

(1997) 01 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8171-M of 1996

Rakha Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Citation : (1997) 4 AICLR 669 : (1997) 2 RCR(Criminal) 229

Hon'ble Judges : M.L.Singhal, J

Advocate : P.P.S. Sahota, K.S. Rupal, Advocates for appearing Parties

Judgement

M.L. Singhal, J. (Oral)

1. This is a Crl. Misc. petition filed by Rakha Singh petitioner whereby he seeks the quashing of FIR Annexure P1, dated 13.10.1991 registered at P.S. Sadar Kotkapura against him. He has also prayed for the quashing of the charge Annexure P2 dated 7.3.1996 framed against him by Judicial Magistrate Ist Class, Faridkot. It has been averred by the petitioner that case FIR No. 64 was registered against him under Section 336 IPC on 13.10.1991 on the statement of one Baldev Singh s/o Arjan Singh of village Sibian. Case was investigated. On investigation, it was found that no offence was made out against him. S.H.O. P.S. Sadar Kotkapura was directed to submit cancellation report to the court of the Magistrate by SP(Hq) who went through the investigation made by DSP(D) Harbhagwan Singh. Cancellation report was submitted on 23.2.1992. Magistrate did not agree with the cancellation report and directed and the case to be reinvestigated. After the case was reinvestigated, challan was put in on 13.3.1995. It is averred by Rakha Singh petitioner that the cognizance of the offence under Section 336 IPC by the Magistrate was barred in view of the provisions of Section 468 Cr.P.C. which lays down that the offence which is punishable with imprisonment for a period less than one year, cognizance can be taken within one year of the commission of the offence. This prayer made by Rakha Singh had been opposed by the State of Punjab. Section 468 Cr.P.C. reads as follows :

"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 subsection (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."

2. It is thus clear that there is one year limitation for the cognizance of the offence if the same is punishable with imprisonment for a period less than one year. Offence under section 336 IPC is punishable with three months imprisonment or fine of Rs. 250/ only. It is thus clear that the cognizance of this offence could be taken within one year of the date of its commission i.e. 13.10.91.

3. With the submission of the cancellation report of the case on 23.2.1992, cognizance of the offence was taken. In Chapter XIV of the Code of Criminal Procedure, Section 190 deals how cognizance of offence by Magistrate is taken.

"(1) Subject to the provisions of this Chapter, any Magistrate of first class, and any Magistrate of the second class specifically empowered in this behalf under subsection (2), may take cognizance of any offence;

(a) upon receiving a complaint of facts which constitute such offence. (b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under subsection (1) of such offences as are within his competence to inquire into or try."

4. Act of taking cognizance is a judicial act and for taking cognizance of offence, Magistrate should take notice judiciously of the facts of the case and should apply his mind to see that he wanted to proceed further in the case. Directing an investigating officer to submit a charge sheet is not a judicial order. JUDGMENT taking cognizance of case should be express and speaking order.

5. Submission of the cancellation report on 23.2.1991 tantamounted to cognizance of the offence being taken by the Magistrate. Magistrate did not agree with the cancellation report submitted by the police and ordered reinvestigation of the case and it was after reinvestigation of the case that the challan was put in the year 1995. It was a case under section 336 IPC, which is punishable with imprisonment for a period of 3 months or fine of Rs. 250/, registered against the petitioner on 13.10.1991 which is hanging like a sword on the accused since thereafter. Charge was framed on 7.3.1996. So far no evidence has been recorded. During investigation, no empty was taken into possession. Licensed double barrel gun seized from the possession of Rakha Singh during investigation was not sent to the ballistic expert so that the ballistic expert could find out whether those empties had been fired through that double barrel licensed gun. It was vital piece of evidence which should have been collected during investigation. It would not be conducive to justice to keep this sword hanging on his head still further when this sword has been hanging on his head for more than 5 years. Right of speedy investigation is the basic right of the accused granted to him under Article 21 of the Constitution of India. If such a petty offence remains under investigation for 3 years, what can be expected of the police so far as serious offences are concerned?

6. Keeping in view the larger interests of justice, this Crl. Misc. petition is accepted. FIR No. 64 dated 13.10.1991 Annexure P1 and charge dated 7.3.1996 Annexure P2 and entire proceedings taken thereunder pending in the court of Judicial Magistrate Ist Class, Faridkot are quashed.