 and 473 Cr.P.C. Further, from the narrative of the First Information Report I also find that there is no allegation against the petitioner since it is the stand of the informant that the petitioner was kept in their custody and it was the rest of the staff who agitated against the arrest of the petitioner and got him forcibly extricated from their clutches.

15. Under the circumstances, I set aside the order dated 02.08.2004 passed by the Judicial Magistrate, 1st class, Samastipur, in T.R. No. 177 of 2004, refusing discharge of the petitioner.

16. The application, thus, stands allowed.