
(1979) 01 BOM CK 0040
In the Bombay High Court
Case No : Criminal Appeal No. 307 of 1977

State of Maharashtra

APPELLANT

Vs

P.D. Pujari

RESPONDENT

Date of Decision : 30-01-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 33
Criminal Procedure Code, 1973 (CrPC) — Section 468, 469, 469(1), 469(2), 470

Citation : (1980) 82 BOMLR 6 : (1979) CriLJ 1152 : (1979) MhLj 244

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : M.R. Kotwal, P.P, for the Appellant; C.R. Dalvi, instructed by
Crawford Bayley and Co., for the Respondent

Final Decision : Allowed

Judgement

S.C. Pratap, J.—Question of some significance as indeed also of wide spread application in the administration of criminal law arises in this appeal by the State against the order of acquittal dated 30th September, 1976 passed by the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivli, Bombay in Case No. 2942/T/1976, the said question being :

What is the starting point of the period of limitation within the meaning of section 469 of the Code of Criminal Procedure, 1973 in respect of offences falling within sub-section (2) of section 468 of the said Code?

2. The prosecution case, briefly, has been that on 5th September, 1975 at about 9.50 a.m. one Gangaram Ganpat Moprekar, Head Constables, Traffic Control Branch, Greater Bombay Police, noticed, while on duty at Swami Vivekanand Road, Goregaon a B.E.S.T. bus bearing No. MRR 945 taking a turn on the said road and proceedings south towards Jogeshwari. The bus halted at the stop of route No. 262 on the said road, but at a distance of three feet from edge of the curb instead of two feet as required by Rule 4(2) of the Rules framed by the Commissioner of Police, Bombay, u/s 33 of the Bombay Police Act. The said Head

Constable noted the bus number and reported the aforesaid breach of the rule to his superiors. However, as the driver's identity was not known, the police made a reference to the Bombay Electric Supply and Transport Undertaking for particulars of the driver in question. The said Undertaking by its letter dated 21st November, 1975, furnished the particulars.

3. The Assistant Inspector of Police thereupon filed on 18th March, 1976 in the Court of the Metropolitan Magistrate, 24th Court, Borivli, Bombay, a complaint, registered as Case No. 2942/T of 1976, against the concerned driver P.D. Pujari the accused herein for contravention of the aforesaid rule. Charge was framed against the accused but the same was denied by him. Evidence was recorded. The learned Magistrate without touching the merits, acquitted the accused holding that the complaint filed on 18th March, 1976 for offence committed on 5th September, 1975 was beyond six months of the offence and consequently barred by limitation. Hence this appeal by the State.

4. There is no dispute that the period of limitation for taking cognizance of the offence in the instant case was six months as provided by Clause (a) of sub-section (2) of section 468 of the Code. The heart of the controversy, however is;

When did the said period of limitation commence?

According to Mr. Kotwal, the learned Public Prosecutor it commenced on 21st November, 1975 when for the first time the identity of the offender (the accused herein) became known while according to Mr. Dalvi, the learned Counsel for the accused, it commenced on 5th September, 1975, the date of the offence itself. Thus, whereas according to the prosecution, the case was governed by Clause (c) of sub-section (1) of section 469 of the Code, according to the accused it was governed by Clause (a) thereof. It is in this light that the question of commencement of the period of limitation within the meaning of section 469(1) of the Code fails to be considered and invites determination.

5. Now, under the Code of Criminal Procedure, 1973 (since repealed), there was no period of limitation for taking cognizance of an offence. Prosecution for an offence could be launched any time after its commission. Though inordinate delay could, in a given case, be a circumstance against the prosecution, it was never a valid ground for its in limine dismissal as barred by limitation. Though periods of limitation were prescribed for prosecution for certain offences under some special and/or local laws, there was no general rule of limitation as such with regard to all criminal cases or even with regard to any substantial class thereof. Indeed, even at the stage when the new Code was still in embryo and in its bill form introduced in Parliament in December, 1970, there was no provisions therein laying down generally any period of limitation for taking cognizance of offences. It was only after the said Bill was referred to a Joint Committee of Parliament that the said Committee in its report presented to Parliament in December, 1972 recommended certain provisions in that behalf with the following observations :---

"These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committees feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission".

6. These recommendations were accepted by Parliament and limitation in the aforesaid respects was thus enacted for the first time by the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), which came into force on 1st April, 1974. Provisions relating to limitation find place in Chapter XXXVI of the Code under the caption :

"Limitation For Taking Cognizance of Certain Offences".

