

(1978) 01 PAT CK 0015

In the Patna High Court

Case No : Criminal Miscellaneous No. 2407 of 1977

Sidheshwar Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-01-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 319, 323, 324, 34, 468

Citation : (1978) 26 BLJR 485

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.S. Sahay, J.—This application is directed against the order of the learned Magistrate dated 11-8-1977, by which he has summoned the petitioners as accused to face trial under Sections 323 and 324 read with Section 34 of the Indian Penal Code.

2. In order to appreciate the points which have been raised in this case it is necessary to state some facts. Opposite party No. 2, Madan Prasad, lodged a petition of complaint on 29-6-1974 against six persons, including these petitioners, alleging offences under Sections 323 and 324 of the Indian Penal Code. Investigation was taken up by the police, and charge-sheet was submitted against three persons, but not these three petitioners, on 25-7-1974. On 27-9-1974 the learned Magistrate took cognizance against those three persons and discharged these petitioners and the case was transferred for trial. The trying Magistrate framed charges against the three persons, against whom cognizance had been taken on, 8-9-1975 under Sections 323 and 324 of the Penal Code. After that, three witnesses were examined by the learned Magistrate. After the examination of these three witnesses on 1-6-1976, opposite party No. 2 filed an application for summoning these three petitioners also for trial, because allegations had also been made against them by those three witnesses. The learned Magistrate, by his order dated 11-8-1977, has summoned

the petitioners for trial along with the other accused persons. Being aggrieved by the aforesaid order, the petitioners have preferred this miscellaneous application.

3. Learned counsel appearing on behalf of the petitioners has contended that the witnesses who have been examined by the learned Magistrate were also examined by the investigating officer", who obviously did not rely on their statements and, therefore, did not submit any charge-sheet against them and the learned Magistrate on the same material has wrongly summoned the petitioners for trial. This contention, in my opinion, is without any substance and must be rejected. Those three witnesses may have been examined by the investigating officer who, for some reason or the other, did not submit charge-sheet these petitioners. That does not mean that the Magistrate had no power to summon these three persons when specific allegation had been made by the witnesses against them.

4. Another interesting point of law has been raised that the occurrence having taken place on 29-6-1974 and the petitioners having been summoned on 11-8-1977, that is, beyond the period of three years, the prosecution was barred u/s 468 of the Code of Criminal Procedure (hereinafter called the Code). Section 468 which is a new provision under the Code, puts a bar for taking cognizance after the lapse of the period of limitation. This section reads as follows:

468. (1) Except as otherwise provided elsewhere 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 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.

The petitioners have been summoned to stand their trial under Sections 323 and 324 of the Indian Penal Code, and the maximum sentence for these two offences is three years. Learned counsel has thus relied on Clause (c) of Sub-section (2) of Section 568 and has submitted that the cognizance against the petitioners having been taken after three years, it is barred under the aforesaid provision.

5. Learned counsel appearing on behalf of the complainant opposite party has, however, submitted that cognizance of the offence had already been taken by the Magistrate on 27-9-1974 and, therefore, there was no occasion for taking cognizance afresh and the provisions of Section 468(2)(c) according to him, will not be attracted in this case. He has further submitted that cognizance is taken of the offence and not of the offender. In support of his contention, reliance has been placed on decision of the Supreme Court in Raghubans Dubey Vs. State of

Bihar, , where it has been held by their Lordships that "taking cognizance of" means cognizance of offence and not offenders ; and the Magistrate has to proceed against those, offenders not sent up by the police and summoning of additional accused is part of the proceeding initiated by taking cognizance of an offence. Learned counsel appearing for the State has supported the point which has been raised on behalf of the complainant opposite party and has submitted that the order dated 11-8-1977 is not an order taking cognizance and is, therefore, not barred.

6. The question as to what is meant by taking cognizance is no longer res integra, as it has been decided by several decisions of the Supreme Court as well as of this court. Therefore, there is great force in the contention raised by the learned Counsel on behalf of the opposite party that cognizance had already been taken of the offence on 27-9-1974, but the order of the learned Magistrate summoning the petitioners for trial on 11-8-1977 does not amount to taking cognizance afresh. I am also of the opinion that it is only the cognizance which is barred and not the summoning of the accused persons subsequently after some materials are found in course of trial.

7. Learned counsel for the petitioners has drawn my attention to Section 469 of the Code which deals with the period of limitation in relation to an offender which, according to Clause (a) of Section 469(1), commences on the date of the offence, meaning thereby 28-6-1974 in the present case and the time, according to him, will run from this very date, and no other date. But, as I have said earlier cognizance of the offence had already been taken, and the order of the Magistrate dated 11-8-1977 does not amount to any fresh cognizance. It will also be relevant to quote Section 319 of the Code which reads as follows:

319(1). Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Not relevant for this case.

(3) Where the court proceeds against any person under Sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard ;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced.

Reading the provisions of Sub-section (4)(b), it is absolutely clear that by legal fiction those persons who are subsequently summoned for trial shall also be deemed to be accused when the court took cognizance of the offences. Therefore, there is absolutely no doubt in my mind that Section 319 read with

Sections 468, 469 and 470 of the Code, person or persons against whom evidence of their participation comes before the court and the court, on a perusal of the evidence, summons them to face their trial along with the other accused persons, the provisions of Section 468 will not be attracted in view of Section 319 of the Code and they will also be deemed to be the persons against whom cognizance had been taken at the initial stage when the court had summoned the other accused persons for trial. Therefore, it must be held that these three petitioners were also accused at the time when the Magistrate had taken cognizance against the original accused persons. Thus, on a careful consideration of the points which have been raised in this case, I am of the opinion that the prosecution is not barred. There is no merit in this application, and it is accordingly dismissed.