

(2002) 12 BOM CK 0053

In the Bombay High Court

Case No : Criminal Application No. 1882 of 1999

Manganese Ore (India) Ltd.

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2), 469(1), 473, 482
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 139, 141, 299

Citation : (2003) BomCR(Cri) 1180 : (2004) CriLJ 474

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : G.G. Modak, for the Appellant; A.R. Patil, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—This application is filed u/s 482 of the Code of Criminal Procedure (for short the Code) in which the following reliefs have been sought :

(i) These applicants therefore pray that this Hon''ble Court be pleased to exercise its powers under S. 482 of Criminal Procedure Code and set aside the order dated 30.8.1999 passed by the Judicial Magistrate First Class, Savner below Exhibit "B" in Criminal Case No.67/99 by holding that the complaint being time barred is untenable;

(ii) during the pendency of the proceeding before this Hon''ble Court interim stay of further proceedings in Criminal Case No.67/1999 pending before the Judicial Magistrate First Class, Savner, be granted;

(iii) any other reliefs that is deem fit under circumstances of the case may kindly be granted."

2.The applicant no.1 is a Government Company which carries on the business of mining of Manganese in the States of Maharashtra and Madhya Pradesh, whereas

applicant no.2 is the Mine Manager. The respondent is the Municipal Council at Khapa. The respondent had filed a complaint under Sections 139, 141 read with Section 299 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short the Act) against the applicants and it is not disputed that the applicant no.1 Company had imported a machine Hindustan 2021 Loader with Z- bar linkage fitted with 1-53 CUM Rock Bucket, Ashok Leyland ALU 400 Engine, Tyres with weld on Teeth with Cabin with Wiper worth Rs.20,20,750/-. The said loader machine was imported within the municipal limits on 13.6.1998 and it is alleged in the complaint that there were some negotiations and also correspondence in between the applicants and the respondent regarding payment of octroi duty. Considering the value of the loader machine, the octroi duty of Rs.80,830/- was sought to be imposed on the applicants, but the latter avoided the payment of octroi and, therefore, a private complaint was instituted before the learned J.M.F.C. on 16.1.1999. It is alleged that the aforesaid loader machine remained at the premises of Gumgaon Mines Khapa till 18.7.1998 and the applicants avoided to pay the octroi on one pretext or the other inspite of the demand of the octroi by demand bill dated 24.8.1998. The octroi was finally demanded on 16.9.1998 but it remained unpaid. It is alleged that the respondent filed the complaint within the period of limitation and the applicant-Company has committed the offences punishable under Sections 139, 141 and 299 of the Act.

3.The applicants had filed an application (Ex.8) before the learned Magistrate seeking dismissal of the complaint on the ground that it is barred by period of limitation as per the provisions of Section 468(2) of the Code. The learned J.M.F.C. after considering the material placed before him and on hearing the arguments of both the learned counsel dismissed the said application (Ex.8). It is this order which is sought to be challenged in this application by invoking the inherent powers of this Court.

4.Mr.Modak, learned counsel, for the applicants contended that the loader machine was brought within the municipal limits on 13.6.1998 whereas the private complaint has been instituted before the Magistrate on 16.1.1999 and the Magistrate took cognizance of the complaint on 3.3.1999. It is contended that as per Section 139 of the Act the entry of loader machine within the municipal limits would be relevant to consider the date for commencement of the period of limitation. In support of this submission, the learned counsel for the applicant-Company relied on a decision of Single Bench of this Court in R.C. Trivedi V. A.H. Paranjape 1982 Cri.L.J. 869 and also on a decision of Single Bench of Rajasthan High Court in Heeralal and Others Vs. State, .

5.The learned counsel for the applicants further contended that as per Section 468(2)(a) of the Code, the period of limitation for institution of private complaint is six months when the offence is punishable with fine only. According to him, since the offence is said to have occurred on 13.6.1998 the presentation of the complaint beyond the period of six months is hopelessly barred by the period of

limitation. He further contended that the Magistrate was not empowered to take cognizance of the offence suo motu and the respondent must have filed an application for condonation of delay. In absence of such application, the suo motu action of the Magistrate cannot be sustained in law. In support of this submission, the learned counsel for the applicants, placed reliance on a decision of Single Bench of Allahabad High Court in the case of Prakash Chandra Sharma v. Kaushal Kishore .

