

(2014) 02 BOM CK 0273

In the Bombay High Court

Case No : Criminal Application No. 2348 of 2013

Shripad Janardan Phadke

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 196(1-A), 467, 468, 469
Penal Code, 1860 (IPC) — Section 153-A, 153B, 295-A

Citation : (2014) ALLMR(Cri) 2903

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Girish S. Rane, Advocate for the Appellant; V.P. Kadam, Additional Public Prosecutor and S.P. Chapalgaonkar, holding for S.S. Chapalgaonkar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Thipsay, J.—The applicants are the accused in S.T.C. No. 651/2005, pending before the Judicial Magistrate (First Class), Navapur [District: Nandurbar]. The said case is in respect of offences punishable u/s 153-A of the IPC and Section 295-A of the IPC. The applicants made separate applications (Exhibits 16 and 17) before the Magistrate, contending that the charge sheet had been filed beyond the period of limitation, and that, the cognizance of the alleged offences could not be taken in view of Section 468 of the Code of Criminal Procedure [For short, "the Code"]. The said applications were rejected by the Magistrate by a common order dated 26-3-2013.

Being aggrieved thereby, the applicants have approached this Court by filing the present Application, invoking the inherent powers of this Court. The applicants pray that the order passed by the Magistrate be quashed and set aside and the applications (Exhibits 16 and 17) be allowed.

I have heard Mr. GS. Rane, the learned Counsel for the applicants. I have heard Mr. V.P. Kadam, the learned Additional Public Prosecutor for the State. I have also

heard Mr. S.P. Chapalgaonkar, the learned Counsel holding for Mr. S.S. Chapalgaonkar, the learned Counsel for the respondent no. 2 i.e. the original first informant.

2. It is not necessary to discuss the facts of the case as alleged in the charge sheet, in details, except mentioning that the respondent no. 2-Ishwar Gavit and some others, on 7-12-1998, noticed a hand bill stuck on one of the walls at Navapur Bus Station. The matter contained in the said hand bill/pamphlet was objectionable, inasmuch as, it criticized Lord Jesus Christ and incidentally the Christian religion. There was also mentioned in the said hand bill that, a Hindu person getting himself converted into some other religion, not only reduces the number of Hindus by one, but also increases the number of enemies by one. Alleging that the matter published in the hand bill/pamphlet was calculated towards promoting disharmony or feelings of enmity, hatred or ill-will between Hindu religion and Christian religion, that the hand bill with such a matter had been printed and displayed with deliberate and malicious intention of outraging the religious feelings of Christians and for insulting their religion, a First Information Report was lodged by the respondent no. 2 on 8-12-1998. On this report, a case in respect of the offences punishable under Sections 295-A of the IPC and 153-A of the IPC, was registered on the same date.

3. As the issue raised is "that the cognizance of the alleged offences was barred as the charge sheet had been filed beyond the period of limitation as defined u/s 467 of the Code", the relevant legal provisions and the relevant dates must be noticed.

4. That, both the said offences being punishable for a term of imprisonment which may extend to 3 years, the period of limitation in case of these two offences shall be 3 years in accordance with Clause (c) of Sub-Section (2) of Section 468 of the Code, is not in dispute. That, the FIR came to be registered on 8-12-1998, is not in dispute. That, the charge sheet came to be filed on 20-6-2005, is also not in dispute.

5. Undoubtedly, the cognizance of the said offences cannot be taken without the previous sanction of the Central Government, or the State Government, in view of Section 196 of the Code. In view of the provisions of Section 470(3) of the Code, the time required for obtaining the sanction shall be excluded in computing the period of limitation. This legal position is not in dispute and has not been disputed by the learned Counsel for the parties.

6. The contention of the applicants is, however, that, even if the period required for obtaining the sanction is excluded, the charge sheet had, still, not been filed within the period of limitation. Undoubtedly, at the fag end of the arguments, Mr. G.S. Rane, the learned Counsel for the applicants, also raised a novel contention, which shall be discussed and dealt with by me at a later stage.

7. One aspect of the matter, however, was not addressed to, by the learned Counsel for any of the parties, and also by the learned Additional Public

Prosecutor. Clause (c) of Sub-Section (1) of Section 469 of the Code lays down that, where it is not known, by whom the offence was committed, the period of limitation shall commence on the first day on which the identity of the offender is known to the person aggrieved by the offence, or to the Police Officer making investigation into the offence. Thus, the Counsel for the parties and the learned Additional Public Prosecutor, both have proceeded on the basis that the period of limitation in the present case shall commence from the date of registration of the FIR, namely 8-12-1998, though, apparently, it should commence from some later date. However, in the present case, that aspect is immaterial, as nothing turns on that date; and if the contentions of the applicants are accepted, then, even after going by the date on which the identity of the offenders was established, the filing of the charge sheet would still be beyond the period of limitation.

