

(2015) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 126 of 2008

Kanaparaju Narsimharaju

APPELLANT

Vs

Adluri Bhasker and Others

RESPONDENT

Date of Decision : 02-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401, 468, 468(2)(c)
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 177, 182, 209

Citation : (2015) 2 ALD(Cri) 477

Hon'ble Judges : Anis, J

Bench : Single Bench

Advocate : V. Ravi Kiran Rao, for the Appellant; D. Bhaskar Reddy, Advocates for the Respondent

Judgement

Anis, J.—This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") is filed by the revision petitioner/complainant challenging the judgment dated 16.10.2007, passed by the learned Judicial Magistrate of I Class, Godavarikhani, in C.C. No. 584 of 2005, whereunder and whereby the respondent/accused was acquitted for the offence punishable under Section 209 of the Indian Penal Code, 1860 (for short, "IPC").

2. The revision petitioner herein is the complainant and the respondent herein is the accused before the Judicial Magistrate of I Class, Godavarikhani in C.C. No. 584 of 2005. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed before the trial Court.

3. The case of the complainant in brief is that himself and the accused are working in NTPC and residing at NTPC quarters, Ramagundam. The complainant obtained a loan of Rs. 50,000/- from the accused by pledging gold ornaments and executed a promissory note to that effect on 29.11.1998 with a condition to discharge his debt within three months and in case he fails to pay the amount,

the accused is at liberty to dispose of the pledged articles. The accused having remained silent for about three years, filed a suit in O.S. No. 219 of 2004 against him on 26.11.2001 by falsely claiming Rs. 77,500/- on the basis of promissory note and concealing the fact of pledge. The complainant received summons and contested the matter, and finally the said suit was dismissed on 20.06.2005. The complainant stated that he suffered mentally and financially from the year 2002 because of the accused as he made a false claim in the Court of Justice concealing the real facts and on the false information that the complaint is filed within the limitation. The cause of action arose on 26.11.2001 when the accused filed a complaint furnishing the false information and made a false claim and continued the same till the date of judgment i.e. 21.02.2005. Therefore, prayed the Court to take cognizance of the offence punishable under Sections 177, 182 and 209 IPC against the accused.

4. After taking sworn statement of the complainant, the trial Court took cognizance for the offence punishable under Section 209 IPC and examined the accused for the said offence. During trial, on behalf of the complainant, he himself examined as P.W. 1 and got marked Exs. P.1 to P.3.

5. After closure of the complainant's evidence, the accused was examined under Section 313 Cr.P.C putting the incriminatory material deposed against him. The accused denied the incriminatory material and reported no oral or documentary evidence.

6. The learned Magistrate after considering the evidence of the complainant and Exs. P.1 to P.3, acquitted the accused for the offence punishable under Section 209 IPC on the ground that the complaint filed by the complainant was barred by limitation as he failed to file the complaint on or before 06.03.2005 but filed the same on 22.11.2005.

7. Aggrieved by the judgment of the trial Court, the complainant preferred the present revision case.

8. The learned counsel for the revision petitioner/complainant argued that the learned Magistrate ought to have seen that the complainant obtained a loan of Rs. 50,000/- from the accused by pledging gold ornaments and also executed a promissory note to that effect on 29.11.1998 with a condition to discharge the debt within three months and in case he failed to pay the amount, the accused is at liberty to dispose of the pledged articles; that the suit filed by the accused was dismissed on 20.06.2005, therefore the accused committed the offence punishable under Section 177, 182 and 209 IPC and the judgment of the trial Court in dismissing the complaint is nothing but arbitrary and illegal; that the trial Court instead of computing the limitation from the date of judgment i.e. 20.06.2005, erroneously taken into consideration of the knowledge of the alleged offence from 20.03.2002; that the Magistrate ought to have exercised his jurisdiction to condone the delay under Section 473 Cr.P.C. at the time of filing of the complaint and relied on a case-law reported in Prakash Chandra Sharma Vs.

Kaushal Kishore, (1980) ACR 179 , wherein the Allahabad High Court held at Para 9 and 9-A as follows:

"I am supported in my view by a decision of late Mr. Justice R.K. Tankha of the Madhya Pradesh High Court in Krishna Sanghi and Others Vs. The State of Madhya Pradesh, (1977) CriLJ 90 : (1976) ILR (MP) 899 : (1976) JLI 613 : (1976) 21 MPLJ 559 , who has made the following observations in this connection:

"Whenever a complaint or a chalan is filed at the instance of any person or any police officer, the Court must first see that Section 468 is attracted or not. If it does, it should not register the case but give an opportunity to the person or the police officer filing the complaint or chalan to satisfy it on the point of limitation for purposes of condonation of delay. As regards the condonation of delay it should not be done as a matter of course. The delay has to be condoned with exercise of judicial discretion."

A similar view has been expressed by Andhra Pradesh High Court in Bharat Hybrid Seeds and Agro Enterprises and Another Vs. The State, (1978) CriLJ 61 as under:--

"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.... Although as held in Cusrow Russy Irani Vs. The State and Another, (1977) CriLJ 160 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, it is 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."

