

(2006) 04 OHC CK 0040
In the Orissa High Court
Case No : CRLMC No. 1221 of 2004

Upali Surajita Dhal and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 11-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 467, 468, 468(2), 482
Penal Code, 1860 (IPC) — Section 294, 34, 448, 506, 506(1)

Citation : (2006) CLT 641 (Suppl CrI) : (2006) CriLJ 3097 : (2006) 1 OLR 767 : (2006) OLR 641 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.S. Das, for the Appellant; G.N. Mohapatra, for Opp. Party No. 2-informant, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—Invoking inherent jurisdiction of this Court u/s 482 CrPC the petitioners who are accused in ICC No. 24 of 2004 in the Court of the SDJM, Jajpur have prayed for quashing the order of the Court below passed on 27th March, 2004 taking cognizance of offences under Sections 448/294/506(1)/34 IPC.

2. Opposite party No. 2 who is an Assistant of the Postal Department and was posted at the S.B. Counter of the Jajpur G.P.O. filed a complaint on the basis of which the aforesaid complaint case was registered before the Court below alleging that on 12th May, 2001 at about 13.30 hours the petitioners along with three others came to the Jajpur G.P.O. and accused petitioner No. 1- Upali wanted to withdraw of a sum of Rs. 1,500.00 from her A/c No. 56280. That being a Saturday, the counters of the GPO were closed since 1.00 p.m. and the complainant told the said fact to the accused-petitioners. Being enraged, the petitioners abused the complainant, threatened to assault him and tried to coerce him to pay the amount on withdrawal. With regard to the said incident the

complainant filed an FIR at the local police station but as no steps were taken by police he filed the aforesaid complaint petition before the Court below and the said Court has taken cognizance of offences under Sections 448/294/506(1)/34 IPC.

3. It is submitted by the learned Counsel for the petitioners that petitioner No. 1 is a practising advocate at Jajpur. According to the petitioners, being enraged by the fact that an award had been passed by the Consumer Court against the complainant at the behest of the petitioners, the aforesaid false and frivolous complaint case had been filed by the complainant against them. Even otherwise, according to the petitioners, as the offences were alleged to have been committed by them on 12th May, 2001, cognizance thereof could not have been taken on 27.3.2004 by operation of law of limitation. Relying upon Section 468 CrPC, it is submitted by their learned Counsel that the Court below acted illegally and with material irregularity in taking cognizance of the alleged offences beyond the period stipulated to do so under CrPC.

At the other hand learned Counsel for the complainant-opposite party No. 2 submitted that the complaint petition had been filed before the Court below in time and the submissions advanced by the learned Counsel for the petitioners are untenable.

4. The rule of limitation, it is well settled, Is not meant to destroy the rights of parties, but then it is meant to see that parties do not resort to dilatory tactics within a time fixed by the Legislature. Section 467 CrPC clearly stipulates that period of limitation means "the period specified in Section 468 for taking cognizance of an offence". Section 468 stipulates that except as otherwise provided in the Code, no Court shall take cognizance of offences of the category specified in Sub-section (2) after expiry of the period of limitation. The period of limitation is clearly stipulated in Sub-section (2) of Section 468. In the present case, so far as offence u/s 294 IPC is concerned, the same if proved is punishable with imprisonment for three months, or fine, or both. Similarly, offence u/s 448 IPC is punishable with imprisonment for one year or fine of Rs. 1,000.00 or with both. As per Sub-section (2) of Section 468 CrPC the period of limitation for taking cognizance in both the aforesaid offences was one year.

5. As per the complaint petition all the offences had been allegedly committed in the year 2001. Cognizance thereof had been taken in the year 2004. Both the offences under Sections 294 and 448 IPC being punishable with imprisonment for a term not exceeding one year, the period of limitation for taking cognizance is also one year and was thus barred by limitation by 27.3.2004 when the Court below took cognizance. That apart if the allegations made in the complaint petition are considered to be true then also a post office being a public place and Saturday being a working day, entering into a post office does not satisfy the basic ingredients of offence u/s 448 IPC. A reading of the entire allegations made in the complaint petition throws a cloud of suspicion with regard to commission of any offence u/s 506 IPC. The allegations appear to be super-imposed and are

not believable. In the aforesaid scenario I have no hesitation to quash the impugned order Annexure-2.

6. Accordingly, this Court allows this CRLMC and quashes the impugned order Annexure-2.