8. Considering that the legal position as to how to calculate the period of limitation has not been disputed before me, a reference may straightway be made to the different dates which are material in the context of the controversy:

- (a) As aforesaid, the first information report was registered on 8-12-1998;
- (b) The proposal for obtaining sanction of the Government of Maharashtra was sent by the investigating agency to the concerned authorities on 8-11-1999;
- (c) Sanction was accorded by the Government on 17-6-2002;
- (d) Charge sheet was filed on 20-6-2005.

9. The contention of the applicants is that, even if the period required for obtaining sanction is excluded from consideration, the filing of the charge sheet was, still, beyond the period of limitation.

10. The contention of the prosecution is that, it is not so, as, "though the sanction order was passed on 17-6-2002, the sanction order was received by the investigating agency on 15-2-2005". It is submitted that, therefore, the charge sheet which came to be filed within about four months thereafter, was well within time.

11. I have gone through the impugned order. The learned Magistrate noticed the provisions of Section 470(3) of the Code and concluded that sanction can be said to have been granted on the date on which the order granting sanction is received by the investigating agency and not on the date on which the order granting sanction is passed. The Magistrate also observed that the investigating agency had applied for sanction on 8-11-1999 and had received the sanction order only on 15-2-2005. The Magistrate observed that though the Government of Maharashtra had accorded sanction on 17-6-2002, that date was not relevant for computing the period of limitation and the relevant date was 15-2-2005. The Magistrate further observed that the charge sheet was filed after 4 months and 5 days from the receipt of the sanction order. Counting the period before the application for sanction was made, and the time taken for filing the charge sheet after the sanction order had been received, the Magistrate concluded that charge

sheet had been filed after 15 months and 5 days from the lodging of the FIR; and that, as the period of limitation was 3 years, the charge sheet had been filed well within the period of limitation.

12. The view of the matter, as taken by the Magistrate is proper and legal. As a matter of fact, no serious dispute about the legal position in that regard has been raised.

13. The contention of the applicants is, however, somewhat different. There is no challenge to the position that the date of receipt of the sanction order would be material for the purpose of computing the period of limitation and not the date on which the sanction order has been passed by the competent authority. Sub-Section (3) of Section 470 of the Code, when read along with the Explanation appended thereto, leaves no manner of doubt that the date of receipt of the order of the Government or other authority would be the one that would be material in the context of computation of the period of limitation. The applicants, however, are raising the question as to the receipt "by whom". According to the applicants, the sanction order was received by the District Magistrate, Nandurbar, on 4-7-2002. It is contended that the communication addressed by the Government to the District Magistrate, in that regard itself shows that a copy thereof was forwarded to the Superintendent of Police, Nandurbar. It is contended that though the date of receipt of the sanction order would be the material date, the receipt need not be by the Investigating Officer. It is submitted that, the receipt of the sanction order by the District Magistrate was sufficient, and that, while computing the period of limitation, this date should be taken into account. Alternatively and additionally, it was submitted that when the sanction order was received by the District Magistrate, Nandurbar, and when the communication indicates a copy thereof to have been forwarded to the Superintendent of Police, Nandurbar, it should be taken as having been received by the investigating agency.

14. It is not possible to agree with this reasoning. The date of receipt of the sanction order by the District Magistrate would not be material in the context of the period of limitation as the District Magistrate would not be competent to file a charge sheet. Obviously the receipt of sanction order as contemplated under Sub-Section (3) of Section 470 of the Code is the receipt thereof by the Investigating Officer or the authority which can launch the prosecution by filing a charge sheet or a complaint, as the case may be. Therefore, the time required for obtaining the sanction cannot be decided on the basis of date of receipt of the sanction order by the District Magistrate.

15. The applicants, however, advanced some contentions on facts challenging the correctness of the date on which the sanction order is said to have been received by the Investigating Officer. In order to clarify certain points, the concerned authorities were directed to file an affidavit. The case diaries and the relevant correspondence was also directed to be produced before this Court. Accordingly, Dr. Sanjay Yashvant Aparanti, Superintendent of Police, Nandurbar, has filed an

additional affidavit and has forwarded the relevant record to this Court.

16. There is no substance in the contention of the learned Counsel for the applicants that, the sanction order must have been received by the investigating agency at about the same time when it was received by the District Magistrate, as a copy thereof had been marked to the Superintendent of Police. Even otherwise, there is substance in the contention advanced by the learned Counsel for the respondent no. 2, that, mere receipt of the communication, or even copy of the sanction order by the Superintendent of Police would not be sufficient as it was necessary to receive the original sanction order before the filing of the charge sheet. In any case, in view of the categorical averment by the Superintendent of Police, Nandurbar, that the sanction order was received in his office from the office of the District Magistrate only on 15-2-2005, and keeping in mind that there is no material to contradict the same, that date is to be accepted as the date of receipt of the sanction order.

