
(2004) 03 AP CK 0053

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 10 of 2004

R.C. Mall, A.P. Paper Mills Ltd. and Another

APPELLANT

Vs

B. Sivaram Murthy

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Andhra Pradesh Factories Act, 1948 — Section 106, 92

Criminal Procedure Code, 1973 (CrPC) — Section 245, 468, 473

Citation : (2004) 1 ALD(Cri) 820 : (2004) 2 ALT(Cri) 398 : (2004) 2 APLJ 223

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; The Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Criminal Revision Case is directed against the order dated 22-12-2003 on the file of the learned III Additional Judicial First Class Magistrate, Rajahmundry, whereby the learned Magistrate dismissed the petition filed by the accused u/s 245 and 468 of Code of Criminal Procedure.

2. The petitioners herein are A1 and A2 in C.C. No. 487 of 2002. The said C.C. arise out of the complaint presented by the 1st respondent herein alleging inter alia that the petitioners contravened certain provisions of the Factories Act, whereby rendered themselves punishable u/s 92 of the Factories Act. The petitioners-accused filed Criminal Miscellaneous Petition No. 9585 of 2003 u/s 245 and 468 of Code of Criminal Procedure seeking discharge on the ground that the complaint filed by the complainant-1st respondent herein is barred by limitation. The learned Magistrate on considering the material on record did not find any merit in plea put forth by the accused and consequently dismissed their application by order dated 22-12-2003. Assailing the order of dismissal passed in Crl. M.P.No. 9585 of 2003, the accused have filed this criminal revision case.

3. The learned senior Counsel appearing for the petitioners contends that the re-

presentation of the complaint filed by the 1st respondent herein is not within reasonable time and therefore, the complaint filed by the complainant-1st respondent is deemed to have been barred by limitation. In support of his contention, he refers Section 106 of the A.P. Factories Act, 1948. Section 106 of A.P. Factories Act reads as follows:

Limitation of prosecutions: No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation:- For the purposes of this Section, ----

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.

4. Few facts of the case are required to be noted at this juncture. The complainant came to know of the commission of the offence by the petitioners-accused on 15-01-2001. The complainant presented the complaint before the learned Magistrate on 10-04-2001. The said complaint came to be returned with certain objections on 01-05-2001. The complainant re-presented the complaint on 02-01-2002. The learned Magistrate took the cognizance of offence against the petitioners-accused on 11-01-2002.

5. It is contended by the learned senior Counsel that re-presentation of the complaint is beyond reasonable time and, therefore, it is to be held that the complaint is barred by limitation.

6. The Supreme Court in *Bharat Damodar Kale and Another V. State of A.P.* that the limitation prescribed in the Criminal procedure Code is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. For better appreciation, I may refer the relevant portion in the above referred decision and it is thus:-

"On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned counsel for the appellants, the limitation prescribed under the above Chapter applies to taking of cognizance by the court concerned, therefore even if a complaint is filed

within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This arguments seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus: "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance."

7. A Division Bench of High Court in Appu Ramani and another V. The State held that the relevant date for limitation as stipulated u/s 468 and 473 of Code of Criminal Procedure is the date on which complaint/charge-sheet is filed in court and not the date on which the cognizance of offence is taken by Magistrate, nor the date of issuance of process. It is held therein as follows:

"Whenever a complaint or a charge-sheet is filed, the court must first see whether it is within the period of limitation with reference to Section 468 Cr.P.C. and if it is found to be within time, the complaint/charge-sheet has to be registered and proceeded with. But, if it is found to be not within the period of limitation, the court should not register the case but give an opportunity to the person or to the police officer who filed the complaint or charge sheet, as the case may be, to satisfy on the question of limitation for purposes of condonation of delay. As regards the condonation of delay, it should not be done as a matter of course. The delay has to be condoned with exercise of judicial discretion."

8. The learned senior Counsel appearing for the petitioners-accused contends since the complaint initially presented on 10-04-2001 is defective, the date of subsequent presentation is to be taken into consideration as the date of legally instituted the complaint. He placed reliance on the decision of our High Court in Pritama Reddy V. Charminar Co-operative Urban Bank Limited. In the cited case the complaint came to be filed without the signature of the complainant and without vakalat duly signed. In those circumstances, it is said therein that the complaint was not a validly instituted one. Coming to the facts on hand, there is no such irregularity pointed out. The complaint filed by the 1st respondent herein came to be returned on 01-05-2001 for want of certain documents. No period has been stipulated by the Magistrate for re-presentation of the complaint. It seems the sanction order has been obtained subsequent to the presentation of the complaint i.e., on 10-04-2001, Since no time has been described for re-presentation, facts of the each case is to be considered and decide whether the delay is abnormal or reasonable. The complaint presented by the 1st respondent-complainant came to be returned on 01-05-2001 for certain documents. The documents came to be obtained by the complainant subsequently and he re-presented the complaint on 02-01-2001. Though there is delay in re-presenting

the complaint, it cannot be said that it is unreasonable. In the circumstances stated above, I do not see any ground to interfere with the order dated 22-12-2003 passed in Crl.M.P.No. 9585 of 2003 in C.C.No. 487 of 2002.

9. In the result, the Criminal Revision Case fails and it is accordingly dismissed.