

(1991) 10 BOM CK 0039

In the Bombay High Court

Case No : Criminal Revision Application No. 80 of 1991

Omprakash Gulabchandji Partani

APPELLANT

Vs

Ashok and another

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 468, 469, 473
Drugs and Cosmetics Act, 1940 — Section 18, 27
Payment of Bonus Act, 1965 — Section 10, 19, 26, 27
Penal Code, 1860 (IPC) — Section 171, 406, 500
Seeds Act, 1966 — Section 14, 15, 16, 19, 6

Citation : (1993) 3 BomCR 611 : (1992) CriLJ 2704

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : B.M. Kasat, for the Appellant; V.V. Naik, Public Prosecutor, for the Respondent

Judgement

1. This revision application is preferred against the order dated 31-1-1991 passed by the Chief Judicial Magistrate, Amravati, in Criminal Case No. 10/87, dismissing an application (Exh. 16) filed under S. 468, Cr.P.C. by the applicant-accused.

2. The facts giving rise to the present revision-application are as under :

The respondent No. 1, Ashok son of Ruprao Ulhe, a Seed Inspector in the Department of Agriculture of Maharashtra State, had lodged a prosecution against the applicant-accused and two others under Cl. 23(g) of the Seeds Rules, 1968, for contravention of S. 7 of the Seeds Act, 1966. The complaint case is filed in the Court of Chief Judicial Magistrate, Amravati, on 2-1-1987. The learned C.J.M., Amravati, took the cognizance and passed an order issuing process against the accused persons including the present applicant. The applicant-accused (original accused No. 2) is the proprietor of Nilesh Agro Service Centre, Cotton Market Road, Amravati, which deals particularly in the various seeds and

agricultural implements.

3. Respondent/Seeds Inspector visited the shop of the applicant/accused on 26-6-1986 and took samples of the seeds of Jawar. After completing necessary formalities, said sample was sent to the "Seeds Testing Laboratory, Nagpur" for testing on 2-7-1986. The Seeds Testing Laboratory, Nagpur, had despatched the report of its analysis on 25-7-1986 and according to the analyst report, the sample was not upto the required standard. The complainant/respondent Seeds Inspector received the report of the Seeds Testing Laboratory on 28-7-1986. After receipt of the report of analyst, the respondent/complainant filed the complaint against the applicant/accused and two others, on 2-1-1987.

4. The applicant/accused filed an application before the learned C.J.M., Amravati u/s 468 of the Criminal Procedure Code and prayed that the institution of the complaint being after the period of limitation, the learned C.J.M., Amravati, ought not to have taken the cognizance and thereby, prayed that the complaint be dismissed and accused be acquitted. The application was resisted on behalf of the complainant/respondent and to that effect a reply was filed at exh. 17. According to the respondent, the offence in question took place on 28-7-1986, when the complainant/Seeds Inspector came to know about the opinion of the Seeds Testing Laboratory and the complaint being filed on 2-1-1987, it is within the prescribed period of limitation, i.e. within 6 months.

5. After hearing the learned counsel of the applicant/accused and the respondents, the learned C.J.M., Amravati, rejected the application filed by the applicant/accused, vide order dated 31-1-1991. Hence, the applicant/accused filed the instant criminal revision application in this Court.

6. Shri Kasat, the learned counsel for the applicant/accused, has urged that in view of the provisions of Section 468 Cr.P.C., the alleged offence is punishable with fine only and, therefore, the limitation for filing the complaint is of six months. Whenever the complaint is instituted after the prescribed period of six months from the date of commission of offence, the charge sheet/complaint is barred by limitation and no cognizance could be taken thereof. Further the learned counsel for the applicant/accused submitted that the respondent/complainant is not entitled to get the benefit of Section 473 of the Code of Criminal Procedure because he is not an aggrieved party. It is further submitted that the respondent/complainant is a public servant working as Seeds Inspector, who took the sample of seeds of Jawar on 26-6-1986 suspecting it to be adulterated and does not bear the germination capacity as required by Rules and Act, and, therefore, the offence took place on 26-6-1986. The limitation starts from 26-6-1986. The respondent/complainant filed the complaint before the C.J.M., Amravati, on 2-1-1987. It is, thus, clear that the institution of the complaint case is after the period of six months. Therefore, the provisions of Section 468 of the Code of Criminal Procedure are attracted. On this short question, the learned trial Judge ought not to have taken the cognizance and issued the summons to the applicant/accused. Therefore, the proceedings

instituted by the complainant are ipso facto illegal and, therefore, it deserves to be quashed against the applicant/accused.