This period of limitation, however, is in respect of only the less serious offences viz., those which are punishable either with fine alone or with imprisonments for a term not exceeding three years. And further, these provisions do not apply to offences under The Economic Offences (In applicability of Limitation) Act, 1974 vide section 2 thereof which specifically excludes such application.

7. The aforesaid Chapter XXXVI of the Code is presently comprised of seven sections viz., sections 467 to 473. Section 467 defines "period of limitation as meaning" "the period specified in section 468 for taking cognizance of an offence". Section 468(1) bars the taking of cognizance of certain offences after the expiry of the period of limitation prescribed therefore u/s 468(2). The next section 469 deals with commencement of the period of limitation, while section 470 refers to exclusion of time in certain cases. By virtue of section 471, where the period of limitation expires on a day when the Court is disclosed, the Court may take cognizance on the day on which it re-opens. Section 472 deals with limitation in the case of a continuing offence. u/s 473, which commences with a non-obstante clause, the Court is empowered to take cognizance even after expiry of the limitation period 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. Relevant for the instant case are sections 468 and 469 which are 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".

"469(1) The period of limitation, in relation to an offender, shall commence---

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any Police Officer, the first day on which such offence comes to the knowledge of such person or to any Police Officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, 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, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded".

8. Now, *ex cathedra* or it cannot be gain said, that a prosecution cannot be launched in a vacuum nor can it be against a nonentity or in *absentia*. The basic wheels to set a prosecution in motion are (i) an offence committed, (ii) knowledge of its commission, and (iii) identity of the offender. If an offence is not committed or, though committed, not known to have been committed, for what crime can a prosecution be instituted? Or, though commission of an offence has become known, if the offender is not known, against whom can a prosecution be initiated? There cannot be a prosecution for an offence committed but not known nor can there be a prosecution against an offender *incognito*. Mere knowledge *simpliciter* of crime is also not by itself enough. Such knowledge can only set into motion the wheels of investigation. For a prosecution the alleged perpetrator of the crime must also be known. There has thus to be not an abstract scenario but a concrete setting in which alone a prosecution can be launched. Though a prosecution should be launched as promptly as possible, it is equally if not more, important that it should also be as precise as possible. All in all, therefore, a prosecution cannot be actually instituted unless the following *sine qua non* stand fulfilled viz.---

(a) an offence has been committed;

(b) its commission has become known; and

(c) its offender is identified.

A prosecution otherwise would be a still born process *bad ad initio*.

9. Now, proceedings further in this light, if, irrespective of any other factor, the period of limitation must commence on the date of the offence itself, within the meaning of Clause (a) of section 469(1), then many an otherwise good prosecution would fail to see the light of the day and/or be barred by time only because, though the offence was committed on a particular date, it was not

known till after the expiry of limitation or because, though the offence was known yet the offender was not known till after the limitation for prosecuting him had already expired. Further, and if again, irrespective of anything else, the period of limitation must commence when the offence becomes known within Clause (b) of section 469(1), then also many a prosecution must fail at its inception because, though an offence has become known the offender was not known till after the expiry of limitation. Thus, if the provisions of sections 468 and 469 of the Code are to be construed singularly and in isolation and de hors the basic requisites for launching a prosecution, then many an offender, though guilty, would escape punishment and many a prosecution, though otherwise sustainable, would nevertheless be infructuous only because of lapse of time in instituting it and that too occurring not for any fault of the prosecution but because knowledge of the offence and/or the offender had not become known within the period of limitation.

10. Such patently unjust results could hardly have been the intention of the legislature. The object of introducing period of limitation for taking cognizance of certain offences is not, indeed cannot be, to condone crime by mere lapse of time, but the object *inter alia* is :---

"..... to put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly".

(Vide the report of the Joint Committee of Parliament *supra* on the Code of Criminal Procedure Bill, 1970).

Offences are also crimes against the society. They are public wrongs affecting the community as a whole. Many an offence and/or offender is often for a long time not known. To wind up such crimes as closed chapters only by mere lapse of time can only encourage the thought that crime can pay if crime and/or the criminal remain undetected till after the period of limitation expires. Such an approach would render an offence non est and negate the very object of criminal justice. The criminal process itself would come to a stand still a situation anathema to the entire concept of penal laws and liabilities.

