
(1984) 09 BOM CK 0020

In the Bombay High Court

Case No : Criminal Application No. 1329 of 1983

Kamal H. Javeri and another

APPELLANT

Vs

Chandulal Gulabchand Kothari and another

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 190(1), 202, 340
Penal Code, 1860 (IPC) — Section 114, 20B, 34, 420, 499

Citation : (1985) 1 BomCR 187

Hon'ble Judges : S.P. Kurdukar, J

Bench : Single Bench

Judgement

1. This criminal application under S. 482, Cr.P.C. 1973, is directed against the order of issuance of process for offence punishable under S. 500, I.P.C., against the petitioners accused passed by the Metropolitan Magistrate, 28th Court, Esplanade, Bombay.

2. The petitioners are the original accused who are hereinafter referred to as "the accused" in Criminal Case No. 245/S of 1983 filed by respondent 1 being the private complaint in the Court of Metropolitan Magistrate, 28th Court, Esplanade, Bombay. This complaint was filed on June 7, 1983. In order to appreciate the allegations contained in this complaint, it would be necessary to refer to two other complaints filed by the accused preceding this private complaint which according to the complainant formed the basis for his criminal action under Ss. 500/114/34, I.P.C.

Both the accused are the employees of Godrej Company. It is also not in dispute that one Saindas Bhandari is the proprietor of the firm known as Pragati Enterprises. Roshanlal Wadhera is the nephew of Saindas Bhandari and was connected with the business of Pragati Enterprises. Pragati Enterprises carry on the business in edible oils which they used to purchase in bulk quantity from Godrej Soaps Ltd. The accused No. 1 filed criminal case No. 79/S of 1979 in the capacity of Sales Manager (Edible Oils) of Godrej Soaps Ltd. against Saindas

Bhandari, Roshanlal Wadhera and Chandu Kothari, the present complainant. That case was filed for the offence punishable under S. 34 and/or under S. 120B read with S. 420 I.P.C. for cheating the Godrej Soaps Ltd., for Rs. 2,26,300/-. This complaint is hereinafter referred to as the "first complaint". It is alleged in this first complaint that Saindas Bhandari is the proprietor of the firm known as Pragati Enterprises. Roshanlal Wadhera and Chandulal Kothari used to assist Saindas in the business of the firm of Pragati Enterprises.

3. It is then stated in this first complaint that during the period between December 1977 and July 1978, one or other of the accused from time to time placed orders worth Rs. 14 lacs and the same were executed by the Company on cash against delivery basis. On July 12, 1978, the Company had to effect delivery of 550 tins of oil but at that time it was noticed that the blank cheques signed by Saindas had been exhausted and, therefore, the complainant told the accused No. 1 on the telephone on July 11, 1978 to send him the cheques duly signed to enable the Company to effect the delivery against payment. Accused 1 informed the complainant that he had already posted few signed cheques and the delivery should not be held up. Accused 2 also repeated the same request and told him that the cheques were already sent by post and the same will be received by July 15, Saturday or latest by July 17, 1978 Monday. Relying on these representations and assurances given by accused 1, the Company delivered 2100 tins of edible oil worth Rs. 2,26,300/-. No cheques signed by accused 1 were received as represented and promised and, therefore, the complainant contacted accused 1 and 2 wherein they accepted for having made a false statement and further alleged that since they could not recover the outstanding from the customers they were unable to pay the price. The company therefore suspended delivery of further edible oil to accused 1 and 2. It was then alleged in the first complaint that on or about August 31, 1978 accused 1 and 2 appealed to the Company to effect delivery on C.O.D. basis and promised to clear all the outstandings by November 1978. The company however taking a charitable view supplied the edible oil tins to accused 1 and 2 but, however, accused 1 and 2 failed and neglected to pay the price. It was then alleged in the complaint that accused 1 and 2 have defrauded the company to the tune of Rs. 2,89,277/-. The Company accepted that the accused have made part payment of Rs. 56,000/- in two instalments in September and October 1978. After assessing the financial position of accused 1 and 2 it was found that the representations made by both the accused were false. In fact the goods received by accused 1 and 2 between July and October 1978, part of it was sold to third party at a lower rate and received the sale proceeds from their buyers (Sic). In para 10, it was alleged that the accused had no intention to pay for the goods supplied by the Company and, therefore, they falsely represented that the cheques had been posted. Para 11 is connected with the present complainant Chandulal Kothari who was accused 3 in the first complaint and it reads as under :-

