

(2017) 11 BOM CK 0047
In the Bombay High Court
Case No : 868 of 2015

Shri Sanjay Nirupam S/o Brij Kishore Lal APPELLANT
Vs
The State of Maharashtra RESPONDENT

Date of Decision : 02-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 468](#), [Section 473](#), [Section 468\(2\)\(c\)](#), [Section 468\(3\)](#) - Bar to taking cognizance after lapse of the period of

Citation : (2017) 11 BOM CK 0047

Hon'ble Judges : Revati Mohite Dere

Bench : SINGLE BENCH

Advocate : Amit Khare, Shyam Bissa

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 28.04.2015 passed by the learned Judicial Magistrate First Class, (3rd Court), Bhandara, below Exhibit 3, in Regular Criminal Case No.251/2010.
3. A few facts and dates as are necessary to decide the aforesaid petition are stated hereinunder: The alleged incident is stated to have taken place on 15.09.2004. According to the prosecution, despite permission having been refused by the competent authority to hold a public meeting, the petitioner and others held a public meeting, which was attended by 500 to 600 persons. It is alleged that in the said meeting, certain words like "VERNACULAR MATTER OMITTED" were uttered, resulting in inciting religious sentiments and in breach of the election code of conduct. Pursuant thereto, on the very same day, i.e. on 15.09.2004, an F.I.R. was lodged by the Tahsildar with the Bhandara Police Station, alleging offences punishable under Sections 153, 295, 298, 505, 505(2) of the I.P.C. and under Section 125 of the Representation of Peoples Act, 1951.

Admittedly, there are no specific allegations in the F.I.R., against any specific person. On 23.12.2010, after investigation, chargesheet was filed as against the petitioner and others, in the Court of the learned Judicial Magistrate First Class, Bhandara alongwith an application seeking condonation of delay. The learned Magistrate was pleased to condone the delay of almost three years in filing the chargesheet. Being aggrieved by the order condoning delay, the petitioner filed a writ petition, being Criminal Writ Petition No.78/2014 in this Court. This Court (Coram:B.R. Gavai and B.P. Dharmadhikari, JJ.), vide order dated 03.03.2014 was pleased to quash and set aside the order condoning delay and directed the learned Judicial Magistrate First Class, to reconsider the issue of condonation of delay, after hearing both the sides. It was observed in the said order, that there was breach of the principles of natural justice, inasmuch as, the petitioner was not heard before the delay was condoned. Pursuant thereto, the learned Magistrate, after hearing the parties, vide order dated 28.04.2015 was pleased to allow the application for condonation of delay and accepted the chargesheet. Hence, this petition.

4. Mr.Amit Khare, learned counsel for the petitioner, assailed the impugned order dated 28.04.2015 on several counts. He submitted that the learned Magistrate despite observing in the order that the delay had not been satisfactorily explained, condoned the delay of almost three years. He submitted that under Section 468 of Cr.P.C., the period of limitation for filing the complaint was three years and that the learned Magistrate clearly glossed over the said fact. He further submitted that the prosecution had failed to give any cogent explanation, for condoning the inordinate delay caused in filing the chargesheet. He further submitted that the delay in filing the chargesheet was inordinate and fatal and as such, the same ought not have been condoned by the learned Magistrate. According to the learned counsel, a perusal of the complaint/chargesheet would also show, that even on facts, there was no material to condone the delay, even in the interest of justice, under Section 473 of the Code of Criminal Procedure.

5. Mr.Shyam Bissa, learned Additional Public Prosecutor opposed the petition. He submitted that although the delay has not been satisfactorily explained, the learned Magistrate has rightly "in the interest of justice" condoned the delay, under Section 473 of Cr.P.C. He relied on the judgment of the Apex Court in the case of Vanka Radhamanohari (Smt.) Versus Vanka Venkata Reddy & Others, reported in (1993) 3 SCC 4 and the judgment of the Bombay High Court in the case of P.D. Palkhandwar Versus Siddayya Shivamurtaya Hiremath, reported in 1985 Cr.L.J. 1017 in support of his submission.

