

M C Kumar Vs. The State Of Karnataka

M C Kumar Vs. The State Of Karnataka

SooperKanoon Citation : sooperkanoon.com/1233393

Court : Karnataka

Decided On : May-24-2021

Judge : H.P.Sandesh

Appeal No. : CRL.P 5293/2020

Appellant : M C Kumar

Respondent : The State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF MAY, 2021 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH CRIMINAL PETITION NO.5293/2020 BETWEEN:

1. M.C. KUMAR, S/O LATE M. CHINNAPPA, AGED ABOUT70YEARS, MEPHERSON ROAD, COOKE TOWN, BENGALURU - 560 005.

2. BALAKRISHNA @ BALU, S/O LATE M. CHINNAPPA, AGED ABOUT66YEARS, R/AT No.33/21, THAMBUCHETTI ROAD, COX TOWN, BENGALURU - 560 005.

3. RAKESH, S/O M.C. KUMAR, AGED ABOUT42YEARS, MEPHERSON ROAD, COOKE TOWN, BENGALURU - 560 005.

4. SUMANTH BALAKRISHNA, S/O BALAKRISHNA, AGED ABOUT 35 YEARS, R/AT NO.33/21, THAMBUCHETTI ROAD, COX TOWN, BENGALURU - 560 005. PETITIONERS (BY SRI A.N. RADHA KRISHNA, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, BY PULAKESHINAGARA POLICE, 2 BENGALURU. REP. BY THE STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BENGALURU - 560 001.

2. SMT. VENKATAGIRI LAKSHMAMMA @ BANGARU, W/O LATE BANGARAPPA, AGED ABOUT 68 YEARS, R/AT NO.60, 1ST CROSS, SWAMY VIVEKANANDANAGARA, BENGALURU - 560 033. RESPONDENTS (BY SRI H.R. SHOWRI, HCGP FOR R-1; SRI K. SATISH, ADVOCATE FOR R-2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE

ORDER

DATED 03.07.2018 PASSED BY THE LEARNED XI ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU IN C.C.NO.53027/2020 (CR.NO.50/2017 OF PULAKESHINAGARA POLICE), TAKING COGNIZANCE, REGISTERING CASE AND

ORDER

ING PROCESS TO THE PETITIONERS FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 427, 448, 143, 147 R/W SECTION 34 OF IPC AND TO QUASH THE PROCEEDINGS. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 12.04.2021, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C, praying this Court to set aside the order dated 03.07.2018 passed by the XI Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.53027/2020 taking cognizance, registering case and ordering process to the petitioners for the offences punishable 3 under

Sections 427, 448, 143, 147 read with Section 34 of IPC and to quash the entire proceedings.

2. The factual matrix of the case is that respondent No.2 filed a complaint against the petitioners making the allegation that on 03.01.2017 these accused persons trespassed the house, caused damage to the house, threatened her and thrown out the vessels outside the house and hence she gave the complaint on the very same day. The police after receiving the complaint, acknowledged the complaint and again complaint was given on 22.02.2017 and the police have registered the case for the above offences and thereafter investigated the matter and filed the charge-sheet against the petitioners herein. The learned Magistrate after receiving the complaint, took the cognizance vide order dated 03.07.2020 and hence the petitioners are before this Court.

3. The main contention of the petitioners before this Court is that the maximum punishment for the offences which have been invoked against the petitioners herein is two years and hence the learned Magistrate ought not to have taken the cognizance after three years and hence committed an error in taking the cognizance. The learned counsel for the petitioners brought to the notice of this Court the relevant offences and also Section 468 of Cr.P.C. The learned counsel would contend that the incident was taken on 03.01.2017 and case was registered on 22.02.2017 and final report was filed on 30.06.2020 and cognizance was taken after lapse of three years. Hence, it requires interference of this Court.

4. The second contention of the learned counsel for the petitioners is that even on merits also no case has been made out against the petitioners to subject them for trial. The learned counsel would contend that the building was in dilapidated condition and any moment it would have fallen due to rain and cause danger to respondent No.2. Hence, the same was narrated to respondent No.2 and respondent No.2 agreed to vacate the house in the first week of January 2017 and accordingly she removed all the materials from the house and voluntarily herself and her son removed the household articles and after vacating the house, the same was demolished. The learned counsel would contend that when the complaint was given on 03.01.2017, petitioner No.1 was secured to the police

station and he gave the reply on 04.01.2017 and the police have 5 registered NCR and again registered the case against the petitioners herein on subsequent complaint and hence there cannot be any criminal prosecution against the petitioners herein.