7. There is no provisions under the Seeds Act, 1968 specifying the period of limitation. Therefore, the provisions of Criminal Procedure Code are applicable.

8. Section 14 of the Seeds Act, 1966 deals with the powers of the Seeds Inspector. According to this Section, the Seed Inspector may -

(a) take samples of any seed of any notified kind or variety from -

(i) any person selling such seed; or

(ii) any person who is in the course of conveying, delivering or preparing to deliver such seed to a purchaser of a consignee; or

(iii) a purchaser of a consignee after delivery of such seed to him;

(b) send such sample for analysis to the Seed Analyst for the area within which such sample has been taken;

(c) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed and order in writing the person in possession of any seed in respect of which the offence has been or is being committed, not to dispose of any stock of such seed for a specific period not exceeding thirty days or, unless the alleged offence is such that the defect may be removed by the possessor of the seed, seize the stock of such seed;

Section 15 of the Seeds Act, 1966 deals with the procedure to be followed by the Seed Inspector while taking the sample of any seed of any notified kind or variety for analysis.

Section 15(4)(a) speaks that "Where a Seed Inspector takes any action under clause (c) of sub-section (1) of section 14, -

(a) he shall use all despatch in ascertaining whether or not the seed contravenes any of the provisions of section 7 and if it is ascertained that the seed does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock of the seed seized;"

Section 16 is about the report of Seed Analyst and Rule 21 of the Seeds Rules, 1968, deals with the duties of the Seed Analyst. Section 16(2) deals with the rights of the accused after the institution of a prosecution under the Seeds Act, 1966, which is reproduced as under :

"After the institution of a prosecution under this Act, the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending any of the samples mentioned in clause (a) or clause (c) of sub-section (2) of Section 15 to the Central Seed Laboratory for its report and on

receipt of the application, the court shall first ascertain that the mark and the seal or fastening as provided in clause (b) of sub-section (1) of section 15 are intact and may then despatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis."

Rule 21(g) of the Seeds Rules, 1968, gives powers to the Seed Inspector to institute the prosecution in respect of the breaches of the Act and these rules.

Section 19 of the Seeds Act, 1966 deals with the penalties. Section 19 is reproduced as under :

"If any person -

(a) contravenes any provision of this Act or any rule made thereunder; or

(b) prevents a Seed Inspector from taking sample under this Act; or

(c) prevents a Seed Inspector from exercising any other power conferred on him by or under this Act;

he shall, on conviction, be punishable -

(i) for the first offence with fine which may extend to five hundred rupees, and

(ii) in the event of such person having been previously convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

9. Shri Kasat, the learned counsel for the applicant/accused, argued that the offence took place on the date when the respondent collected the sample of seeds from the shop of the applicant on 26-6-1986, because Section 14(1)(c) empowers the Seed Inspector to enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act, has been or is being committed and, order in writing the person in possession of any seed in respect of which the offence has been or is being committed. Where the seeds searched and conformed to the minimum limit of germination and purity specified in clause (a) of Section 6, is nothing but an evidence to be collected during the procedure or investigation. After the receipt of the report from the Seed Testing Laboratory, the Seed Inspector may file the complaint. But, it is not by any stretch of imagination be said that the offence is committed by the person on the date of receipt of the report of the Seed Analyst about the germination and purity. In the instant case, as soon as the Seed Inspector collected the sample of the seed, the offence is completed. The words "Commission" and "cause of action" have been dealt by Their Lordships in a case of Surinder Mohan Vikal Vs. Ascharaj Lal Chopra,

"The High Court ignored the bar of limitation on the ground that the "cause of

action" for proceeding for defamation could not arise before the (respondent) was acquitted by the Court of Session." As the respondent was acquitted on April 1, 1975, it appears that the High Court took the view that the "protection of S. 468(c)" was not available to the appellant. We are constrained to say that the question of "cause of action" could not really arise in this case as the controversy relates to the commission of an offence. As has been stated, sub-sec. (1) of S. 469 of the Code specifically provides that the period of limitation prescribed in S. 468, in relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of the offence was March 15, 1972, when the defamatory complaint was filed in the Court of the Magistrate, and that was the starting point for the purpose of calculating the three years" period of limitation. The High Court clearly erred in taking a contrary view."

