

**(2004) 06 GAU CK 0009**

**In the Gauhati High Court**

**Case No : Criminal Revision No. 143 of 2003**

Monoranjan Sarma

APPELLANT

Vs

State of Assam and Another

RESPONDENT

**Date of Decision : 23-06-2004**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 134  
Representation of the People Act, 1951 — Section 7(2)

**Citation : (2004) 3 GLT 483**

**Hon'ble Judges : P.G. Agarwal, J**

**Bench : Single Bench**

**Advocate :** J.M. Choudhury, G.K. Bhattacharyya, P. Sharma, B.C. Kalita and D. Goswami, for the Appellant; F.H. Laskar, Public Prosecutor, D.K. Bhattacharyya, S. Chakravorty and G. Sharma, for the Respondent

**Final Decision : Dismissed**

## Judgement

P.G. Agarwal, J.—Heard Mr. J.M. Choudhury, learned Sr. Counsel appearing for the Petitioner and D.K. Bhattacharyya, learned Sr. Advocate appearing for the private Respondent and H. Laskar, learned Public Prosecutor, Assam.

2. The Petitioner before us, Manoranjan Sarma, has been prosecuted by the Court of the S.D.J.M. (S) North Lakhimpur in G.R. Case No. 739/2002 for commission of the offence punishable u/s 7(2) of the Representation of the Peoples Act, 1951 on the allegation that being a Govt., servant the Petitioner accused, Manoranjan Sarma, has acted as a Counting Agent to a candidate in the election of 109 Bihpuria Legislative Assembly constituency of the Assam Legislative Assembly. The quashing of the complaint has been sought on the ground that the cognizance of the case has been taken beyond the period of limitation.

3. The offence u/s 134(a) is punishable with imprisonment which may extend to 3 months or with fine or with both. u/s 468 Code of Civil Procedure, the period of limitation provided is one year. The date of offence, as alleged in the complaint

petition, is 13.5.2001 and the order of G.R. Case No. 739/2002 shows that cognizance was taken by the Court below on 26.11.2002. Thus, admittedly the cognizance of the offence was taken beyond the period of one year.

4. The question, raised before us, was settled by the Apex Court in the case of Bharat Damodar Kale and Another Vs. State of A.P., and the Apex Court held:

On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned Counsel for the Appellants, the limitation prescribed under the above Chapter applies to taking of cognizance by the court concerned, therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus: "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the Appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter 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. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section, also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is foiled before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made

infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the earlier decision of this Court in the case of Rashtni Kumar.

In view of the decision of the Apex Court in Bharat Damodar Kale (Supra), let us examine, whether the information in the present case was lodged or the prosecution was initiated within the period of limitation or not. The FIR is available on record, it shows that the complainant Bargoram Deuri, a candidate in the said election, has lodged the complaint case before the Court on 30th April, 2002 and it was forwarded to police for registering a case and investigated by the learned Magistrate vide the order of even date. As the complaint was lodged within the statutory period of one year, relying on the decisions, stated above, we hold that the complaint petition is not barred by limitation.

5. The revision petition stands dismissed. Send down the records. The Petitioner, as well as, the private Respondent is directed to appear before the learned S.D.J.M. (S), North Lakhimpur on 11th August, 2004.