5. The learned counsel for the petitioners in support of his arguments relied upon the judgment of the Apex Court in the case of STATE OF PUNJAB v. SARWAN SINGH reported in AIR 1981 SC1054 wherein the Apex Court comes to the conclusion that if the offence is punishable for two years, the Trial Court ought not to have taken the cognizance after three years. The Apex Court discussed Sections 468(2) and 469 of Cr.P.C. and comes to the conclusion that the object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India and hence the same is barred by limitation.

6. The learned counsel also relied upon the judgment of this Court in the case of SRI DEENA v. STATE OF KARNATAKA reported in 1987(1) II Crimes 518, wherein this Court relying upon the judgment in the case of Sarwan Singh (supra) came to the conclusion that taking of cognizance is barred by limitation 6 and no application for condonation of delay is filed by the prosecution. Any prosecution, whether by the State or the private complaint must abide by the letter of law as provided under Section 468 of Cr.P.C. or take the risk of the prosecution failing on the ground of limitation.

7. The learned counsel also relied upon the judgment of this Court in the case of VENKAPPA v. REGIONAL TRANSPORT OFFICER AND ANOTHER reported in 1978(2) KAR.L.J.

457, wherein this Court had discussed Section 473 of Cr.P.C. regarding seeking permission to condone the delay.

8. The learned counsel also relied upon the judgment of this Court in the case of STATE OF KARNATAKA v. VEDAVATI reported in 1978 CRI.L.J.

1375, wherein this Court held that condonation of delay, exercise of judicial discretion, delay not to be condoned as a matter of course and sufficient cause is essential. No application for condonation of delay, held delay could not be condoned.

9. Per contra, the learned counsel for respondent No.2 would contend that the offence is a continuous offence and 7 brought to the notice of this Court Sections 470 and 472 of Cr.P.C. and contend that no limitation applies as contended by the learned counsel for the petitioners. The learned counsel would vehemently contend that the case was registered at the first instance against accused Nos.1 and 2 and other two accused who have been arraigned as accused Nos.3 and 4 and those accused have absconded. The learned counsel would contend that other two accused have been absconded and while filing the charge-sheet also the same is shown in the charge-sheet that those two accused are absconded and sought for issuance of NBW against them and hence limitation does not arise.

10. The learned High Court Government Pleader appearing for respondent No.1 - State would submit that the complaint is not barred by limitation and the complaint is filed within the limitation and there is no bar for taking the cognizance as contended by the learned counsel for the petitioners. He also reiterated that accused Nos.3 and 4 have been absconding and the same has been shown in the absconded column. 8

11. In reply to the arguments of the learned counsel for the respondent No.2 and the learned High Court Government Pleader, the learned counsel for the petitioners would contend that in the complaint only the name of accused Nos.1 and 2 has been shown. In the FIR at the time of registration, the case has been registered against accused Nos.1 and 2 and the other two accused have been falsely implicated as accused Nos.3 and 4 and there is no substantive material against them.

12. Having heard the learned counsel for the petitioners and the learned counsel for respondent No.2 and the learned High Court Government Pleader appearing for respondent No.1, this Court has to analyze the material on record. It is not in dispute that an allegation is made in the complaint that on 03.01.2017 the accused

persons have trespassed the house of the complainant and thrown the house vessels and also household articles and caused damage to the building by using JCB and caused mischief and also caused life threat. The learned counsel for the petitioners brought to the notice of this Court that two complaints are filed, one is dated 03.01.2017 and 9 another is dated 22.02.2017 and also brought to the notice of this Court the endorsement issued by the police.

13. Having perused the complaint dated 03.01.2017, specific allegations are made against accused Nos.1 and 2 that they suddenly came and caused damage to the house in which respondent No.2 was residing and abused and threatened her. On perusal of the complaint dated 03.01.2017, the same has been received on 03.01.2017 at 17.30 hours and NCR No.06/2017 was registered. On perusal of the acknowledgment, which has been relied upon by the learned counsel for the petitioners, it discloses receiving of the complaint and registration of NCR and the same is kept pending for enquiry. No doubt, one more complaint is given on 22.02.2017. The very same allegations are reiterated and in the said complaint. An allegation is made that those two accused persons came along with friends and committed the offence and the said complaint is registered for the above offence. The learned counsel for the petitioners does not dispute the fact that on the date of incident itself complaint was given i.e., on 03.01.2017 and the police acknowledgement also discloses that the complaint was received 10 on the same day and NCR was registered and the same is kept pending for enquiry. When the complaint was received and the same is pending for enquiry and the subsequent complaint is dated 22.02.2017, it cannot be contended that there was a delay in lodging the complaint. It is not in dispute that the charge- sheet is filed after three years of the registration of the case and also it is not in dispute that the learned Magistrate has taken the cognizance. On perusal of the order passed by the learned Magistrate, it is clear that after receiving the complaint he has perused the charge-sheet and its enclosures and held that there are sufficient materials present to proceed against the accused persons for the offences invoked against them. Hence, the cognizance is taken and process is issued. Having perused the order, I do not find any error committed by the learned Magistrate in taking the cognizance. He has perused the charge- sheet and its enclosures and found that there are sufficient materials. Hence, it is clear that he has applied his judicious

mind while issuing process and there cannot be any detailed order while issuing process.