"My inquiries further show that many of the invoices for the sale of goods by the accused firm to third parties at a lower rate have been signed by accused 3. It is,

therefore, clear that all the three accused, pursuant to their common intention or in the alternative, in conspiracy with each other, made false representations to me, obtained delivery of the goods worth Rs. 2,32,450/- and thereafter disposed of the same at a cheaper rate, collected sale proceeds and yet did not make payment to my company."

The complainant therefore prayed that necessary process be issued against all these accused. This complaint was filed sometime in the month of January 1979.

4. The trial Magistrate after perusing the record produced before him and the verification statement issued process against the three accused. The criminal case was then posted for trial on April 21, 1980 but, however, on that day the complainant (accused 1-petitioner before me) was absent and, therefore, the complaint came to be dismissed in default.

5. On 7-1-1980, the Godrej Soaps Ltd., Company filed another complaint bearing Criminal Case No. 159/S of 1980 (hereinafter referred to as the "second complaint"). This second complaint was filed by P. Roy, petitioner 2 (accused 2) against the very same three accused persons. The allegations contained in this second complaint were more or less and substantially the same and it is not necessary to reproduce the allegations contained in the second complaint. The petitioner No. 2 had filed his second complaint because at that time petitioner 1-accused 1 came to be transferred to Calcutta.

6. The trial Magistrate issued the process against all the three accused for the offences punishable under S. 420 read with S. 34 and under S. 120B, I.P.C. The second complaint is annexed to this petition at Ex.B. The trial Magistrate by his order dt. 14-12-1982 discharged all the three accused. The trial Magistrate observed as follows :-

"I am therefore clearly of the opinion that the present case is of civil nature and there was no dishonest intention on the part of the accused to cheat the complainant Company as alleged. I, therefore, discharge all the accused persons under S. 245(1), Cr P.C."

7. After the order of discharge passed by the learned trial Magistrate, accused 3 (1st respondent-complainant) moved the trial Magistrate on 5-7-1983 by filing an application under S. 340, Cr.P.C., against the petitioners who were the complainants in the two complaints filed by them against the three accused, praying therein that action be taken against these two complainants for perjury having been committed during the pendency of these two criminal complaints. This application, I am told, is pending in the trial Court.

8. The 1st respondent-complainant was accused 3 in both these complaints. Feeling aggrieved and defamed by the accusations made in these two complaints and calling him a cheat and a conspirator along with accused 1 and 2 (the proprietors of Pragati Enterprises) which amounted to defamation, the 1st respondent/complainant filed criminal case No. 246/S of 1983 on July 7, 1983

against the petitioners-accused (complainants in the respective two complaints filed on behalf of Godrej Soaps Ltd. Company) for offences punishable under S. 500/114/34 I.P.C. The complaint is at Ex.A to this petition.

9. At this stage it may be noted that it is the respondent 1 alone (accused 3) filed this Complaint Case No. 246/S of 1983, against these two petitioners-complainants for offences punishable under S.. 500/114/34, I.P.C. The accused 1 and 2, the proprietors of Pragati Enterprises however did not move the Court for any action.

10. It is alleged in the present complaint (hereinafter referred to as "the present complaint") that the complainant has been doing the business in textiles in the name and style of "Om Shanti Textiles" at Kalbadevi, Bombay-2. Before that he was doing the business as commission agent of Berar Oil Industries, Akola, owned by Birla Group. He was doing the said business in the name of Mahavir Sales Corporation, Mazgaon, Bombay 10 between 1976 to 1979. It is alleged by the complainant in the present complaint that the first and the second complaint filed by the accused against him were based on false accusations and because of these false accusations his reputation in the business has been vitally affected and ruined. The accusations contained in both the complaints that he is a cheat and co-conspirator with the proprietors of Pragati Enterprises are totally false and in fact this complainant had nothing to do with the Pragati Enterprises save and except that he was acting as Commission Agent for them. In spite of this knowledge to both the complainants they had falsely involved this complainant in these two complaints on the false accusations by calling him as a cheat and a co-conspirator and this has resulted into totally ruining his business and bad name in business circle. The complainant then stated in the present complaint that the allegations made against him were false and baseless. He was neither Manager of the Pragati Enterprises nor in any way associated with the firm. He was working as a commission agent for the said company. He then stated :-