6.Mr.Modak, learned counsel, for the applicants contended that the offences alleged in the complaint are under Sections 139, 141 and residuary section 299 of the Act under which penalty for avoiding the payment of octroi duty with an intention to defraud the Municipal Council is only a fine and as per Section 468 of the Code no cognizance could have been taken by the Magistrate. It is contended that the respondent has deliberately contended that the writ of demand for an amount of Rs.80,830/- was issued without mentioning the date of demand. The learned counsel contended that u/s 139 of the Act the date of demand of the octroi duty would not be relevant and as such the prescribed period of limitation would expire on 12.12.1998.

7.Mr.Patil, learned counsel, for the respondent contended that the cost of loader machine was Rs.20,20,750/- and as per Section 151 of the Act the octroi duty of Rs.80,830/- was levied. This octroi duty was demanded but it has remained unpaid till today. He contended that the first demand was put on 24.8.1998 and the final demand was made on 16.9.1998 and these dates would be very much material for the commencement of the period of limitation. He further contended that the inherent powers of this Court has to be sparingly exercised and, in this case, when the octroi duty of Rs.80,830/- has remained unpaid, grave injustice would be caused to the respondent if the complaint in question is dismissed. He contended that the applicant-Company would succeed in evading this octroi duty and the learned Magistrate was perfectly justified in rejecting the application for dismissal of the complaint filed by the applicants.

8.Mr.Patil, learned counsel, further contended that separate application for condonation of delay was not necessary inasmuch as the complaint itself is filed within the period of limitation, if we consider that the period of limitation shall commence from the last date of demand, i.e. 16.9.1998. In support of these submissions, he relied on a decision of the Apex Court in the case of PP Unnikrishnan and Another Vs. Puttiyottil Alikutty Anr Another, . He also relied on a decision of the Apex Court in State of Rajasthan Vs. Sanjay Kumar and Others, and a Full Bench decision of the Apex Court in Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, .

9.I have heard the learned counsel for the respective parties at length. Before I consider the first limb of the argument of the learned counsel for the applicants on the point of limitation, I think it proper to reproduce some of the provisions of law. Section 139 of the Act reads as under :

"139. Where any animal or goods passing into a municipal area are liable to the payment of octroi, any person who, with the intention of defrauding the Council, causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of the Council any such animal or goods upon which payment of the octroi due on such introduction has neither been [made nor tendered, shall, on conviction, be punished with fine [which shall not be less than five times the amount of octroi evaded but] which may extend to ten times the amount of such octrooi."

Section 468 of the Code reads as under :

"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."

10. The learned Magistrate has considered the scope of Section 473 of the Code which deals with the extension of period of limitation in certain cases and it gives powers to the Court to take cognizance of an offence after the expiry of period of limitation, if it is satisfied on the facts and circumstances of the case. The learned Magistrate has observed that the applicants were preparing the list of octroi charges which was prepared for the period from April 1998 to June 1998 in which the payment of octroi of Rs.80,000/- was not shown. He also observed that the applicants had acknowledged on 18.7.1998 in writing that they would pay the octroi charges. He has also considered that the bill of demand dated 24.8.1998 is also a material document in this case and in the interest of justice the complaint cannot be dismissed because it will result into miscarriage of justice.

11. Bare reading of Section 139 of the Act would reveal that what is made punishable is non-payment of the octroi duty which remains unpaid inspite of the demand. Therefore, though the entry of the goods within the limits of municipal council would be a relevant factor to be taken into consideration, one cannot lose sight of the wording of the Section that non-payment of octroi is made

punishable and a criminal law can be set in motion only if the payment of octroi duty is not made. Section 139 clearly says that if the octroi duty is not paid or tendered, the act of evader would amount to an offence and on conviction can be punished with fine which shall not be less than five times the amount of octroi evaded, but it may extend to ten times the amount of such octroi. In such circumstances, I am of the considered view that the date of final demand would be relevant to consider as to whether the complaint is barred by the period of limitation. Admittedly, though the loader machine was introduced within the municipal limits on 13.6.1998 the applicants had prepared the list in the month of June 1998 and the entry of the payment of octroi was not mentioned in the list of octroi charges from April 1998 to June 1998. The applicant No. 2 had also acknowledged the liability to pay octroi on 18.7.1998 in writing. It is not disputed that the octroi duty has remained unpaid till today and, therefore, it is not possible to accept the contention of the learned counsel for the applicants that the complaint is hopelessly barred by the period of limitation. In view of these findings the authorities relied on by the learned counsel for the applicants need not be taken into consideration so far as the entry of the goods within the municipal limits is concerned. The cause of action for filing criminal complaint for the offence u/s 139 of the Act would arise only when the payment of octroi is not made on demand and not at the time of the entry of the goods within the limits of the municipal council.