6. Perused the papers. Admittedly, the F.I.R. was lodged on 15.09.2004 as against the petitioner and several others alleging offences punishable under Sections 153, 295, 298, 505, 505(2) of I.P.C. and Section 125 of the Representation of Peoples Act, 1951, with respect to the incident which took place on 15.09.2004. Admittedly, the chargesheet in the said case was filed on 23.12.2010, i.e. after more than six years from the date of the incident and

registration of the F.I.R. Admittedly, the prosecution had filed an application seeking condonation of delay in filing the chargesheet, dated 23.12.2010. The said application for condonation of delay was allowed by the learned Magistrate, Bhandara and delay was condoned. Admittedly, against the said order condoning delay, the petitioner filed a writ petition in this Court, being Criminal Writ Petition No.78 of 2014 and this Court vide order dated 03.03.2014 allowed the said petition and accordingly quashed and set aside the impugned order condoning delay and directed the learned Magistrate to reconsider the issue of condonation of delay, after hearing both the sides. Thereafter, the learned Magistrate after hearing both the sides passed the impugned order dated 28.04.2015. A perusal of the application dated 23.12.2010, filed by the Bhandara Police Station shows, that no reasons were spelt out for condoning the delay. The application for condonation of delay only states that as the permission was obtained belatedly, there was delay in filing the chargesheet and a prayer was made for condoning the delay under Section 473 of Cr.P.C., in the interest of justice.

7. It is pertinent to note, that Section 468 of the Code bars the Court from taking cognizance of an offence under the categories specified in SubSection 2 of Section 468, after the period of limitation is over. If the offence is punishable with fine only, the period of limitation is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation is one year; and if the offence is punishable with imprisonment for a term not exceeding three years, the period of limitation is three years. Under Section 468(3) of the Code, 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.

8. In the present case, the offences with which the petitioner and others are charged are; Section 153 of the I.P.C., which is punishable with maximum imprisonment of one year; Section 295 of the I.P.C., which is punishable with maximum imprisonment of two years; Section 298 of the I.P.C., which is punishable with maximum imprisonment of one year; Section 505 of the I.P.C. which is punishable with maximum imprisonment of three years; Section 505(2) of the I.P.C. which is punishable with maximum imprisonment of three years, and, Section 125 of the Representation of Peoples Act, 1951, which is punishable with maximum imprisonment of three years. In terms of Section 468(2)(c) and Section 468(3) of Cr.P.C., the chargesheet in the said case, ought to have been filed within three years from the date of lodging of the F.I.R. i.e. in 2007. Although, the learned A.P.P. also does not dispute the fact, that the chargesheet ought to have been filed within three years from the date of registration of the F.I.R., he relied on Section 473 of Cr.P.C., which provides for extension of the period of limitation in certain cases and submits that it is under Section 473 of the Code, that the period of limitation has been extended in the interest of justice.

9. Section 473 of the Code empowers the Court to extend the period of limitation in certain cases. The Section being relevant, is extracted below:

" 473. Extension of period of limitation in certain cases.- 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."

10. From a bare reading of this provision, it is clear that the Court may take cognizance of an offence even after the period of limitation prescribed by Section 468 has lapsed, if the two essential conditions are satisfied. These conditions are; (i) where a proper and satisfactory explanation of the delay is available; and (ii) where the condonation of delay is in the interest of justice. The extension of the period contemplated under this Section is only by way of an exception to the period fixed under Section 468 of Cr.P.C. The Apex Court in the case of State of Himachal Pradesh Versus Tara Dutt, reported in AIR 2000 SC 297, analyzed the provisions of Section 473 of Cr.P.C. and observed as under:

"Section 473 confers power on the Court taking cognizance 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 and that it is necessary so to do in the interest of justice. Obviously, therefore, in respect of the offences for which a period of limitation has been provided in S.468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence."

(Emphasis supplied).

