

(2005) 05 DEL CK 0169

In the Delhi High Court

Case No : Criminal M. (C) . No. 2860/02

Rama Kant Sharma

APPELLANT

Vs

State (N.C.T. of Delhi) and Another

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 446, 468, 472
Penal Code, 1860 (IPC) — Section 380, 448

Citation : (2005) 121 DLT 330 : (2005) 4 RCR(Criminal) 467

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Sandeep Sethi and Sumeet Mehta, for the Appellant; Richa Kapoor and K.B. Andley and M.L. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The present petition assails the order dated 17th January, 2001 whereby the respondent No. 2 was discharged in FIR No. 855/1998 dated 27th October, 1998. The petitioner claims to be the co-owner with the respondent in respect of property bearing No. 60, North Avenue Road, Punjabi Bagh. In the FIR, it is stated that the property was partitioned by an award of an Arbitrator which became Rule of Court on 5th August, 1988 and parties obtained respective possessions, that the petitioner being an NRI used to come back to the country off and on, that when he came to India in 1996, his entry was resisted by the respondent but subsequently, the matter was again settled whereon the petitioner again went back to Canada but that when he came to India in October, 1998, he was denied entry to his portion of the property and he found that the locks on his portion had been broken and his articles missing. A case under Sections 448/380 IPC was registered. The charge sheet was then filed. The trial court record shows that the Metropolitan Magistrate received the charge sheet on 1st November, 1999 when he passed the following order:-

"FIR No. 855/98 u/s 448/380 IPC 1.11.99 Fresh challan received Today. It be

checked and registered as per rule. Present APP. I take cognizance against accused for offence punishable u/s 448 IPC.

Issue summon to accused and Notice to respective surety u/s 446 Cr.P.C. for 22/01/00.

Sd/-

M.M.

1-11-99

2. Thus, initially cognizance was taken only u/s 448 IPC. There is no subsequent order of taking cognizance u/s 380 IPC. Nonetheless, the Metropolitan Magistrate after hearing arguments on charge passed an order on 1st September, 2001 directing framing of charge u/s 448 IPC and simultaneously discharging the respondent u/s 380 IPC. In a revision petition, the impugned order was passed. The Additional Sessions Judge while hearing the revision petition found that the proceedings u/s 448 IPC was barred by limitation. The Additional Sessions Judge also noticed that the petitioner came to know of the offence on 6-4-1998 while the cognizance of the offence was taken on 1-11-1999 which was beyond the period of limitation of one year for an offence punishable with imprisonment of only one year. For passing this order, the Additional Sessions Judge took notice of the following dates:-

The challan was filed in the Court on 1-11-1999 and an order was passed for serving notice u/s 251 Cr.P.C. on the accused u/s 448 IPC on 1-9-2001, the notice was actually served on the accused on 15-9-2001.

3. He expressed an opinion that the trial had not commenced within one year of the pendency of the case and, Therefore, the order could not be sustained. For passing this order, the Additional Sessions Judge took note of the judgments of the Supreme Court in the case of Common Cause Vs. Union of India & Ors. 1996 JCC 503 and Common Cause Vs. Union of India 1996 JCC 720. The Additional Sessions Judge found that as per the two judgments if in a summons case trial had not begun within one year of the pendency of the case, the Magistrate was bound to discharge or acquit the accused.

4. So far as the limitation u/s 468 is concerned, the present case cannot be said to be barred by limitation because the offence came to the notice of the petitioner on 8-4-1998 when, it can be said, the period of limitation started. But since the offence is a continuing one, by virtue of Section 472 Cr.P.C., a fresh period of limitation would start at every moment during which the offence continues. There is no plea that the alleged offence of house trespass punishable u/s 448 IPC has come to an end. The offence will come to an end only when the trespass is removed. In other words, only when the respondent No. 2/accused withdraws from the property in which he has trespassed that the offence will come to an end. Since the offence is a continuing one, the limitation as provided u/s 468 Cr.P.C. for an offence punishable by imprisonment for a period of one

year has not at all ceased to run.

5. So far as the delay in commencement of trial and discharge on that account is concerned, suffice it to say that the two judgments in the case of Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, , Common Cause A Registered Society Vs. Union of India and others, were set aside by a Constitution Bench in the case of P. Ramachandra Rao Vs. State of Karnataka, . Neither the counsel for the State nor the counsel for the respondent No. 2 disputed the proposition of the petitioner's counsel that in view of the Constitution Bench's judgment the respondent No. 2 could not have been discharged on the ground that the trial had not commenced within one year of the presentation of the challan.

6. In view of the above, the impugned order must be set aside. The petition is, Therefore, allowed and the impugned order is set aside. The Additional Sessions Judge will now decide the revision petition on merits.