12. In the present case the germane aspect of the case is that the period of limitation shall not commence from the date of entry of the goods within the municipal limits but from the date of the demand of octroi. The last demand of octroi was on 16.9.1998 and in a situation like this, it is obvious that the period of limitation shall commence from this date for setting the criminal law in motion.

13. The second limb of the argument of the learned counsel for the applicant is that the Magistrate below was not empowered to take cognizance of the complaint without any application from the respondent for condonation of delay. In *Prakash Chandra Sharma vs. Kaushal Kishore*, cited supra, it is held that when a complaint is filed against the accused which prima facie is time barred, it becomes necessary for the prosecuting agency to simultaneously file an application for condonation of delay under S. 473. Unless the delay is condoned, the Court cannot take cognizance, issue process, record evidence and thereafter to determine the question of limitation.

14. I am of the considered view that this authority has no bearing on the facts and circumstances of the present case inasmuch as the period of limitation itself will commence from 16.9.1998 and if this be so then it is crystal clear that the institution of the private criminal complaint was clearly within the period of limitation as envisaged by sub-section(a) of Section 468(2) of the Code.

15. Reliance has also been placed by the learned counsel for the applicants on the decision of this Court in *R.C. Trivedi vs. A.H. Paranjape*, cited supra, wherein it has been held that the right which has accrued in favour of an accused u/s 468,

by virtue of a belated complaint, can be denied to him only on an order for extension of period of limitation passed by the Court concerned acting judicially u/s 473 not when an objection is taken but at the time of the issuance of the process itself.

16. Not only on examination of the material available on record but on hearing the learned counsel for both the sides, the learned Magistrate below has recorded a finding that the complaint is not barred by the period of limitation. It is not the case of the applicants that opportunity of hearing was not given to them and that the impugned order suffers from the defect of violation of principles of natural justice. In a situation like this, I am of the considered opinion that filing of the application by the respondent for condonation of delay was not at all necessary and it is not possible to set aside the impugned order on this ground and this would answer the second limb of the argument of the learned counsel for the applicants.

17. Mr. Patil, learned counsel, for the respondent rightly relied on the Full Bench decision of the Apex Court in *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, wherein it has been observed in paragraph 16 as under :

"The question, therefore, whether it is a continuing offence and limitation began to run everyday loses its relevance, in view of the above finding. The decision cited in support thereof, viz., *Vanku Radhamanohari v. Vanka Venkata Reddy and Balram Singh v. Sukhwant Kaur* hence need not be considered. It is well settled legal position that the High Court should sparingly and cautiously exercise the power u/s 482 of the Code to prevent miscarriage of justice. In *State of H.P. v. Pirthi Chand (K. Ramaswamy and S.B. Majmudar, JJ.)* composing the Bench and in *State of U.P. v. O.P. Sharma* a three Judge Bench of this Court, reviewed the entire case law on the exercise of power by the High Court u/s 482 of the Code to quash the complaint or the charge-sheet or the first information report and held that the High Court would be loath and circumspect to exercise its extraordinary power u/s 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the Court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the court. Same view was taken in *State of Haryana v. Bhajanlal* and *G.L. Didwania v. ITO* etc."

18. Mr. Patil, learned counsel, for the respondent also relied on a decision of the Apex Court in the case of *State of Rajasthan Vs. Sanjay Kumar and Others*, wherein it has been observed in para no.13 as under :

"13. For the above reasons, in the instant case, the limitation for the purpose of Section 468(2)(c) will commence from July 2, 1998, the date of knowledge of the commission of offence to the concerned officer u/s 469(1)(b) but not from

February 29, 1988 (the date of collection of samples by the Drugs Inspector) and as the complaint was filed on June 28, 1991 which is within three years so the complaint is not barred by limitation u/s 468(2)(c). The High Court has missed this germane aspect and erroneously took the date of commencement of the limitation as February 29, 1988, the date on which the samples were collected by the Drugs Inspector from accused No.16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice."

19.The Apex Court considering the facts and circumstances of that case held that the High Court was wholly wrong in quashing the proceedings u/s 482 of the Code. In the present case, the learned Magistrate below has considered the material before him and has recorded a finding that the complaint is not barred by limitation after considering the scope of Section 473 of the Code and has observed that if the complaint is quashed or dismissed, it would result into the abuse of process of the Court and also into miscarriage of justice.

20.In the result, I am of the considered view that exercise of inherent powers of this Court u/s 482 of the Code is not necessary in the given facts and circumstances of this case and this application is liable to be dismissed. The application is accordingly dismissed.