The learned counsel also relied on a case-law reported in Tapan Kumar Mukherjee Vs. State of West Bengal and Others, (1995) CriLJ 1985 , wherein the Calcutta High Court held at Para 18 as follows:

"Therefore the limitation under Section 468 is not an absolute bar but is subject to the power under Section 473 of the Act. This Court cannot under Art. 226 preempt a decision on the issue by the Magistrate by holding that there was no scope for exercising the power under Section 473 of the Code of Criminal Procedure to condone the delay. The power to consider the question of limitation is in any event, one which is vested solely in the Court taking cognizance."

The learned counsel further relied on a case-law reported in Udai Shankar Awasthi Vs. State of U.P. and Another, (2013) 1 AD 537 : (2013) 1 Crimes 231 : (2013) 1 JCC 711 : (2013) 1 JT 539 : (2013) 2 RCR(Criminal) 503 : (2013) 1 SCALE 212 : (2013) 2 SCC 435 , wherein the Hon'ble Supreme Court held at Para 19 as

follows:

"Section 468 Cr.P.C. places an embargo upon court from taking cognizance of an offence after the expiry of the limitation period provided therein. Section 469 prescribes when the period of limitation begins. Section 473 enables the court to condone delay, provided that the court is satisfied with the explanation furnished by the prosecution/complainant, and where, in the interests of justice, extension of the period of limitation is called for. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies, as has been explained by way of the legal maxim, *nullum tempus aut locus occurrit regi* (lapse of time is no bar to the Crown for the purpose of it initiating proceeding against offenders). A criminal offence is considered as a wrong against the State and also the society as a whole, even though the same has been committed against an individual."

The learned counsel also relied on a case-law reported in *Krishna Sanghi and Others Vs. The State of Madhya Pradesh*, (1977) CriLJ 90 : (1976) ILR (MP) 899 : (1976) JLI 613 : (1976) 21 MPLJ 559 , wherein the Madhya Pradesh High Court held at Para 7 as follows:

"Learned Counsel appearing for both the parties requested me to lay down the procedure to be followed by the trial Courts in such cases since this is a new provision incorporated in the Code of Criminal Procedure, 1973. Whenever a complaint or a chalan is filed at the instance of any person or any police officer, the Court must first see that Section 468 of the Code of 1973 is attracted or not. If it does, it should not register the case but give an opportunity to the person or the police officer filing the complaint or chalan to satisfy it on the point of limitation for purposes of condonation of delay. As regards the condonation of delay it should not be done as a matter of course. The delay has to be condoned with exercise of judicial discretion. Section 473 of the Code empowers the Court to condone such delay if sufficient cause has been shown or if the interests of justice make it necessary to do so. But the application of the section would always depend upon the facts and circumstances of each case of which the Court would be required to exercise its judicial discretion in the matter, like an application under Section 5 of the Limitation Act, 1963. At this stage I would also like to point out that the provisions of Section 473 of the Code should also be liberally construed like Section 5 of the Limitation Act so as to advance substantial justice when no negligence or junction or want of bona fides is imputable "to the prosecutor but cannot be construed too liberally because the Government is the prosecutor or prosecution is upon police report. After the delay is condoned by the Court on its being satisfied by the process referred to above, then alone it would register the case and proceed with the same in accordance with law. Before condoning the delay, although I do not find any provision of giving of notice to the accused person in Chapter XXXVI of the Code, but natural justice demands that the accused persons must be heard before passing an order in that regard as such an order is bound to affect a valuable

right which accrues to the accused and which cannot be allowed to be taken away lightly. As such, they have to be heard when an application under Section 473 of the Code is moved by the prosecution before cognizance is taken."

and finally, prayed the Court to set aside the judgment, dated 16.10.2007, passed in C.C. 584 of 2005."

9. On the other hand, the learned counsel for the respondent/accused argued that though the Court has taken cognizance of the offence, the accused has every right to question the aspect of limitation at any time and the learned counsel before the trial Court rightly raised the plea of limitation; that according to Section 468 Cr.P.C., the period of limitation prescribed for the offence punishable under Section 209 IPC is three years, therefore the trial Court rightly dismissed the complaint filed by the complainant as barred by limitation; that the offence punishable under Section 209 IPC is not a continuing offence and relied upon a case-law reported in State of Punjab Vs. Sarwan Singh, AIR 1981 SC 1054 : (1981) CriLJ 722 : (1981) 83 PLR 457 : (1981) 1 SCALE 619 : (1981) 3 SCC 34 : (1981) SCC(Cri) 625 : (1981) 3 SCR 349 , wherein the Hon"ble Supreme Court held as follows:

"The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was 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 statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 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."

The learned counsel also relied on a case-law reported in Bharat Damodar Kale and Another Vs. State of A.P., AIR 2003 SC 4560 : (2003) CriLJ 4543 : (2003) 2 JT 569 Supp : (2003) 8 SCALE 392 : (2003) 8 SCC 559 : (2004) 1 UJ 203 : (2003) AIRSCW 5333 : (2003) 7 Supreme 736 , wherein the Hon"ble Supreme Court held as follows:

"A cumulative reading of various provisions of Chapter XXXVI Cr.P.C. clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter."

and finally, prayed the Court to dismiss the revision case.