11. Sections 468 of 469 of the Code have, therefore, to be interpreted and construed fairly and reasonably keeping in view the interests of the and protection to the accused on the one hand and on the other hand the interests of the aggrieved person and the community as a whole. While on the one hand, interests of justice do require that the sword of prosecution should not remain hanging over the offender for an indefinite period, particularly in cases of less serious offences, at the same time and on the other hands, courts cannot helplessly constrict the language even of a penal statute so as to allow persons legitimately within its purview to escape its consequences. As observed in Maxwell's Interpretation of Statutes, Twelfth Edition, at page 96 :

"It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. To this end, a certain

extension of the letter is not unknown, even in criminal statutes".

Peril to the offender would be much less if he is made to stand trial with onus on the prosecution to bring home the charge against him beyond reasonable doubt than peril to the society or the community at large if crime goes unpunished only because prosecution in that behalf is supposed to be barred by limitation. The object is not to punish regardless of innocence or to acquit regardless of guilt. But the scheme and intention in less serious offences is to render justice to the community without injustice to the accused and to render justice to the accused without injustice to the community.

12. The contention of Mr. Dalvi, the learned Counsel for the accused, that the period of limitation in all cases governed by Clauses (a), (b) and (c) of sub-section (1) of section 469 must commence uniformly on the date of the offence with a proviso that the prosecution would be entitled to exclude from the total period (from the date of the offence to the date of its cognizance) time taken up for obtaining knowledge of the offence and/or identity of the offender cannot be accepted. Though based on the principle of exclusion of time, it runs contrary to the plain construction of sub-section (1) of section 469 of the Code. If the legislature wanted to apply the principle of exclusion of time to Clauses (a) and/or (b) and/or (c) of sub-section (1) of section 469, nothing really prevented it from plainly doing so. Indeed the legislature has expressly given effect to this principle in sub-section (2) of the very section 469 under consideration as also in cases governed by section 470 of the Code. The legislature, therefore, in the very context of laying down periods of limitation was fully conscious of the principle of exclusion of time and it has expressly enacted it into law applicable to cases u/s 469(2) and section 470 of the Code. In the circumstances the fact that it has even so not chosen to apply this principle to cases under Clauses (a) and/or (b) and/or (c) of sub-section (1) of section 469 clearly indicates that it did not think it just and reasonable to do so.

13. Moreover, the fact that Clauses (a), (b) and (c) of sub-section (1) of section 469 of the Code are disjunctive also indicates different commencement points of limitation depending on the facts and facts of each case. One and the same uniform point of commencement of the period of limitation cannot be the object of these three different clauses disjunctively separated from each other. The ambiguity, if any, arising by virtue of the short and cryptic phraseology of Clause (a) is dispelled by the provisions and the wording of Clause (b) and (c). If Clause (a) is taken to be of all pervasive application, Clauses (b) and (c) would become meaningless and ineffective. Pointless repetition of one and the same uniform date of commencement of period of limitation cannot be the aim behind such three different Clauses (a), (b) and (c) of sub-section (1) of section 469 of the Code. An exercise in tautology cannot be attributed to the legislature. The legislature cannot have intended such a result nor can it have committed such a mistake. Legislature must be so construed as to be in consonance with and not contrary to justice and reason. Any approach and interpretation otherwise would

be against the very concept of a legislature being an ideal body that commits no mistakes, does not waste words, does not indulge in superfluities and aims not at perplexities but certainties.

14. Mr. Dalvi next submitted that rejection of his contention would result in injustice to the accused who would be greatly prejudiced at the trial by the delay in launching prosecution. There is no cause for any such apprehension. The resultant prejudice, if any, because of delay may be a good contention on merits of the prosecution. As already indicated supra delay may, in a given case, be a circumstance against a prosecution. Staleness may weaken a prosecution and render it lame. But that by itself will not warrant a summary dismissal of a prosecution not otherwise barred by limitation. Moreover, mere delay is not synonymous with prejudice. There is also no singular answer to the contention on prejudice. Much will depend on the ever changing facts and facts of each case as also on the nature of the prejudice, the cases thereof and the consequence flowing therefrom.