"I say because of these prosecutions and cases I lost my business because everybody came to know that I am a cheat and by these complaints in writing both the accused intended to or knowing or having reason to believe that such imputation will harm the reputation of mine." "Both the accused have the common intention to defame and aided and abetted such other (Sic) in the commission of the said offence and because of these false and defamatory allegations I could not re-establish my said business in oil and closed the same and suffered losses to the tune of several lacs."

The complainant therefore in the present complaint prayed that suitable action in accordance with law be taken against the accused.

11. As stated earlier the complaint was filed on 7-7-1983 and on the last page of the complaint the trial Magistrate passed the following order :

"Complaint filed by the complainant for verification adjourned to 17-7-1983."

On 18-7-1983 the trial Magistrate recorded the verification statement of the complainant and posted the matter for hearing on 2-8-1983. It was then from time to time adjourned and ultimately on 24-8-1983 the learned trial Magistrate ordered to issue process under S. 500, Penal Code, against the petitioners-accused 1 and 2.

12. It is this order which is the subject matter of the present criminal application.

13. In the present criminal application, three submissions were advanced on behalf of the accused for quashing the order of process issued by the trial Magistrate and also for quashing the criminal complaint. The first submission is in connection with the limitation based upon the provisions of S. 468, Cr.P.C. The second submission urged on behalf of the accused by the learned counsel Shri Vashi is that the present complaint discloses no offence whatsoever against the accused and, therefore, the present complaint is liable to be dismissed in limine. Thirdly, it was urged that since the complainant has taken recourse to the perjury proceedings against the accused, it is not in the interest of justice to proceed with this present complaint and, therefore, the present complaint deserves to be dismissed.

13A. Coming to the first point viz. the limitation, two grounds were taken up in this criminal application and they are as follows :

"(d) That the complaint of respondent 1 was filed long after the period of limitation had expired.

(e) The learned Magistrate failed to appreciate that the said complaint of respondent 1 was barred by limitation and there has been no prayer for condonation of delay nor is delay condoned."

In order to supplement the contention that the present complaint is barred by limitation Shri Vashi sought to draw support to his submission by relying upon the provisions of S. 468, Cr.P.C. In order to appreciate his submission, it would be necessary to reproduce the relevant provisions of Ss. 468 and 469, Cr.P.C. :-

"468. (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) & (b) x x x x

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

Section 469 reads as under :-

"469(1) The period of limitation, in relation to an offender, shall commence, -

(a) on the date of the offence; or

(b) & (c) x x x x

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

14. It is not and cannot be disputed that the present complaint which is filed on July 7, 1983 by the complainant is within three years from the date of the second complaint which was filed by accused 2 (Criminal Case No. 159/S of 1980) on 7-1-1980. It is also no more in dispute that the verification statement of the present complainant was recorded by the learned trial Magistrate in the present complaint on July 18, 1983 and the process was issued against the accused on August 19, 1983. It is also no more in dispute that the present complaint would fall under Cl. (c) of sub-section (2) of S. 468 which prescribes limitation of three years. It is also not in dispute that the present complainant has not made any application for extension of period of limitation as contemplated under S. 473, Cr.P.C. in the trial Court. But, however, during the course of the arguments, the learned advocate for the complainant sought to produce an affidavit before me explaining as to why he filed the complaint on July 7, 1983 just on the last date. I will consider this affidavit at a later stage if it is found necessary.

