
(1995) 08 CAL CK 0018
In the Calcutta High Court

Case No : Criminal Rev. No. 812 of 1995 & Criminal Revn. No. 812 of 1995

Yukub Ali Saranj and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 468, 473, 482
Penal Code, 1860 (IPC) — Section 147, 323, 379, 427

Citation : (1995) 2 CALLT 461

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Himangsu De, Arunabha Jana and Syam Sundar Mahapatra, Sekhar Basu, for the Appellant; Rabi Sankar Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Nripendra Kumar Bhattacharyya, J.—This revisional application u/s 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing of the proceedings being N.G.R. 820 of 1990 and N.C.R. 59 of 1988, arising out of Bauria P. S. Case No. 4 dated 27.4.85 under Sections 147/ 323/379/427 of the Indian Penal Code, pending before the court of the learned Sub-divisional Judicial Magistrate, Uluberia, Howrah.

2. From the record it appears that a duplicate police report was submitted on 30.11.90 against the accused persons for an offence under Sections 323/427 of the Indian Penal Code and the learned Magistrate took cognizance of the offence and directed issuance of process against the accused persons by his order dated 30.11.90.

3. The only submission that has been made before this Court by Mr. Himangsu De, learned Advocate for the accused petitioners, is that the cognizance having been taken beyond the period of three years as contemplated u/s 468 of the Code of Criminal Procedure and as there is no recording of satisfaction of the learned Magistrate in the order assigning any special reasons for taking

cognizance beyond the period of 3 years as contemplated u/s 468 of the Code of Criminal Procedure, the order is illegal, incorrect and imperfect. As such the entire proceeding starting from the order of taking cognizance be quashed.

4. During the course of argument a point arose that where the materials are galore and ubiquitous on record showing what are the; reasons for delay in taking cognizance, that will itself cure the order of taking cognizance even if the satisfaction of the learned Magistrate is not recorded.

5. The assistance of the learned Advocate Mr. Sekhar Basu was called for and Mr. Basu as *amicus curiae* very ably assisted the Court on that point.

6. According to Mr. Basu, Section 473 of the Code of Criminal Procedure, which controls the provision of Section 468 of the said Code speaks that the satisfaction of the learned Magistrate shall be drawn on the fact and circumstances of the case for holding that the delay has been properly explained or that it is necessary to do so in the interests of justice. In the absence of recording of the same there will be materials before the superior court to come to a finding that the learned Magistrate satisfied himself on consideration of the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Materials may be there on record but that will itself not point out or indicate that the learned Magistrate has taken into consideration of the same. In such a situation the mandatory provision of Section 473 would amount to non-compliance. In this context Mr. Basu also referred to Section 144(2) of the Code of Criminal Procedure and pointed out that where the condition was such which does not permit service of notice open the opposite party in that case the learned Megistrate shall have to record his satisfaction that there was an emergent situation prevailing. Likewise, according to Mr. Basu, u/s 473 of the Code of Criminal Procedure; it is imperative upon the learned Magistrate to record his satisfaction on circumspection of the record and on consideration of the same that the delay has been properly explained in case of an application, filed before him or in case where no such application has been filed before him then it is necessary to do so in the interest of justice. But in the instant case nothing has been recorded by the learned Magistrate.

7. Appearing for the State, the learned Advocate Mr. Rabi Sankar Chatterjee on the other hand contended that if there are materials on record such satisfaction need not be recorded by the learned Magistrate.

8. Heard the learned Advocates for the parties and also Mr. Basu who has ably assisted this Court to come to a proper decision in, this matter.

9. The satisfaction as has been embodied in Section 473 of the Codes of Criminal Procedure is a question of subjective satisfaction and not an objective one. Such subjective satisfaction must be derived from the record wherefrom the learned Magistrate shall satisfy himself that the delay has been properly explained on the basis of the materials on record or such delay should be condoned in the interest of justice. Both finding, though alternatively, should be derived from the record

and on the facts and circumstances of the case. If such recording is not in the order, no superior court will be in a position to know whether the learned Magistrate has taken into consideration the materials on record or has passed an order perfunctorily and mechanically. In the instant case, the order of taking cognizance does not show that the learned Magistrate has considered the record. The learned Magistrate simply recorded that duplicate police report has been filed against the accused persons. He accepted the final report and discharged the accused persons in connection with the case. He directed for starting of a separate case and took cognizance and directed issuance of summons against the accused persons. So, from the text of the order it is not apparent that the learned Magistrate considered the materials on record for condonation of delay and did not assign any special reason or record the special reason for which, he has condoned the delay. He has also not recorded that in the interest of justice the delay should be condoned. Interest of justice can be ascertained after taking into consideration the materials on record. There is nothing in the order dated 30.11.90 that he has considered the record. In such circumstances, in my view, the order of taking cognizance beyond the period of three years, as envisaged in section. 468 of the Code of Criminal Procedure, is vitiated and as such the order is illegal, incorrect and imperfect and the same cannot be sustained.

10. For the reasons above, the order of taking cognizance by the learned Magistrate and all subsequent orders thereto are hereby set aside. The entire proceedings in N.G.R. 820 of 1990 and N.C.R. 59 of 1988 are hereby quashed. The revisional application is, accordingly, allowed.

11. In view of my earlier order dated 31.7.95, the Department is directed to place the entire record of this case along with the record of the trial court being tagged to the file before the Administrative Committee for taking appropriate action against the erring Magistrate. The matter should be brought to the notice of the Zonal Judge for his information. Let the records be also placed before him.