

(2009) 11 PAT CK 0042
In the Patna High Court

Ramjee Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 341, 342, 379

Citation : (2009) 11 PAT CK 0042

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—Heard the parties.

2. This application has been filed challenging the order taking cognizance dated 3.7.1996 passed by Judicial Magistrate, Bhagalpur in connection with Nath Nagar P.S. Case No. 241/1991 of an offence under Sections 147, 341, 342 and 379 of the Indian Penal Code.

3. The allegations in the First Information Report is that the accused persons had looted wheat of the informant worth Rs. 7,200/-which was being carried on a bullock cart which resulted in the institution of the present case.

4. Learned Counsel for the petitioners submits that the order dated 3.7.1996 is barred by Section 468 of the Code of Criminal Procedure.

5. Section 468 of the Code of Criminal Procedure envisages that the Court should not take cognizance of an offence if it is barred by the period of limitation. The period of limitation has been defined in Sub-section (2) of Section 468 which is as follows:

(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.

Sub-section (3) further provides that 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.

6. In this case the cognizance has been taken under Sections 147, 341, 342 and 379 of the Indian Penal Code. Section 379 of the Indian Penal Code provides for a punishment which may extend to three years or with fine or with both. It is therefore, submitted that the case would come within Sub-section (2)(C) of Section 468 of the Code of Criminal Procedure. Reference may be made to Section 473 of the Code of Criminal Procedure which envisages that there can be an extension of period of limitation in certain cases. The Court may take cognizance of an offence after the expiry of the period of limitation if it is specified on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. In the present case the occurrence took place on 14.12.1991 and the cognizance was taken on 3.7.1996 after a delay of four years, six months and twenty days. It is, therefore, submitted that the Court ought not to have taken cognizance in terms of Section 468 of the Code of Criminal Procedure.

7. Learned Counsel for the State on the other hand refers to decision of Ram Kripal Prasad and Ors. v. The State of Bihar and Ors. reported in 1985 PLJR 275 wherein the Court refused to interfere with the order of cognizance in view of Section 473 of the Code of Criminal Procedure. In the case of Ram Kripal Prasad the offences related to Employees Provident Funds and Miscellaneous Provisions Act, 1952. The offences related to violation of Section 1(2)(b) and 14 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The full bench of this Court held that in cases where the offence is of a continuing nature or and the facts disclose offences of a serious nature, the Court would have the power to extend the time. Similarly in another matter, the Supreme Court in the case of Ramesh and Ors. v. State of Tamil Nadu reported in 2005 (2) PLJR 193 (SC) the Court condoned the delay on the ground that there was an interim order of stay by this Court and as such refused to interfere with the order of cognizance u/s 468 of the Code of Criminal Procedure. In the present case this Court finds that the offence took place in the year 1991 and cognizance was taken in the year 1996 and it is apparent that till date no further action has been taken.

8. In the circumstances, the petitioners are granted leave to raise the issue before the Court where the matter is pending who will consider the provisions of Sections 468 and 473 of the Code of Criminal Procedure and pass appropriate orders within a period of four weeks on receipt/production of a copy of this order.

9. This application is disposed of with the aforesaid observations.