15. Shri Vashi drawing support from the provisions of sub-section (1) of S. 468, Cr.P.C. urged that the impugned order is without jurisdiction. According to him if the provisions of sub-section (1) of S. 468 are carefully read, it imposes a bar upon the court from taking cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. What is urged on behalf of the accused is that it is not enough for the complainant to file the complaint within three years as has been done in the present case but as contemplated under cl. (c) of sub-section (2) of S. 468, Cr.P.C. it was also incumbent upon the complainant to request the Magistrate to take the cognizance of such offence falling within cl. (c) of sub-section (2) of S. 468 before the expiry of three years from the date of the alleged offence. In the present case, he urged that the verification statement of the complainant was recorded on July 18, 1983 which clearly falls beyond the period of three years and consequently the order of issuing process on August 19, 1983 is beyond the prescribed period of limitation of three years. The Magistrate first time took cognizance of the present complaint when he ordered to issue the process on 19-8-1983 and in view of the bar contained in sub-section (1) of S. 468, that no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation, namely, three years, from the date of offence, the impugned order clearly suffers from want of jurisdiction. In substance the contention of Shri Vashi is that the period of three years prescribed under cl. (c) of sub-section (2) of S. 468 of the Code has got to be necessarily linked up with the date of cognizance of an offence falling in category (c) of sub-section (2) of S. 468 and if no such cognizance is taken by the Magistrate within three years from the date of offence, the order must become illegal and without jurisdiction.

16. The entire argument of Shri Vashi centres around the expression "cognizance" used in sub-cl. (1) of S. 468, Cr.P.C. The word "cognizance" has not been defined either in the I.P.C. or in the Cr.P.C. or in any other penal statutes. But, however, the expression "cognizance" has been judicially interpreted by this Court as well as by the Supreme Court in various reported judgments. I may only usefully refer to few judgments of the Supreme Court which has defined the expression "cognizance".

17. In *Ajit Kumar Palit Vs. State of West Bengal*, the Supreme Court has defined the meaning of the expression, "to take cognizance" of an offence" with reference to the provisions of S. 190(1), Cr.P.C. In that behalf the Supreme Court in para 19, observed as follows :

"19. The provisions of S. 190(1) being obviously, and on its own terms inapplicable, the next question to be considered is whether it is the requirement of any principle of general jurisprudence that there should be some additional material to entitle the Court to take cognizance of the offence. The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means - become aware of and when used with reference to a Court or Judge, to take notice of judicially"

18. In a latter judgment in *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, , the Supreme Court has considered the expression, "taking cognizance of an offence" appearing in S. 190, Cr.P.C., in great details. The Supreme Court in para 14 observed as follows :

"14. This raises the incidental question :

What is meant by "taking cognizance of an offence" by the Magistrate within the contemplation of S. 190 ? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of S. 190 and the caption of Chap. XIV under which Ss. 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in cls. (a), (b) and (c) of S. 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under S. 200 and the succeeding sections in Chap. XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of S. 190(1)(a). If, instead of proceeding under Chap. XV, he has in the Judicial exercise of his discretion taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under S. 156(3), he cannot be said to have taken cognizance of any offence."

19. In view of these authoritative pronouncements by the Supreme Court in

connection with the expression, "taking cognizance", I have to examine the first submission in connection with the limitation urged on behalf of the accused. Shri Vashi relying upon the above referred passage of the Supreme Court in *D. Lakshminaryana* (1976 Cri LJ 1361) (supra), urged that having regard to the facts of the present case that the trial Magistrate issued the process on 19-8-1983, it must be held that he applied his judicial mind to the complaint and the other material produced before him, for the alleged offence on this day and accordingly issued the process and, therefore, this is the day on which the Magistrate has taken the cognizance of the alleged offences disclosed in the complaint. According to him since the cognizance was taken by the Magistrate much after the expiry of period of 3 years from the date of offence i.e. on 7-1-1980, the action of the Magistrate taking cognizance is contrary to the provisions of sub-section (1) of S. 468 and in fact the trial Magistrate has completely ignored the bar envisaged under sub-section (1) of S. 468, Cr.P.C. I however do not agree with this submission. This submission of Shri Vashi completely overlooks the provisions of S. 469 of the Code which deals with the commencement of the period of limitation. Section 469 prescribes a starting point of limitation with reference to offenders vis-a-vis the date of offence. For instance S. 469(1) prescribes the period of limitation, in relation to an offender and it shall commence (a) on the date of the offence. Sub-clauses (b) and (c) deal with the other two situations and date of commencement of limitation thereof. Ss. 468 and 469 of the Code have got to be read together to ascertain as to whether complaint lodged against the offender is within limitation. Therefore, in my opinion, it is the date of complaint which is material for the purposes of taking cognizance of an offence under S. 468 of the Code.