17. Once that is so, clearly the charge sheet had been filed within the period of limitation and there was no bar to take cognizance of the alleged offences.

18. At the conclusion of the arguments, when the aforesaid aspects were discussed, Mr. Rane, the learned Counsel for the applicants, advanced a novel submission. He submitted that there was no necessity on the part of the Investigating Officer to have waited for the filling of the charge sheet till the receipt of the sanction." It is submitted that, what is barred is taking cognizance of the alleged offences in the absence of a sanction, but not the filing of the charge sheet. There is no substance in this contention. Obviously, if the charge sheet would be filed without the previous sanction of the Government, as contemplated u/s 196 of the Code, the court would not take cognizance of the alleged offence and consequently, would discharge the accused. The reliance placed on some of the observations made by Their Lordships of the Supreme Court of India, in the case of State of Karnataka and Another Vs. Pastor P. Raju, in support of such a novel submission, is totally misplaced. There, the question that arose before Their Lordships of the Supreme Court was, whether the investigation into an offence punishable u/s 153B of the IPC would be bad in the absence of a sanction as contemplated u/s 196(1-A) of the Code. In that case, the High Court had quashed the investigation on the ground that it was bad on account of the investigating agency not having obtained previous sanction of the Government. Their Lordships of the Supreme Court of India held that, the question of sanction would come at the stage of taking of cognizance of the offence and not at the time of its registration and investigation. The observations made in para 10 of the reported judgment clearly lay down the reasoning of Their Lordships, namely, that, the question of sanction would not arise before completion of investigation and collection of evidence. These observations cannot be interpreted to mean that even after the completion of investigation and at the time of filing charge sheet, there would be no necessity of any sanction, and that, a charge sheet could be filed in the court without obtaining sanction. As a

matter of fact, if that would be the position, there would be no occasion to provide that the period required for obtaining sanction to be excluded from computing the period of limitation, as has been done by enacting Section 470 of the Code.

19. There is, therefore, no merit in the Application.

20. There are some disturbing aspects of the matter, which, however, need a mention here. In the say filed by the Assistant Public Prosecutor in-charge of the case in the court of the learned Magistrate, after making a submission that the applications Exhibits 16 and 17 were not maintainable, and signing the same, below his signature, the Assistant Public Prosecutor is seen to have further made an endorsement to the effect that, "the sanction order received on 4-7-2002 to D.M. Nandurbar and to P.S. Nawapur on 18-7-2002". Apart from the fact that this statement appears to be factually incorrect, what was the occasion to mention the same after the say had already been given, is difficult to understand. It is based on this date, that the applicants have tried to raise factual disputes with respect to the date on which the sanction order had been received by the Investigating Officer.

21. Why the District Magistrate did not forward the sanction order to the Investigating Officer, or even to the Superintendent of Police, Nandurbar, is difficult to comprehend.

22. It is disturbing that the record shows that right from 15-11-1999 the Superintendent of Police had been, through the District Magistrate, Nandurbar following the matter with the Government and seeking sanction as contemplated u/s 196 of the Code. There are at least 7-8 letters sent by the then Superintendent of Police, Nandurbar, to the District Magistrate, Nandurbar, during the period from 15-11-1999 to 16-3-2001. What the District Magistrate had done pursuant to these letters, has not been explained at all. It appears that, ultimately, the then District Superintendent of Police, Nandurbar, by a letter dated 5-2-2005, requested the Under Secretary to the Government, to expedite the grant of sanction.

23. There appears to be delay on the part of the District Magistrate, Nandurbar, and also on the part of the Government authorities to process the request for sanction. The delay in that regard is inordinate, particularly because the Superintendent of Police, Nandurbar, had been diligently following up the matter.

24. Considering all the relevant aspects of the matter, a possibility of the matter having been deliberately delayed in order to see that the offenders are not prosecuted, cannot be ruled out. Therefore, while dismissing the Application, this aspect of the matter needs to be brought to the notice of the State Government.

25. The Application is rejected. The learned Magistrate shall proceed further with the case in accordance with law.

26. A copy of this order be forwarded to the Chief Secretary to the Government

of Maharashtra, who shall bring the matter to the notice of the Hon''ble Chief Minister of Maharashtra. The Hon''ble Chief Minister, if he thinks fit, may take such further action in the matter, as he may deem proper. The Application is disposed of in the aforesaid terms.