14. The main fundamental question raised before this Court by the learned counsel for the petitioners is that taking of 11 cognizance after three years of the incident is barred by limitation. The learned counsel for the petitioners relied upon several judgments in this regard and also it is an admitted fact that no application is filed under Section 473 of Cr.P.C. for condonation of delay. This Court would like to refer the Constitutional Bench judgment of the Apex Court in the case of SARAH MATHEW v. INSTITUTE OF CARDIO VASCULAR DISEASES AND OTHERS reported in (2014) 1 SCC (Cri) 721. This judgment is on the point which gives answers to the contentions of the learned counsel for the petitioners. The Apex elaborately discussed Sections 468, 469, 470, 473 and Chapter XXXVI and also Sections 466 to 473 of Cr.P.C. The Constitutional Bench held that date relevant for computation of period of limitation is the date when criminal complaint is filed or date of institution of prosecution/criminal proceedings, and not the date when a Court/Magistrate takes cognizance. It is also held that there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. As taking cognizance is application of mind by the Magistrate to the suspected offence, a subjective element comes in. It would be unreasonable to take a view that delay caused by the Court in 12 taking cognizance of a case could deny justice to a diligent complainant. Such an interpretation of Section 468 of Cr.P.C. would be unsustainable and would render it unconstitutional. Furthermore, an anomalous situation would arise if date of taking cognizance is considered to be relevant as cognizance may be taken by Magistrate after the limitation period though the complaint is filed within time. Hence, only harmonious construction which can be placed on Sections 468, 469 and 470 Cr.P.C. is that Magistrate can take cognizance of an offence only if the complaint in respect of it is filed/prosecution/criminal proceedings instituted within prescribed limitation period. Furthermore, complainant or prosecution are entitled to exclude such time as is legally excludable.

15. The Apex Court further held that cognizance is an act of the Court. The term cognizance has not been defined in Cr.P.C. That means taking of cognizance is

application of mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. It is further held that so far as the heading of Chapter XXXVI is concerned, it is well settled that heading or title prefixed to sections or group of sections have a limited role to play in the construction of statutes. They may be taken as very broad and general indicators or the nature of the subject-matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. It is held that penal statutes must be strictly construed. There are, however, cases where the Supreme Court has having regard to the nature of the crimes involved, refused to adopt any narrow and pedantic, literal and lexical construction of the penal statutes. In this case, looking to the legislative intent, the provisions of Chapter XXXVI have been harmoniously construed so as to strike a balance between the right of the complainant and the right of the accused. Besides, Chapter XXXVI is part of the Criminal Procedure Code, which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. The Apex Court in detail discussed and held that date relevant for computation of period of limitation is the date when criminal complaint is filed or date of institution of prosecution/criminal proceedings, and not the date when a Court/Magistrate takes cognizance. 14

16. In view of the principles laid down in the Constitutional Bench judgment, the judgments relied upon by the learned counsel for the petitioners will not come to the aid of the petitioners, as contended by the learned counsel that taking of cognizance is barred by limitation.

17. The learned counsel for the petitioners would contend that NCR was issued and thereafter second complaint is filed and there is no merit and the complainant has already vacated the house on their request. The same is not acceptable at this juncture when the complainant in the complaint has specifically alleged that abruptly the accused persons came and thrown her out from the house and also her belongings including domestic vessels and caused damage to the house by using JCB. Hence, it cannot be accepted at this juncture that the respondent No.2

voluntarily vacated the premises and thereafter they have demolished the building. The fact that they have demolished the building is not in dispute taking note of the averments made in the complaint. The complaint discloses the ingredients of offence under Sections 448 and 427 of Cr.P.C. Hence, it cannot be contended that on merit also there is no 15 case against the petitioners and the learned Magistrate has committed an error in taking the cognizance. I have already pointed out that the learned Magistrate while taking the cognizance has applied his judicious mind and came to the conclusion that there are prima facie materials to proceed against the petitioners herein. Hence, I do not find any merit in the petition to invoke Section 482 of Cr.P.C. to quash the proceedings initiated against the petitioners herein.

18. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed. Sd/- JUDGE MD

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com