
(2005) 08 AP CK 0120

In the Andhra Pradesh High Court

Case No : Criminal Rev. Case No. 1263 of 1999

Vinayak Steels Ltd. and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 44(2), 448, 468, 468(2)
Electricity Act, 1910 — Section 39, 44
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 120B, 379, 406, 498A

Citation : (2005) 2 ALD(Cri) 723 : (2006) 1 ALT(Cri) 356 : (2005) CriLJ 4337 :
(2006) 1 RCR(Criminal) 375

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P.V. Vidyasagar, SC representing D.V. Nagarjuna Babu, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This revision petition is filed against the order of the Judicial Magistrate of First Class, Shadnagar in Criminal Misc. Petition No. 1930 of 1998 dated II-6-1999 in C.C. No. 107 of 1999.

2. Crime No. 4 of 1999 was registered by the Vigilance Anti-power Theft Squad, of A.P.S.E.B., Nalgonda for the offences under Sections 120-B and 379, IPC and Sections 39 and 44 of the Indian Electricity Act, 1910 for theft of electricity by meddling with the wires in the meter board. The loss was assessed at Rs. 3,63,42,021 /-. The offence was detected on 20-3-1991. After completion of investigation, the charge sheet was laid on 19-3-1994. The Court returned the charge-sheet three times for compliance of certain objections. Finally the charge-sheet was presented on 6-8-1998 along with a petition covered by Criminal Misc. Petition No. 1930 of 1998 u/s 473 read with 468, Cr. P.C. requesting to take the charge-sheet on file. The lower Court allowed the petition through the order dated 11-6-1999 by taking the charge-sheet on file after condoning the delay in

representation.

3. The petitioners are the accused in C.C. No. 107 of 1-999. They are challenging the order of the lower Court in condoning the delay and taking cognizance of the offences against them. The petitioners are contending that though the charge-sheet was filed within the period of limitation, there was inordinate delay in representing the same, and there was no proper explanation for the delay. The lower Court instead of considering whether there were sufficient grounds to condone the delay, took cognizance of the offences on the sole ground that the Electricity Board was put to huge loss to a tune of Rs. 3,63,42,021/-, therefore, the delay must be condoned in the interest of justice, otherwise, the petitioners would go unpunished. The above observation made by the lower Court amounts to pre-judging the case against the petitioners. The lower Court ought to have observed that taking cognizance of the offence was beyond the period of limitation, and ought to have acquitted the petitioners. Since the case is pending for a long time, the Court ought to have refused to take cognizance of the offences.

4. In the light of the contentions of the revision petitioners, the point for consideration is :

Whether the lower Court is justified in condoning the delay in representing the charge sheet and whether the order of lower Court taking cognizance of the offence is liable to be set aside ?

Point:

5. This is a case of pilferage of energy by the first petitioner steel factory. A case of pilferage of energy was registered on 22-3-1991 by the Anti-Power Theft Squad, A.P.S.E.B. West Zone, Hyderabad. The loss of energy was provisionally assessed at Rs. 3,63,42,021/-. After completion of the investigation a charge-sheet was laid on 19-3-1994 i.e., within three years from the date of registration of crime. On 27-3-1991 the petitioners filed CrI. M.P. No. 251 of 1991 u/s 437, Cr. P.C. before the lower Court seeking permission to surrender, but the learned Magistrate dismissed the petition on the ground that the case is under investigation. On 1-4-1991 the petitioners filed another petition u/s 44(2) Cr. P.C. The Court allowed the same and remanded the petitioners to judicial custody during the pendency of investigation. In connection with the above enquiry, the Sessions Court, Mahabubnagar addressed the Judicial Magistrate of First Class, Shadnagar to send the crime record and the record in CrI. M.P. Nos. 205 and 251 of 1991. The record was accordingly sent to the Sessions Court on 29-9-1992. Subsequently, when the matter was taken to the High Court, the Sessions Court sent the said record to the High Court on 31-3-1993. On 19-3-1994 the charge-sheet was filed by the police in the Court of the Judicial Magistrate of First Class, Shadnagar. After receipt of the record from the High Court the Sessions Court returned the same to the Magistrate at Shadnagar on 19-8-1997, the crime papers were received by the said Court on 20-9-1997. After receipt of the crime

papers the charge-sheet was returned by the learned Magistrate for the first time on 22-9-1997 i.e. 3 years 6 months after the date of filing of the charge-sheet with the following objections :

(0) Photos taken by L.W. 10 in respect of scene are not filed with negatives.

(1) The case property was not deposited.

(2) Case property from C.E. not brought.

The charge-sheet was re-submitted on 22-4-1998 i.e. 7 months after the date of return, by-mentioning the following :

(1) The case property was already deposited through F.S.I., Hyderabad.

(2) The photos would be submitted at the time of trial.

