
(1978) 04 AP CK 0002
In the Andhra Pradesh High Court

P. Bhanumathi and Another

APPELLANT

Vs

Smt. Premalatha and Others

RESPONDENT

Date of Decision : 12-04-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 469, 473, 482

Citation : (1979) CriLJ 257

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Judgement

Muktadar, J.—It is now well settled by series of decisions of the Supreme Court as well as by this Court that the High Court would invoke the provisions of Section 482 of the Code of Criminal Procedure (new) corresponding to Section 561A of the old Code if the trial court had no jurisdiction to entertain the case or if some formality as by way of sanction which ought to have been obtained, has not been obtained or the facts mentioned in the complaint if taken to be correct on their face value, do not make out a prima facie case, then only the High Court would take cognizance of the offence and quash the proceedings. In the instant case the case of the petitioners is that the Magistrate had no jurisdiction to take cognizance of the offence because according to the complainant herself, the occurrence is said to have taken place on 11-11-1973 and the complaint was filed in February 1978 and, therefore, this complaint was beyond the period of one year as envisaged u/s 469 of the new Criminal Procedure Code. Mr. C.P. Sarathy, the learned Advocate for the 1st respondent has brought to my notice that in the complaint itself the complainant had specifically pointed out as to when exactly the complainant had come to know of the offence. He has taken me through the complaint and pointed out that in para 3 of the complaint it is stated that the cheating was completed on 11-11-1973 which came to be known to the complaint subsequently in Jan., 1978 Again, in para 18 Mr. Sarathy points out that the complainant has alleged that it is only in Jan., 1978 when A-3 came to Madras with his third wife Bridget and a baby and clearly told the complainant that he will not cohabit with her and she need not remain in the house, she came

to know of the fraud. Therefore, contends Mr. Sarathy, that having regard to the provisions of Section 469 and also Section 473 of the Code of Criminal Procedure the accused have still an opportunity to raise this plea in the lower Court. It is possible that the lower court might have invoked the provisions of Sub-section (b) of Section 469 which provides that 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, the period of limitation would commence. Secondly, having regard to the provisions of Section 473 the court has a discretion to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interests of justice. No doubt, it does not appear from the impugned order of taking cognizance of the complaint that the trial Court had Section 473 in its mind. Nevertheless, the ruling relied upon by the learned advocate for the petitioners in *Bharat Hybrid Seeds and Agro Enterprises and Another Vs. The State*, would show that my learned Brother Sambasiva Rao, J, as he then was, has observed (at p. 63):

Now, having laid down the procedure as to how to extend the period of limitation after the expiry of the prescribed period, the question arises as to whether the proceedings in this case should be quashed. As far as I am aware, there are no decided cases of this Court on this aspect. Consequently, the lower Court thought that reasons for condonation of the delay could be given after the accused entered their appearance, though it was satisfied that the delay was satisfactorily explained even at the time of taking cognizance of the offence. Going by its finding that it was satisfied about the explanation given for the delay even at the time of taking cognizance of the offence, I dismiss this petition for quashing the proceeding. I am certain that the courts will hereafter follow the procedure which I have indicated above while taking cognizance of the offence.

2. I am of the opinion that an opportunity should be given to the petitioners accused herein to raise this plea before the lower court. The lower court after hearing the arguments of the parties will dispose of the plea as to whether the complaint is within time or not. The questions involved in this petition, as it would appear, are questions of fact as to when exactly the complainant had knowledge" of the offence. Therefore, it would not be proper for this Court to quash the proceeding where questions of fact are involved. Hence, the trial court will hear the parties on this point and decide the matter. With this observation, the petition is dismissed.

3. The learned Counsel for the petitioners sought leave orally to appeal to the Supreme Court. I do not see any reason to certify that the case is a fit one for appeal to the Supreme Court, Hence, leave is refused.