"It would thus appear that the appellant was entitled to the benefit of sub-sec. (1) of S. 468 which prohibits every Court from taking cognizance of an offence of the category specified in sub-sec. (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under S. 468 of the Cr.P.C. and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case."

The object of Sections 468, 469 and 473 of the Criminal Procedure Code is discussed by Their Lordships in a case of State of Punjab Vs. Sarwan Singh, . In para 3 of the judgment. Their Lordships observed that

"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."

In the instant case, for the purpose of limitation, the provisions of Section 468(2) (a) is applicable, which provides limitation of six months if the offence is punishable with fine only.

10. Section 469 of the Code of Criminal Procedure deals with the commencement of the period of limitation, which reads as under :

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

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

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

Thus, according to Mr. Kasat, the learned counsel for the applicant/accused, the period of limitation, in relation to an offender shall commence on the date of the offence. In the instant case, the offence took place on 26-6-1986 when the respondent/complainant visited the shop of the accused and collected the seeds of Jawar. However, according to the complainant/respondent, the period of limitation will commence from the first day on which such offence comes to the knowledge of the person, in view of Section 469(1)(b). The respondent No. 1 received the report of the Seed Analyst on 28-7-1986 and, therefore the period of limitation will commence from 28-7-1986. Therefore, according to him, the institution of the complaint in the Court of C.J.M, Amravati, is within the period of limitation of six months.

Shri Kasat relied on a case of Jethmal Himmatmal Jain and others Vs. State of Maharashtra, . The case which was before His Lordship was under the provisions of Drugs and Cosmetics Act, 1940, Sections 18(a)(ii) and 27. In that case, the Police accompanied by the Officers of the Food and Drug Administration searched the premises of Maharashtra Medical Stores in the presence of panchas on 24-7-1974. All the samples were sent to Government Analyst, Maharashtra State, for analysis. The Government Analyst submitted his report dated 2nd August, 1974. The report showed that the sample was not of standard quality. The complaint was filed on 12th August, 1977. The Lordship in para 12 observed that the period of limitation, therefore, would be three years from the date of the offence as provided in Section 468(2)(c) read with section 469(1)(a) of the Code of Criminal Procedure, 1973. Section 469(1)(a) provides that the period of limitation, in relation to an offender shall commence on the date of the offence. The complaint should have been filed before 24th July 1977. The complaint has been filed in this case on 12th August 1977, i.e. about 19 days after the period of limitation had expired. The complaint having been filed more than three years after the period of limitation, it was incumbent upon the prosecution to have explained the delay either in the complaint itself or by a separate application. It was also necessary that the learned Magistrate, before taking cognizance of the offence, should have applied his mind to the question of limitation and should have indicated that he condoned the delay or has taken cognizance of the

offence in the interest of justice. There is neither any mention anywhere in the record of the case that the prosecution has explained the delay nor is there any statement anywhere that the learned Magistrate took cognizance of the offence in the interest of justice. In the absence of any such statement it is difficult to conclude that the Magistrate took cognizance by condoning the delay It must, therefore, be held that the Magistrate has taken cognizance of the offence with which the petitioners are charged without the Magistrate having power to take cognizance of the offence without condoning the delay or without stating that he has taken cognizance of the offence beyond the period of limitation in the interest of justice."

A reliance has also been placed on a case of *R. C. Trivedi v. A. H. Paranjape* 1982 Mah LJ 82 : 1982 Cri LJ 869. In this case His Lordship discussed the provisions of Sections 468 and 473 of Cr.P.C. The prosecution was initiated beyond the period of limitation prescribed by Section 468 Cr.P.C. Delay cannot be condoned as a matter of course and after cognizance of offence is taken. The cognizance so taken is without jurisdiction.

11. Shri Kasat further submitted that the complainant/Seed Inspector cannot be said as an aggrieved person, not being personally affected. Seed Inspector is a public servant and he has to discharge his duties. The aggrieved person only can file an application u/s 473 of Cr.P.C. for extension of a period of limitation in certain cases. To substantiate his submissions, Mr. Kasat, the learned counsel for the applicant/accused, relied on a case of *Navinchandra Gandhi v. Dr. Pushpasen Kapadia* 1986 Cri LJ 1218 . His Lordship referred the observations of a case of *Sulochana Vs. State Registrar of Chits (Investigation and Prosecution)*, and expressed "person aggrieved by the offence" occurring in Clause (b) of sub-section (1) of Section 469 of the Cr.P.C. is limited or restricted only to those persons who are personally and directly affected by the offence. In the present case the complainant cannot be said to be directly affected by the offence. In the circumstances, the complainant cannot be held to be aggrieved person within the meaning of Section 469(1)(b) and (c) of Cr.P.C. This being the position, the provisions of Section 469(1)(b) of the Cr.P.C. are not attracted and the period of limitation had to be counted under clause (a) of sub-section (1) of S. 469 of the Cr.P.C. Before the Lordship the criminal case was not u/s 171(H) of the Indian Penal Code. The said offence is meant to maintain the purity of an election and, as such, only the authorities concerned with the process of the election have locus standi to file a criminal case under the said Section, for only they are aggrieved persons.