11. Similarly, the Apex Court in the case of Srinivas Pal Versus Union Territory of Arunachal Pradesh (now State), reported in AIR 1988 SC 1729, was dealing with a case, i.e. an offence of rash and negligent driving causing death of one and injury to some person. In the said case, cognizance of Sections 279, 304A and 338 of the I.P.C. was taken after a lapse of about 9 1/2 years. Considering the said sections involved in the case, the Apex Court observed that the period of limitation for taking cognizance of the said offence would be three years in view

of Sections 468 of the Cr.P.C. and further observed as under:

"The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution, i.e. 9 1/2 years for a trial for rash and negligent driving is too long a time. Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 9 1/2 years without any cause at all cannot be with the spirit of the procedure established by law. Thus, the trial would be vitiated and it could not be saved by invoking Regn. 32 of Assam Frontier (Administration of Justice) Regulation (1945) on ground that the provisions of Criminal P.C. do not apply to State of Arunachal Pradesh. Regn. 32 of the said Regulation should be guided by the spirit of the Code and it will be proper to throw out a complaint if there was inordinate or undue delay, which was not explained."

12. The question that arises here is, whether the learned Magistrate has properly exercised his judicial discretion vested in him, by Section 473 of the Code, by condoning the delay, and accepting the chargesheet, after a lapse of more than three years. On the face of it, no reasons nor any proper or satisfactory explanation has been offered for condoning the delay of more than three years. Admittedly, the F.I.R. was lodged on 15.09.2004. Considering the punishment prescribed for the alleged offences, the maximum punishment being three years, the chargesheet ought to have been filed before 15.09.2007, in terms of Section 468 of the Code. Admittedly, the chargesheet was not filed within the said period, but was filed on 23.12.2010, i.e. after more than three years. Admittedly, no details are set out nor any explanation is offered in the application filed justifying the delay in obtaining sanction from the competent authority in filing the chargesheet. The learned Additional Public Prosecutor also does not dispute, that no satisfactory or proper explanation has been offered in the application seeking condonation of delay. Infact, even the learned Magistrate has observed in the impugned order, that no satisfactory explanation has been offered to condone the delay, yet the learned Magistrate has in the interest of justice condoned the delay. Therefore, in the facts, what is required to be seen is, whether the learned Magistrate, whilst condoning the delay, has exercised his discretion judiciously and on well recognized principles. Neither the application seeking condonation of delay nor the impugned order spells out, how in the interest of justice, the delay ought to be condoned/was condoned. Section 473 of the Code, being an enabling provision, whenever a Magistrate invokes the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied in the facts and circumstances of the case, that it is necessary in the "interest of justice" to condone the same. In the absence of a positive order, it can be said that the Magistrate had failed to exercise his discretion judiciously, in accordance with law. The learned Magistrate has not accorded any reasons for condoning the delay nor has disclosed in what manner, in the interest of justice, the delay was being condoned. In the present case, the petitioner and others are

alleged to have conducted a public meeting of about 500 to 600 persons despite being refused permission to conduct the same. Learned A.P.P. is unable to point out if any specific utterances were made by the petitioner, or any other specific allegation against the petitioner, in the chargesheet. It is an omnibus statement made in the F.I.R., that these words were uttered in the meeting, in which the petitioner and others (named) were present. The judgments relied on by the learned A.P.P., i.e. Vanka Radhamanohri (Smt.) Versus Vanka Venkata Reddy & Others, reported in (1993) 3 SCC 4 and a judgment of the Bombay High Court in the case of P.D. Palkhandwar Versus Siddayya Shivamurtaya Hiremath, reported in 1985 Cr.L.J. 1017 are not applicable to the facts of the present case and are clearly distinguishable.

13. In the facts and circumstances of the present case, I am of the opinion that the prosecution has failed to explain the delay caused in filing the chargesheet nor is it able to substantiate in the facts and circumstances of this case, why the delay ought to have been condoned, in the interest of justice.

14. Considering the aforesaid, the petition is allowed. The impugned order dated 28.04.2015 passed by the learned Judicial Magistrate First Class, 3rd Court, Bhandara, below Exhibit 3, in Regular Criminal Case No.251/2010 is quashed and set aside and consequently the proceedings. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.