On verification of the record, the office noticed that the photos and negatives were filed along with the charge-sheet, and they are available in the Court. The Court again returned the charge-sheet on 25-4-1998 i.e. three days after re-submission, with the following objections :

The case property from C.C. (Director of Electronics Test and Developments, Kachiguda, Hyderabad) is not deposited and the C.E. report riot filed.

The charge-sheet was re submitted on 15-7-1998 i.e., after two months 20 days with the following compliance endorsement:

The C.E. report was received by the Hon"ble Court. The case property will be deposited in the Court after collecting the same from the F.S.I. Director of Electronics Test, Hyderabad.

On 31-7-1998 (16 days later) the charge-sheet was again returned for the third time with the following objections :

(1) The charge-sheet may be, filed after depositing the meter box,

(2) State how the charge-sheet filed" is within time.

(3) A.7 has to be arrested.

(4) The charge-sheet cannot be taken on file as the limitation expired.

On 6-8-1998 i.e. 6 days latter, the charge-sheet was re-submitted to the Court com plying the objections. On 11-6-1999 i.e., 10 months after the re-presentation the Court. took the charge-sheet on file mentioning that all the objections were complied with and, the charge-sheet was in order.

6. The petitioners did not dispute the., above sequence of events subsequent to the date of filing the charge-sheet and those,, events clearly indicate that in between the; date of filing the charge-sheet and the date of taking it to file, it remained with the Court; for 4 years 4 months and ,19 days and the file remained with the Investigating Offence for ,9 months and 26 days. The delay

occurred in the court was due to transmission of files from the Magistrate's Court to the Sessions Court and from Sessions Court to the High Court, therefore, this delay can-not be attributed to the Investigating Officer. The delay occurred at the instance of the Investigating Officer in re-submitting the file on all the three occasions was only 9 months, and 26 days, which Cannot be treated as an abnormal delay in answering the queries, raised by the Court,

7. In the light of the above circumstances-,¹ it has to be examined whether the lower Court was justified in condoning the delay and taking cognizance of the offences.

8. The learned Senior Counsel Sri. P.V. Vidyasagar representing the petitioners laid stress on two grounds viz. 1) there was inordinate delay in taking cognizance of the offences; and (2) allowing the petition on the ground of the Electricity Board sustaining huge loss to a tune of Rs 3,63,42,021/- is not warranted while considering the-inordinate delay in taking cognizance.

9. Section 468 of the Code of Criminal Procedure, 1973 speaks about the bar of limitation on prosecutions. It 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 the year but not exceeding three years. (3) For the. purposes of this section, the period of limitation, in relation- to offence which may be tried, together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the ease may be, the most severe punishment.

10. Section 473 of the Code of Criminal Procedure provides the extension of the period, of limitation, in certain cases. It reads as follows :

473. Extension of period of limitation in certain cases:

Not Withstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, 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 interest of justice.

11. The Supreme Court of India elaborated the scope of Sections 468 and 473 of the Code of Criminal Procedure in the following judgments :

12. In *State of Punjab Vs. Sarwan Singh*, the Supreme Court while dealing with the scope and object of Section 468, Cr. P.C. held as follows (para 3) :

The object of Criminal P.C. in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence.

13. In *Arun Vyas and Another Vs. Anita Vyas*, the Supreme Court dealt with a case where the Magistrate had taken cognizance of the complaint filed by the wife under "Sec. 498-A, IPC without taking note of the fact that the complaint was time barred. The Apex court while deciding the case dealt with the provisions u/s 472 (continuing offence) and 473, Cr. P.C. and held that Section 473 has overriding effect over all other provisions of Chapter XXXV of Cr. P.C. In the relevant context, the Supreme Court observed as follows :

The essence of the offence in Section 498-A, IPC is cruelty as defined in the explanation appended to that section. It is a "continuing offence and on each occasion on which the respondent wife was subjected to cruelty; she would have a new starting point of limitation. The last act of cruelty was committed against the respondent wife within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent wife in the complaint to Additional. Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 of Criminal P.C. the period of limitation commenced for offences under Sections 406 and 498-A, IPC from October 13, 1988 and ended on October 12, 1991. But the charge-sheet, was filed on December 22, 1995, therefore, it was clearly barred by limitation u/s 468(2)(c) Cr. P.C. Complaint, however, cannot be dismissed without considering provisions of Section 473, the second limb of which empowers Court to take cognizance of offence after period of limitation if it is satisfied on facts and circumstances that it is necessary as to do in the interest of justice (para 13).