A reliance has also been placed on a case of *Avanti Development Company Ltd. Bombay v. State of Maharashtra and others*, 1988 Mah Law Journal 81. In the case before His Lordship, a complaint was filed by the Government Labour Officer against a Company alleging offences under Sections 10, 19, 26 and 27(4) of the Payment of Bonus Act read with rules 4(a)(b)(c) of the Rules on 15-7-1986. The offences alleged to have been committed by the Company came to the notice of

the complainant for the first time on 14-1-1986. It was contended on behalf of the Company that since the offences were alleged to have been committed for having not paid full bonus in the year 1982, the complaint filed on 15-7-1986 was barred by limitation. Since the offences in question were punishable with imprisonment for a term which could extend to six months or with fine which could extend to Rs. 4000/- or with both, the period of limitation for filing such complaint as provided in Section 468(2)(b) of the Criminal Procedure Code was one year. It was further contended that the complainant could not be termed as a "person aggrieved" so as to claim the benefit of Section 469(1)(b) for the starting point of period of limitation from the date of the knowledge of the said offence by the Complainant. According to the Company, as the case was governed by Section 469(1)(a) the cognizance taken by the trial Magistrate was without jurisdiction. His Lordship held as under :

"The Magistrate had no jurisdiction to take cognizance of the complaint filed by the Labour Officer as it was barred by limitation. The expression "person aggrieved by the offence" occurring in Clause (b) of Section 469(1) is limited or restricted only to those persons who are personally and directly affected by an offence. The words "person aggrieved" include a person who had a genuine grievance. When a complainant cannot be said to have been prejudicially affected by the activities of the offence-doer and cannot be said to be directly affected by the alleged offence, the complainant cannot be held to be an aggrieved person within the meaning of Clause (b) of Section 469(1) of the Criminal Procedure Code and where clause (b) is not attracted, the period of limitation had to be counted under Clause (a) of Section 469(1)."

Who is an aggrieved person is also discussed in a case of Thammanna Vs. K. Veera Reddy and Others, . In para 17 of the judgment. Their Lordships observed as under :

"Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something."

12. Shri Naik, the learned P.P., supported the action taking cognizance and issuing process against the applicant/accused and others. According to Shri Naik, the learned counsel for the respondents, the offence took place on the date when it came to the knowledge and that is on the date of receipt of analyst's report on 28-7-1986. Section 7(b) of Seeds Act, 1966 reads as under :

"No person shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless -

(b) such seed conforms to the minimum limits of germination and purity

specified under clause (a) of Section 6;"

Therefore, according to him, Section 14 empowers the Seed Inspector to enter and search the premises or any place in which he has reasons to believe that the offence under this Act has been or is being committed. When the respondent/Seed Inspector visited the shop of the applicant/accused on 26-6-1986, he was neither sure nor any data was available with him to show that the seeds of Jawar are of sub-standard quality, but he had reason to believe that the accused was selling seeds of Jawar which did not conform to the minimum limits of germination and purity. In other words, it means that on 26-6-1986 when the Seed Inspector collected the sample of seeds of Jawar, he had only reason to believe that the accused was selling the sub-standard seeds of Jawar. Therefore, it cannot be construed that only because the Seed Inspector visited and collected the samples of seeds of Jawar on 26-6-1986 an offence has been committed on that date itself by the accused. The Seed Inspector was satisfied after the receipt of the report of Analyst dated 25-7-1986, which he received on 28-7-1986, that the seeds are not upto the required standard. Therefore, on the date of receipt of report i.e. on 28-7-1986, for the first time, he got the knowledge that the applicant/accused has committed an offence. Therefore, the period of limitation shall commence from 28-7-1986. As the complaint is filed on 2-1-1987, it is filed within six months. Provisions of Section 469(1)(b) contemplates two dates; first the date of offence, but not known and secondly, the date when the aggrieved person gets the knowledge about the offence. In the instant case initially when he visited and collected the samples from the shop of the applicant/accused, he had reason to believe that either an offence has been or is being committed as per the Section 14(1)(c) of the Seeds Act, 1966. Merely on the basis of collection of sample from the Proprietor or sellers, the non-applicant cannot institute the prosecution without confirming that the seeds are not conformed to the minimum limits of germination and purity specified in Section 6(a). The Seed Inspector can only institute the proceedings against the persons who are carrying on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, if such seeds are not in conformity with the required standard. Therefore, the period of limitation begins from the date on which the Seed Inspector gets knowledge in respect of the impurity of the seeds from the report of the Seed Analyst.