20. Chapter XXXVI deals with the limitation for taking cognizance of certain offences. Section 467 deals with the definition. Section 468 prescribes the bar in taking cognizance after lapse of the period of limitation. Section 469 deals with the commencement of the period of limitation, whereas S. 470 deals with the exclusion of time in certain cases. Section 471 deals with the exclusion of date on which Court is closed. Section 472 is about continuing offence and S. 473 deals with extension of period of limitation in certain cases. If the scheme of this Chapter is carefully scrutinised it is apparent from S. 473 of the Code that the legislature also in proper cases vested the discretion with the Magistrate to extend the period of limitation in the interests of justice. To be very precise S. 473 permits the Court to take cognizance of the case after the expiry of the period of limitation if it is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. Section 473 of the Code permits the party to make out a case for condonation of delay if it has approached the Court after the expiry of prescribed period of limitation and upon such satisfaction the Court may condone the delay in order to do justice between the parties. If the provisions of Ss. 468, 469 and 473 are read together then the effect of all these provisions would clearly negate the contention of Shri Vashi that if the Magistrate fails to take

the cognizance within the prescribed period of limitation then the order becomes without jurisdiction and illegal. The proper construction of sub-section (1) of S. 468 namely that no court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation, is that a bar is created in taking cognizance of an offence wherein the complaint is barred by limitation.

21. The Limitation Act prescribes the limitation for taking action in the Court of law and if the action is taken after the expiry of the period prescribed under the Limitation Act, the remedy is said to be barred. The same principle would also apply while considering the question of limitation provided under S. 468 of the Cr.P.C. I may give an illustration to demonstrate how the submission of Shri Vashi in connection with the interpretation of S. 468, will lead to illogical situation and disastrous result. It is also well settled that a party can take action on the last date of the limitation prescribed under the Act. (1) Suppose a complaint is filed on the last day of limitation prescribed under the Act and if on that date the Magistrate is on leave and/or otherwise unable to hear the party and/or apply his mind to the complaint on that date then naturally his complaint will have to be held barred by limitation if arguments of Shri Vashi are to be accepted.

(2) Suppose a complaint is filed quite in advance before the expiry of the period of limitation and if the Magistrate in his discretion postpones the issue of process by directing an investigation under S. 202, Cr.P.C. and if that investigation is not completed within the prescribed period of limitation, naturally the Magistrate shall not be able to apply his mind and take cognizance and/or issue the process until report u/s. 202 of the Code is received and in that event the complaint will have to be dismissed on the ground that the Court cannot take cognizance of an offence after the expiry of the period of limitation from the date of offence. There could be several such situations. The complaint although filed within limitation but the Magistrate due to some or other reasons beyond his control could not apply his mind and take cognizance of the complaint and/or could not issue the process within the prescribed period of limitation as provided under S. 468 of the Code, then the complaint will have to be dismissed in limine. So also if the Magistrate takes cognizance after the period prescribed under S. 468 of the Code the said order of taking cognizance would render illegal and without jurisdiction. In such contingencies can the complainant be blamed who has approached the Court quite within limitation prescribed under the Act but no cognizance could be taken for the valid and good reasons on the part of the Magistrate and should the complainant suffer for no fault on his part. This could not be the object of the framers of the provisions of S. 468, Cr.P.C. In fact the Supreme Court in *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, has held that if a Magistrate orders an investigation under S. 156(3), Cr.P.C., or issues a warrant for further investigation, he cannot be said to have taken cognizance of the offence. The Supreme Court in para 35 observed as follows :

"..... Secondly, it is well settled that before a Magistrate can be said to have taken cognizance of an offence under S. 190(1)(a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under S. 200 and the provisions following that section. But where he has applied his mind only for ordering an investigation under S. 156(3) or issuing a warrant for purposes of investigation he cannot be said to have taken cognizance of the offence."

