
(2001) 03 JH CK 0023

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 1816 of 2001

Surendra Prasad Keshri

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 24, 47

Citation : (2001) CriLJ 2471

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Kumar Gupta, C.J.—The offence patently seems to be time barred. The Court, without any application of mind, appears to have mechanically rejected the petitioner's application for dropping the proceedings in terms of Section 468. Cr PC merely because the cognizance earlier had been taken by the learned Chief Judicial Magistrate, Dhanbad, and after taking cognizance the case was transferred to the learned Judicial Magistrate.

2. I, have perused the order dated 14.12.2000 and find that the only ground on which the petitioner's application filed u/s 468, Cr PC was dismissed is that the cognizance of the case earlier was taken by the Superior Court. The observations of the trial Court are as follows :

".....In this case the cognizance has been taken by the superior Court and the cognizance is still good enough till today."

3. It is only on the basis of the aforesaid observation that the petitioner's application has been dismissed by the learned court below. He has not at all discussed or considered as to whether the petitioner's application had any merit or not with reference to Section 468, Cr PC, and as to whether the offence was time barred or not. Merely because a superior Court, or any other Court had

earlier taken cognizance of the case did not disentitle the accused, at a later stage, to take a plea before the trial Court that the taking of the cognizance of the case was hit by Section 468, Cr PC because it was barred by limitation. It is quite common that at the initiation of the prosecution, cognizance is taken and processes issued to the accused. It is only after that stage that an accused may come to a court and ask for the dropping of proceedings on the ground that the offence is time barred. The earlier taking of the cognizance, therefore, cannot stand in the way of the Court in considering the request of the accused on its merits because if even at the later stage the Court finds that the taking of the cognizance was barred by limitation in view of Section 468, Cr PC, it has no option but to dismiss the prosecution case.

4. In the present case, the allegation is that the alleged occurrence had taken place on 30.7.1997 and the cognizance was taken on 5.6.2000 for an offence allegedly committed u/s 24 of the Standards of Weights & Measures (Enforcement) Act, 1985, punishable u/s 47 thereof and the punishment prescribed is fine of upto Rs. 500/-. Patently, therefore, in terms of Section 468, Cr PC taking of cognizance of such a case was barred by limitation. These facts were highlighted by the petitioner in his application filed u/s 468, Cr PC. Had the learned Magistrate considered these facts, he would have returned the finding that taking of the cognizance was barred by limitation. He did not do so. Instead, he merely went by the earlier order taking cognizance, which actually was under challenge before him. Whether an earlier order taking cognizance is passed by a superior Court or not is immaterial to an application filed u/s 468, Cr PC. Whenever the accused brings to the notice of the court the fact that the cognizance was taken with respect to a time barred offence, on that ground alone, the proceedings should be dropped. If such a fact was brought to the notice of the Court, the bounden duty of the court was to consider such an application on the basis of such averments and pass order thereupon on its merits, being uninfluenced by the fact that earlier cognizance was taken by some other court, superior or otherwise.

5. For the aforesaid reasons, this petition is allowed and the proceedings in the complaint case (W.M. Case No. 345 of 2000) as also the order taking cognizance are quashed and set aside and the impugned order passed by the learned Judicial Magistrate, Shri V. Banerjee, Dhanbad on 14.12.2000 is also set aside with all consequences,

6. Petition allowed.