

(2007) 03 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 20474 of 1997

Uma Maheshwar Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 379, 411

Citation : (2007) 4 PLJR 43

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as "the Code") has been filed for quashing the order dated 8.8.1997 passed by Sri Ravi Nath Verma, VIth Additional Sessions Judge, Chapra in Cr. Revision No. 160/95 whereby he affirmed the order dated 31.7.1995 passed by Sri Arvind Kumar Srivastava, Judicial Magistrate, 1st Class, Chapra in Tr. No. 565/95 whereby he had framed charges against the petitioners for the offences under Sections 379 and 411 with 34 of the Indian Penal Code. It appears that on 28.6.1976 informant Janardan Prasad filed an application before the Superintendent of Police, Saran at Chapra alleging therein that on 27.6.1976 one Nawal Kishore Singh informed him that the petitioners alongwith others came variously armed and started cutting Sisum tree from his land bearing survey plot No. 457 situated within Mauza Rasulpur. The informant's father being an old person reached anyhow and asked as to why they were cutting his tree, upon which Uma Maheshwar Prasad ordered his two sons to assault him. In this way accused persons took away the log of Sisum tree worth Rs. 400/- by loading it on a cart on the door of Uma Maheshwar Prasad Singh and on the same day half of the log was taken to Chapra. On the basis of the said application the Police registered Amnaur PS. Case No. 9(6)/76 and after investigation submitted final form in the shape of charge-sheet. The learned Magistrate, Saran at Chapra by

order dated 14.2.1979 refused to take cognizance on the basis of the charge-sheet submitted by the police and remitted the matter u/s 156(3) of the Code for further investigation. He adjourned the case awaiting supplementary final form. It appears from Annexure-5 that later on by order dated 20.1.1994 the learned Magistrate in session of the case after condoning the delay took cognizance in the case under Sections 379 and 411/34 of the Penal Code. Thereafter, a petition was filed on behalf of accused petitioners to discharge them from the case on the ground that on the basis of allegation no case against them is made out. The said matter was heard and the learned Magistrate by order dated 31.7.1995 refused the prayer against which Cr. Rev. No. 160/95 was preferred before the Sessions Judge, Saran at Chapra and the same was heard by VIth Additional Sessions Judge who by order dated 8.8.1997 dismissed the revision and affirmed the order of learned Magistrate. Against the said order dated 8.8.1997 petitioners have preferred present application for quashing before this Court.

2. The submission of learned counsel for the petitioners is that though the alleged occurrence took place on 27.6.1976 but the cognizance was taken in the case on 20.1.1994 much after expiry of period of limitation as provided u/s 468 of the Code. His further submission is that before condoning the delay the learned Magistrate did not give any notice to accused petitioners which is mandatory in nature. Learned counsel in support of his contention referred to a decision of the Supreme Court reported in AIR 1995 Supreme Court 231 given in the case of State of Maharashtra vs. Saradachandra Vinayak Dongre. He also pointed out that the learned Magistrate without assigning any reason has condoned the delay.

3. Section 468 of the Code reads as follows:-

"468. Bar to taking cognizance after lapse of the period of limitation.- (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.

(3) 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.

4. As said above in the present case the cognizance has been taken u/s 379 and 411/34 of the Penal Code. The maximum punishment provided in Section 379 or

411 of the Code Is imprisonment upto three years or with fine or with both. Now, as per clause (c) of sub-section 2 of Section 468 of the Code the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Therefore, cognizance should have been taken by 27.6.1979. The cognizance in the present case has been taken on 20.1.1994 after condoning the delay. In the order dated 20.1.1994 the learned Magistrate has not assigned the reason for condoning the delay. It appears from the order of cognizance that no notice was given to the petitioners accused before condoning the delay. As mentioned above, it is also the contention of the petitioners' counsel that they had no knowledge of the order taking cognizance as no notice was served upon them. In the decision relied upon by the petitioners at paragraph-9 the Hon'ble Supreme Court has observed as follows:-

"Since the Chief Judicial Magistrate condoned the delay for launching the prosecution without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties."