14. In *Vanka Radhamanohari (Smt) Vs. Vanka Venkata Reddy and Others*, the Supreme Court held that the bar of limitation to take cognizance u/s 468, Cr.P.C. is not absolute. Wherever Section 468 is applicable, the Court must consider the applicability of Section 473 and condone the delay having regard to the explanation for the delay and interest of justice. The Supreme Court further observed that the object of introducing Section 468, Cr. P.C. was to put a bar on limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. But that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. The general rule of limitation is biased on the Latin maxim *Vigilantibus, et non dormienti bus, jura*

subveniunt (the vigilant, and not the sleepy, are assisted by the laws).

15. In the above Judgment, the Supreme Court further observed that in view of Section 473, Cr. P.C. a Court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in the absence of proper explanation if the Court is satisfied that it is necessary so to do in the interests of justice. By virtue of the non-obstante clause, Section 473 has an Overriding effect on Section 468, if the Court is satisfied on the facts" : and in the circumstances of a particular case, that either the delay has been properly explained or it is necessary to do so in ; the Interests of justice. As such, whenever the bar of Section 468 is applicable, the , Court has to apply its mind on the question, whether it is necessary to condone delay in the interests of justice. While examining the question, the Court has to take note of the nature of offence, the class to which the Victim belongs, including the background of the victim. "The Supreme Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473; Cr. P.C. For exercise of power u/s 5 of the Limitation Act the onus is on the appellant or the applicant to, satisfy the Court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the, Court to examine not only whether such delay has been explained, but as to whether it is the requirement of the justice to condone or ignore such delay.

16. In State of Himachal Pradesh Vs. Tara Dutt and Another, the Supreme Court held as follows :

7. Section 472 confers power on the , Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in Section 448, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in (he interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognized principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice, In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence.

17. From the above judgments, it is clear that Section 468, Cr. P.C. was introduced to prevent the parties from filing cases after a long time, but, in the

case on hand, the charge-sheet was filed by the investigating officer within the period of three years, which is the limitation prescribed for taking cognizance of the offences covered by this crime. So far as the delay in taking cognizance of the offence is concerned, I have already observed that there was more delay on the part of the Court than at the instance of the prosecution. The learned Magistrate without considering the fact that the charge-sheet remained with the Court for more time than the time of retention by the investigating officer, observed that there was negligence on the part of the investigating agency in re-presenting the charge-sheet after returns and there was no explanation given by the investigating agency as to why the delay was caused in re-presenting the charge-sheet. The major part of the delay occurred at the instance of the Court was on account of transmission of the file from the learned Magistrate to the Sessions Court and from Sessions Court to the High Court, therefore, it cannot be totally attributed to the investigating officer. The learned Magistrate though observed that there was negligence on the part of the investigating agency in re-presenting the charge-sheet, took cognizance of the offence by observing that in the light of the seriousness of the matter and in the interest of justice, ;it is essential to take cognizance of the offences.

18. As per the above mentioned judgments of the Supreme Court, even in the absence of explanation for the delay, if the Court opines that taking cognizance is in the interest of justice, it can condone the delay and take the case on file. Therefore, the learned Magistrate was right in taking cognizance of the offences after condoning the total delay of 9 months and 26 days, caused by the Investigating Officer for representing the charge-sheet in three spells. I do not find any force in the contention raised by the learned counsel for the petitioners on this aspect.

19. Regarding the observation of the Magistrate that the Electricity Board sustained loss to a tune of Rs. 3,63,42,021/- while condoning the delay and taking cognizance, the learned counsel for the petitioners submitted that though the loss was provisionally assessed at Rs. 3,63,42,021/- it was reduced to Rs. 40,57,675-20 ps. in the final assessment and part of the amount was paid by the petitioners to the Electricity Board. He further submitted that the petitioners representing the first petitioner filed Writ Petition No.. 5848 of 1995 before this Court to quash the order of the Superintending Engineer dated 21-11-1994 as modified by the Chief Engineer through the order dated 6-3-1995. This Court while allowing the writ petition through the order dated 9-12-2004 observed that there was no due and proper enquiry, therefore, it is a fit case to conduct proper enquiry after "affording sufficient opportunity to the petitioners. The Court accordingly remitted the matter back to the Chief Engineer for conducting fresh enquiry after giving opportunity to the petitioner by acceding to its request for supply of documents and cross-examination of the officials and panchas.

20. The proceedings for recovery of the amount towards pilferage of energy are different from prosecution of the accused for theft of energy. It is for the

concerned authorities to assess the quantum of loss suffered by the Electricity Board. For the purpose of criminal prosecution, it is immaterial whether (here is any variation in the pilferage charges. Since there is a prima facie material to show that the petitioners caused theft of energy resulting in loss to the Electricity Board. The lower Court was right in observing that it is essential in the interest of justice to take cognizance of the offence. I therefore do not find force in the contention raised by the petitioners on this aspect also.

21. In the light of the above discussion, I do not find any grounds to interfere with -the order of the lower Court. The revision case is accordingly dismissed.