10. Now, the point for determination is-

"Whether the revision petitioner/complainant is entitled to set aside the

judgment, dated 16.10.2007, passed by the Judicial Magistrate of I Class, Godavarikhani in C.C. No. 584 of 2005 as prayed for?"

11. Point:

A perusal of the record shows that the revision petitioner is the complainant who filed the criminal complaint against the respondent/accused for the offence punishable under Sections 177, 182 and 209 IPC on the file of the Judicial Magistrate of I Class, Godavarikhani, which is numbered as C.C. No. 584 of 2005. The learned Magistrate took the cognizance of the offence punishable under Section 209 IPC only against the accused. During the course of trial, the complainant was examined as P.W. 1 and Exs. P.1 to P.3 were got marked. During the course of arguments, the accused put forth his arguments that the complaint filed by the complainant was barred by limitation in view of Section 468 Cr.P.C. The complainant ought to have filed the complaint on or before 06.03.2005 as the summons in O.S. No. 219 of 2004 was received by the complainant's wife on 07.03.2002 and the said suit was filed by the accused against the complainant. However, considering the provision of law, the trial Court dismissed the complaint and acquitted the accused for the offence punishable under Section 209 IPC on the ground that the complaint was barred by limitation. Aggrieved by the judgment of the trial Court, the complainant filed the present revision case.

12. The learned counsel for the revision petitioner/complainant argued that the complaint filed by the complainant cannot be barred by limitation as the offence is a continuing offence. The learned counsel for the complainant further argued that the learned Magistrate has already taken the cognizance of the case in the year 2002 itself, and therefore, the trial Court instead of computing the limitation from the date of the judgment in O.S. No. 219 of 2004 i.e. on 20.06.2005, has erroneously taken into consideration of the knowledge of the alleged offence from 26.03.2002, which is nothing but illegal, and therefore, prayed the Court to set aside the judgment dated 16.10.2007 passed in C.C. No. 584 of 2005.

13. Section 468 Cr.P.C. reads thus:

"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."

Therefore, Section 468(2)(c) Cr.P.C. prescribes the period of limitation for the offence punishable under Section 209 IPC is three years.

14. The contention of the learned counsel for the revision petitioner/complainant is that the Magistrate has already taken the cognizance of the case, as such the limitation prescribes therein is only from the date of taking cognizance but not the filing of the complaint. However, the said contention of the learned counsel for the revision petitioner/complainant cannot be entertained and it is incorrect in view of the judgment of the Hon"ble Supreme Court in 6th cited supra, wherein it clearly held that the limitation prescribes only for filing of the complaint or initiation of the prosecution and not for taking cognizance. In view of the settled principles of law, the contention of the learned counsel for the revision petitioner/complainant that the complaint is within the limitation from the date of taking cognizance, cannot be accepted.

15. The other contention of the learned counsel for the revision petitioner/complainant is that Section 209 IPC is a continuing offence, as such the limitation begins to run at every moment of the time during which the offence continues. It is not pleaded in the complaint that Section 209 IPC is a continuing offence and he is entitled for relief under Section 472 Cr.P.C. The trial Court has rightly held that the period of three years shall be computed from the day on which the offence punishable under Section 209 IPC comes to the knowledge of the complainant. Admittedly, the accused filed O.S. No. 219 of 2004 against the complainant; the wife of the complainant received summons on 07.03.2002; the complainant filed vakalat on 19.02.2002 and the date of first appearance was 20.03.2002. Therefore, the complainant was having knowledge that the accused allegedly made a false claim in O.S. No. 219 of 2004 by the above dates. Even after the date of first appearance i.e. 20.03.2002, the complainant ought to have filed a private complaint on 19.03.2005. But, the complainant has not filed the private complaint within three years from the date of knowledge as contemplated under Section 468 Cr.P.C. Therefore, the trial Court rightly dismissed the complaint and acquitted the accused from the accusation levelled against him.

16. The another contention of the learned counsel for the revision petitioner/accused is that this Court may remand the matter to the trial Court for condonation of delay and to decide the case. Admittedly, the complainant has not filed any petition for condonation of delay under Section 473 Cr.P.C., but filed the complaint for the offence punishable under Section 209 IPC alleging that the complaint filed by him is within limitation. Therefore, the plea of the revision petitioner for remand with a direction to the trial Court to condone the delay, has to be negated and he is not entitled for such reliefs in the revision case. Further, the scope of the revision is very limited and this Court cannot interfere with the judgment of the trial Court unless it suffers from any perversity or

procedural defects or jurisdictional errors, or is not in accordance with the evidence. Evidently, the case of the revision petitioner will not fall in any of the above category and he has not made out grounds to interfere with the judgment of the trial Court. Therefore, the point is answered against the revision petitioner/complainant.

17. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.