

(2008) 02 PAT CK 0082

In the Patna High Court

Case No : Criminal Miscellaneous No. 28678 of 2007

Randhir Bahadur Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482

Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 341

Citation : (2008) 56 BLJR 1723 : (2009) 3 PLJR 1058

Hon'ble Judges : Anwar Ahmad, J

Bench : Single Bench

Advocate : Ajit Kumar Singh, for the Appellant; Mayanand Jha, APP, for the Respondent

Final Decision : Allowed

Judgement

Anwar Ahmad, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 7th July, 2005 passed by the Chief Judicial Magistrate, Purnea in Purnea Sadar P.S. No. 136 of 1997, G.R. No. 1076 of 1997 taking cognizance of the offence under Sections 341, 342, 323, 324, 447/34 of the Indian Penal Code.

2. Learned lawyer for the petitioners attacked the impugned order on the ground of limitation. He submits that the occurrence is said to have taken place on 29th April, 1997 whereas cognizance of the offence was taken on 7th July, 2005 i.e. after more than eight years of the date of occurrence. He submits that the section under which the cognizance has been taken is punishable to the maximum period of three years for which the limitation u/s 468 of the Code of Criminal Procedure has been prescribed for three years. He, therefore, submits that cognizance of the offence in the present case has been taken after expiry of the period of limitation and hence the impugned order be quashed.

3. From the perusal of the case records it appears that Panchu Devi gave

fardebayan on 29th April, 1997 giving rise to Purnea Sadar PS Case No. 136 of 1997 under Sections 341, 342, 447, 323, 324, 307/34 of the Indian Penal Code and 27 of the Arms Act. After investigation charge sheet has been submitted under Sections 341, 342, 323, 324, 447/34 of the Indian Penal Code and cognizance has accordingly been taken on 7.7.2005.

4. Section 468 of the Code of Criminal Procedure lays down:

Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if any 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.

Section 473 of the Code of Criminal Procedure lays down:

Notwithstanding anything contained in the foregoing provisions of this Chapter any Court may 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 or that it is necessary so to do in the interests of justice.

5. Learned Judicial Magistrate under the impugned order dated 7th July, 2005 has taken cognizance of the offence under Sections 341, 342, 323, 324, 447/34 of the Indian Penal Code against the accused persons and adds "the delay in taking cognizance is rendered in the interest of justice."

6. As per Section 473 of the Code of Criminal Procedure, noted above, the Magistrate can take cognizance of the offence after expiry of the period of limitation as in the present case provided he is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. In the impugned order, the learned Chief Judicial Magistrate has not indicated that he was satisfied on the facts and in the circumstances of the case that it was necessary to extend the period of limitation in the interest of justice. He simply wrote that the delay in taking cognizance is rendered in the interest of justice.

7. It is therefore lacking in the impugned order extending the period of limitation that the learned Chief Judicial Magistrate was satisfied on the facts and in the circumstances of the case that it was necessary to extend the period of limitation in the interest of justice and hence his order for extension of the period of limitation is bad in law.

8. In view of the above discussions, I find that the cognizance of the offence in the present case has been taken after the period of limitation prescribed under the law. I, therefore, find that the miscellaneous case is fit to be allowed.

9. In the result, the miscellaneous case is allowed and the impugned order of cognizance is quashed.