22. The same view has been reiterated by the Supreme Court in the case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, (supra). Having regard to the scheme of Chap. XXXVI, Cr.P.C. and having regard to the provisions of S. 468 of the said Code, the only proper construction that could be placed on S. 468, in connection with the limitation is that if the complaint is filed beyond the prescribed period of limitation under sub-section (2) of S. 468, then no Court shall take cognizance of an offence under S. 468(1) of the Code subject however to the power vested in court to extend the period of limitation under S. 473 of the Code. The first submission of Shri Vashi that no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation from the date of offence is without any substance. The true construction of S. 468, in my opinion, is that it lays down a bar on a Court from taking cognizance of an offence in which a complaint is lodged after the expiry of the period of limitation prescribed under sub-section (2) of S. 468, subject however to the extension of time as provided under S. 473, Cr.P.C.

23. It is then urged by Shri Vashi that upon plain reading of the provisions of S. 468, Cr.P.C., there is no room for applying any fiction that the date on which the Magistrate has taken cognizance or passed an order of process should be deemed to be the date of the complaint. The date of filing of the complaint is distinct from the date of taking cognizance or issuing the process by the Magistrate and, therefore, the date of cognizance is the date which should be the material date for the purpose of determining the period of limitation under S. 468, Cr.P.C. In support of this submission Shri Vashi drew my attention to the provisions of S. 145(4), Cr.P.C., 1898, and strongly relied upon the judgment of the Madras High Court in Athiappa Gounder and Others Vs. S.A. Athiappa Pandaram, . The Madras High Court while considering the scheme of S. 145, Cr.P.C., 1898 and while construing the phraseology used in sub-section (4) of S. 15, namely, two months next before the date of order, held that having regard to the provisions of S. 145(4), there is no room for applying any fiction that the date of the preliminary order should be deemed to be the date of the petition and to give relief even to persons forcibly and wrongfully dispossessed within two months prior to the date of petition.

24. I have gone through the judgment of the Madras High Court very carefully and I find that the ratio laid down by the Madras High Court in the said judgment cannot be even remotely extended to the question of limitation with, reference to

S. 468, Cr.P.C. involved in the present case. The provisions of S. 145(4), Cr.P.C., 1898, are materially different from the provisions of S. 468, Cr.P.C. 1973. The wording employed in sub-section (4) of S. 145, in terms refers to two months next before the date of order i.e. preliminary order and, therefore, any dispossession before two months prior to the filing of the petition would not enable such dispossessed party to obtain any relief. In my opinion, the principles laid down by the Madras High Court in the above referred judgment cannot be extended to the question involved in the present petition.

25. Shri Vashi then brought to my notice the Division Bench judgment of this Court in State Vs. Ramjivan Kaluram and Another, That case arose under S. 145 Cr.P.C 1898 and, therefore, in my opinion, no assistance whatsoever can be taken by the accused to contend that the Magistrate had no jurisdiction to take cognizance of the offence is on the date of cognizance the period of three years had elapsed and/or expired.

26. Shri Vashi, the learned advocate for the petitioners then sought to rely upon the two judgments of this Court in Jethmal Himmatmal Jain and others Vs. State of Maharashtra, and R. C. Trivedi v. A. H. Paranjape 1982 Cri LJ 869. Both these judgments are rendered by the single Judges of this Court. In both these judgments, admittedly the complaints were filed beyond limitation without any explanation for delay or application for condonation of delay. In both these judgments, the Magistrate has taken cognizance of such belated complaints and issued the process. This Court held that in the absence of any valid reasons and in the absence of an application for condonation of delay under S. 473, Cr.P.C., the Magistrate had no jurisdiction to take cognizance of any offence and issue the process. The learned Judges therefore quashed the proceedings and dismissed the complaints having been filed beyond the prescribed period of limitation.

27. As stated earlier in the present case before me it is not disputed that the complaint filed on July 7, 1983 was very much within the prescribed period of limitation and, therefore, the question of any delay does not arise. The principles laid down by this Court in the above referred judgments therefore are not at all attracted. Since the facts of these two reported judgments are distinct and since the complaints in both these cases were filed beyond the period of limitation, I have not referred to these two judgments in extenso.

28. Thus having taken resume of these several authorities and after considering the provisions of Ss. 467 to 473, Cr.P.C., I am of the opinion that the limitation prescribed under S. 468 is to be read with reference to the filing of the complaint and not with reference to the date of cognizance or issuance of process, for determination of period of limitation prescribed in S. 468, Cr.P.C. The first submission of Shri Vashi has, therefore, no force and has got to be rejected.