5. Learned counsel further relied on a decision given in the case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, in which the scope of Sections 468 and 473 of the Code was examined and the Apex Court observed that the power u/s 468 or 473 can be exercised only when the court is satisfied on the extension of period of limitation that the delay has been properly explained or that it is necessary to do so in the interest of justice.

6. As mentioned above in the impugned order the learned Magistrate has not assigned any reason for condoning the delay. He has also not mentioned that the delay has been properly explained. No notice before condoning the delay was given to the petitioners-accused. That being the position it has to be held that the order of cognizance dated 20.1.1994 is not sustainable in the eye of law.

7. Further submission of learned counsel is that, by order dated 14.2.1979 learned Chief Judicial Magistrate refused to take cognizance on the basis of chargesheet submitted by the Police and directed the Officer Incharge of Amnour P.S. u/s 156(3) of the Code to make further investigation in the case and adjourned the matter to another date awaiting supplementary final form. His further submission is that the Investigating Officer did not conduct any further investigation and submitted charge-sheet under Sections 379/411/34 of the Penal Code on the same materials collected earlier and this time learned Judicial Magistrate in session of the matter without looking into the previous order passed in the case by order dated 20.1.1994 took cognizance against the petitioners under Sections 379/411/34 of the Penal Code. Learned counsel in support of his contention placed reliance on a decision reported in Yamuna Pathak Vs. The State of Bihar and Another, .

8. It appears from the order of learned Sessions Judge passed in Cr. Revision 160/95 that after submission of chargesheet, accused persons filed a petition not to take cognizance against them on the basis of police report as no offence was made out against them. After hearing both sides learned Chief Judicial Magistrate, Chapra by order dated 14.2.1979 directed the officer incharge of Amnaur police station u/s 156(3) to make further investigation and adjourned the matter for submitting supplementary final form but till 4.7.1998 supplementary final form was not received. It further appears from the order of learned Sessions Judge that by order dated 22.7.1988 a report was submitted in the court stating therein that in the instant case charge-sheet has already been filed on 31.8.1977 and so there is no need to submit any supplementary final form. By order dated 20.1.1994 learned Chief Judicial Magistrate, Chapra took cognizance against the accused persons after condoning the delay on the basis of charge-sheet which was already on record from before. Thus, I find substance in the contention of learned counsel that the Investigating Officer did not conduct any further investigation and submitted charge-sheet under Sections 379/411/34 of the Penal Code on the same material collected earlier. In the decision relied upon by learned counsel it has been Observed that in such situation the order taking cognizance cannot be sustained and is liable to be quashed. In paragraphs 10 and 11 of the above decision it has been observed as follows:-

"10. In the instant case, no further investigation appears to have been held and no fresh or additional evidence has been obtained which was not available during the investigation held before submission of the chargesheet No. 19, dated 17.3.1985. What has been done is reconsideration of the evidence which was already before the investigation agency prior to submitting the first charge-sheet No.19 dated 17.3.1985 after consideration of which the learned Chief Judicial Magistrate had discharged petitioner Yamuna Pathak by his order dated 6.7.1985.

10. In view of the above, we are of considered view that the charge-sheet No. 49, dated 17.3.1989, which has been called supplementary charge-sheet is not a supplementary charge-sheet as envisaged u/s 173(8) of the Code of Criminal Procedure. It is a subsequent charge-sheet submitted on the basis of the same material which had already been collected before submission of charge-sheet No.19,dated 17.3.1985."

9. Learned APP though supported the impugned order but conceded that from the order of learned Sessions Judge it appears that the Investigating Officer did not make any further investigation in the matter nor submitted any supplementary charge-sheet. Thus from what has been mentioned it is clear that the learned Chief Judicial Magistrate, Chapra took cognizance on 20.1.1994 on the basis of the same material which was available before him since 14.2.1979. In the aforesaid facts and circumstances, to prevent the abuse of the process of the Court this application is allowed and the order impugned are hereby quashed.