15. The learned public prosecutor Mr. Kotwal referred to two unreported judgments of this Court one of (19th October, 1978 by Sawant, J., in Criminal Appeal No. 859 of 1977), and the other of (3rd November, 1978 by Jahagirdar, J., in Criminal Revision Application No. 136 of 1978). These decisions do not, however, decide the question arising in the instant appeal. The question before Sawant, J., was whether, even to offences occurring prior to the coming into force of the Code of Criminal Procedure, 1973, the provisions of the said Code relating to periods of limitation would or would not apply and whether prosecutions in respect of even such prior offences must be instituted within the period of limitation laid down thereunder. Such is not the question arising in the present appeal. Before Jahagirdar, J., the controversy related to the interpretation of section 473 of the Code and the power thereunder of the Court to extend the period of limitation in certain cases. Such again is not the question in the present appeal.

16. Also cited before me was a ruling of the Supreme Court in Surinder Mohan Vikal Vs. Ascharaj Lal Chopra, Going through the same, I find it to have no relevance to the question herein arising. Undisputed position therein was that the matter was governed by Clause (a) of sub-section (1) of section 469 of the Code, and consequently the period of limitation commenced on the date of the offence. The only surviving dispute was as to when, in a case relating to defamation, could the said offence be said to have taken place on the date of the complaint containing the defamatory statements or on the date when an order of acquittal is passed in a prosecution based on that complaint ? In that context, the Supreme Court held that the period would commence on the date of the complaint containing the defamatory allegations and not on the date when an order of acquittal is rendered in a prosecution based on such complaint. Moreover, it has been expressly observed by the Supreme Court in the said ruling that :---

"It is not urged before us that Clauses (b) or (c) of the sub-section [sub-section (1) of section 469] or sub-section (2) have any bearing on the present controversy."

17. The said decision also, therefore, can hardly be of any avail while deciding the question arising in the instant appeal. The inter-relation and the action and reaction inter se between Clauses (a), (b) and (c) of sub-section (1) of section 469 of the Code and the various permutations and combinations involved therein and arising therefrom for consideration while deciding the question of commencement of the periods of limitation there under was not a question raised either before the Supreme Court in the aforesaid ruling or in the above-cited two unreported decisions of this Court. Indeed, both the learned Advocates Mr. Dalvi and Mr. Kotwal informed me that the filed of interpretation involved in this appeal is not cover either way by any direct authority. One is, therefore, on an hitherto unexplored ground terra-incognito. If one may say so.

18. Bearing in mind all these factors and circumstances as also the scheme of Chapter XXXVI and its object, my conclusions on the question arising and framed for adjudication are as follows:

(i) The period of limitation will commence, under Clause (a) of sub-section (1) of section 469, "on the date of the offence", if, on that date itself, there is knowledge also of the offence as also identity of the offender. Clause (a) will not apply, if, on the date of the offence, there is no knowledge of the offence nor will it apply, if, on the date of the offence, there is knowledge of the offence but there is no identity of the offender. Clause (a) presupposes knowledge of the offence as also identity of the offender.

(ii) The period of limitation will commence, under Clause (b) of sub-section (1) of section 469, "on the first day on which the offence comes to the knowledge" of the person aggrieved thereby or of any Police Officer, if on that date itself the identity of the offender is also known. Clause (b) will not apply, if, on the date specified therein, though there is knowledge of the offence, there is no identity of the offender i.e. though the offence is known, the offender is not known. Clause (b) presupposes identify of the offender.

(iii) The period of limitation will commence, under Clause (c) of sub-section (1) of section 469. "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, whichever is earlier." Clause (c) presupposes knowledge of the offence.

19. Applying the tests formulated above to the undisputed dates in the present case. It is clear that the instant prosecution was not barred by limitation. The date of the offence was 5th September, 1975. The offence was also known on that date but the offender was not known. His identity was first known only by virtue of letter dated 21st November, 1975, by the B.E.S.T. Undertaking to the Traffic Police. The case was thus clearly governed by Clause (c) of sub-section (1)

of section 469 of the Code. The prosecution instituted on 18th March, 1976 was thus much within the period of limitation of six months (prescribed u/s 468(2)(a) of the Code) from the date when the identity of the offender (the accused herein) was, on receipt of the letter dated 21st November, 1975, first known to the Police Officer making investigation into the offence. The learned Magistrate was, therefore, wrong in holding that the complaint was not within limitation. His finding in that behalf is set aside.

20. In the result, this appeal is allowed. The impugned order dated 30th September, 1976 is set aside and the matter is sent back to the learned Metropolitan Magistrate for proceeding further with the case and for bearing and disposing of the same on merits and in accordance with law.