Shri Naik, the learned P.P. relied on a case of Pravinchandra J. Gandhi v. Ibrahim Mohamed Merchant, 1987 Mah LJ 855 : 1987 Cri LJ 1795. The case before His Lordship was for the prosecution u/s 500 of the Indian Penal Code. According to the Lordship, the period of limitation begins from the date of knowledge of defamatory statement by the complainant. Though the F.I.R. containing defamatory statement filed in April, 1980, the complainant received the copy of the chargesheet on 4th August, 1980, along with extract of F.I.R. containing defamatory allegations against him. The complaint filed on 6th July, 1983 is within the limitation of three years from 4-8-1980, the date of knowledge of defamatory statement by the complainant.

13. In a case of State of Gujarat v. Chimanlal Gordhanbhai (1978) 19 Gujarat Law Reporter, 603, His Lordship elaborately discussed the provisions of Sections 468, 469 and 473 of the Criminal Procedure Code. His Lordship observed that

"In order to answer the crucial question whether the facts and circumstances of the case demand that the bar of Section 468 of the Criminal Procedure Code be overlooked in the larger interest of justice, the court must address itself the following questions; Who is the offender ? What is the offence ? Who is the victim of this offence ? Why is it made an offence under the Act i.e. what is the mischief it seeks to suppress ? Will the ends of justice be better served or defeated if the bar of Section 468 of the Code is applied ? These are some of the valid considerations to be borne in mind while deciding the question whether the delay in prosecuting the accused should be disregarded in the interest of justice."

The applicant/accused before this Court, is a person who dealt in selling the impure seeds of Jawar and thereby, he committed a social offence. If the impure seeds having no standard of germination, are used by the cultivators, there will be no yield, consequently, there will be no Jawar crop for the maintenance of the cultivators, villagers and the public at large. Therefore, such people are largely responsible for the draught due to shortage of food-grains and thereby responsible for shattering the economic condition of the country, and it is a moot question if such people should be allowed to go scot free on the plea that the prosecution is stale. By their very nature such offences do not come to light immediately. To over-ride such situations, the powers are given by Section 473 of the Code to overlook the delay if the interest of justice so demand. In fact such economic offenders have to be penalised because their crime is a calculated one, the punishment could only have been provided so that the offender may be deterred from repeating his performance and others like him learn a lesson. These are not offences against an individual committed in the heat of the moment, these are deliberate, calculated crimes committed by shrewd and crafty businessman against the society at large for which they cannot be easily forgiven.

This Court in a case of P.D. Palkhandwar and others Vs. Siddayya Shivamurtaya Hiremath and another, in entire agreement with the observations made in a case of State of Gujarat v. Chimanlal Gordhanbhai (1978) 19 Guj LR 603, in a case of criminal breach of trust during the period of 1969 to 1973 process issued u/s 406 of the Indian Penal Code, held that the prosecution of the petitioners will be in the interest of justice.

14. With profound respect to the Hon'ble Judges and the view in a case of State of Gujarat v. Chimanlal Gordhanbhai cited supra, I am of the opinion that the offence being a social offence, not only the Seed Inspector, but every citizen, who will not get the yield of Jawar, if sub-standard seeds of Jawar are sown by the cultivators, is an aggrieved person. The non-applicant/Seed Inspector is an aggrieved person in the instant case, who visited the shop and took the sample on 26-6-1986, and after receipt of the report from the Seed Analyst on

28-7-1986, instituted the prosecution in the Court of C.J.M., Amravati, on 2-1-1987, which is within the period of six months, because he got the knowledge on 28-7-1986. In view of the above observations, I do not agree with the submissions made by Shri Kasat, the learned counsel for the applicant/accused. In the result, the application is dismissed.

15. Application dismissed.