29. It is then urged by Shri Vashi that at any rate so far as the present complaint against accused 1 is concerned, must be held to be barred by limitation because

accused 1 had filed a criminal complaint in 1979 bearing Criminal Case No. 79/S of 1979. Shri Vashi however could not give me the correct date of filing of this first complaint but it is not disputed that it was filed sometime in the first half of the year 1979. If the period of limitation is computed from the year 1979, the present complaint which is filed on July 7, 1983 is clearly barred by limitation. This argument again has to be considered with reference to the contents found in the present complaint. It is alleged by the complainant in the present complaint that accused 1 had filed the complaint against him and two others for the offence under S. 420 read with S. 34 and 120B, I.P.C. and the first complaint came to be dismissed for default on April 21, 1980. Thereafter the accused No. 2 filed the second complaint on 7-1-1980 against the present complainant and two other proprietors of Pragati Enterprises and it was filed for the offence under S. 420 read with S. 34 and S. 120B I.P.C. The trial Magistrate then recorded the statements of accused 1 and 2 and this must be admittedly after 7-1-1980. The accused 1 has stated on oath that all the three accused with common intention cheated the Godrej Company and there was conspiracy on the part of three accused to cheat the Company, and, therefore, they have committed the offence punishable under S. 420/34 and S. 120B I.P.C. The complainant has produced on record the judgment in the second complaint which makes reference to the allegations and the evidence of accused 1. It is true that the complainant and the other two accused were discharged by the trial Magistrate by his order dt. 14-12-1982 holding that the dispute between the parties appears to be a civil dispute. Accused 1 in the second complaint has deposed to the fact that the present complainant and two others have cheated the Company with common intention and/or in conspiracy and these allegations according to the present complainant were false and baseless inasmuch as he was not connected with the business of Pragati Enterprises at all and he was only working as a commission agent on the commission basis. The statements of both the accused in the second complaint calling the present complainant as a cheat in spite of the knowledge on their part that such imputation will harm the reputation of the present complainant, the prestige of the complainant is prima facie affected and a great damage and loss has been caused to his business. Having regard to these facts alleged in the complaint by the present complainant, I see no hesitation in concluding that the present complaint even against accused 1 is perfectly within limitation.

30. It is then urged by Shri Vashi that the findings of the learned trial Magistrate in the second complaint that it was a civil dispute inasmuch as the amounts alleged in these 1st and 2nd complaints were due and recoverable from the Pragati Enterprises and non-payment thereof justifying the conduct of the complainant to file complaint under S. 420 read with S. 34 and S. 120B, I.P.C. cannot be said to be without substance. He also urged that there was no intention on the part of the present petitioners to cause any damage to the reputation of the present complainant as well as other two accused and in the absence of such intention on their part it must be held that the allegations

contained in those two complaints as well as in their statements would fall in the Eighth Exception to S. 499, I.P.C. I do not think that it will be proper at this stage to consider this argument in the absence of full opportunity being given to the complainant to prove his case at the trial. I, therefore, do not wish to make any observations in this behalf.

31. Lastly, it was urged by Shri Vashi that the present complainant has already filed an application before the Magistrate for taking action against both the accused for an offence of perjury and the said case is pending. He therefore submitted that in the fitness of things, it is not in the interest of justice to allow the present complainant to proceed with the present complaint against the accused. He also raised a question of propriety in keeping alive and continue the present complaint filed by the complainant. This submission is again devoid of any merits because filing an application for taking action for perjury cannot be a substitute for the case of defamation under S. 500, I.P.C. This submission again therefore has no force and has got to be rejected.

32. After reading the contents of the present complaint and the material produced on record I am satisfied that the present complainant has made out a prima facie case and there was no error on the part of the learned trial Magistrate in issuing the process against both the accused. Since I have held that the present complaint filed by the complainant is within limitation the Magistrate was justified in taking cognizance of the offence, and, therefore, there was no question of any delay and/or making an application for condonation of delay under S. 473, Cr.P.C.

33. The present petition therefore has no substance and must be rejected. The petition is accordingly dismissed. Rule is discharged but, however, there shall be no order as to costs.

34. Petition dismissed.