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**Court :** Patna

**Decided On :** Jun-05-1997

**Judge :** Prasun Kumar Deb, J.

**Appeal No. :** Criminal Writ Jurisdiction Case No. 299 of 1992 (R)

**Appellant :** Pawan Maroo Alias Pawan Kumar Maroo

**Respondent :** State of Bihar and ors.

**Judgement :**

**Prasun Kumar Deb, J.**

1. The petitioner in this case is the Editor of Hindi daily 'RANCHI EXPRESS' published from Ranchi. It is the contention of the petitioner that this daily has a very wide circulation in the State of Bihar in general and in South Bihar in particular having vast readership in this region.

2. A first information report dated 8.8.1992 was registered against the petitioner on the written information of the then Officer-in-charge of Chakradharpur Police Station (respondent No. 3) wherein it has been stated that he received a written communication from the then Deputy Commissioner, Chaibasa (respondent No. 2) annexed with the written report of one Mahendra Prasad Singh, Chakradharpur, a correspondent of Ranchi Express. In that written report, the correspondent had addressed to respondent No. 2 that he had not sent any report regarding the bomb

explosion in Chandnamari and Banglatanr area at the relevant point of time, the news item of which was published at Ranchi Express dated 8.8.1992. He also denied to have sent the above news by telephone and he had not quoted any person named Bahadur Oraon in this regard. As per the communication received from respondent No. 2. Deputy Commissioner, Chaibasa and the denial being made by the correspondent of Ranchi Express, the news item as published in the daily 'Ranchi Express' of its issue dated 8.8.1992 revealed a prima facie case of incitement of communal disharmony in the area and hence a case was registered under Section 153A of the Indian Penal Code.

3. This petition was filed under Section 482 of the Code of Criminal Procedure originally for quashing the first information report and the investigation of the above mentioned police case. After the petition was admitted, a supplementary affidavit has been filed challenging the cognizance being taken in the case vide order dated 16.1.1997 by the Sub-Divisional Judicial Magistrate, Chaibasa, in G.R. Case No. 265 of 1992 arising out of the same first information report and the police case.

4. Mr. N.N. Sinha learned Counsel appearing for and on behalf of the petitioner submitted that the news item published can in no stretch of imagination be stated to be an incitement for communal disharmony between the two communal or ethnic groups in the area of Chakradharpur. His next submission is that even if there is any case made out, cognizance taken on 16.1.1997 is bad in the eye of law as prescribed under Section 468 of the Code of Criminal Procedure.

5. Mrs. Indrani Sen Choudhuri, learned Standing Counsel No. 1 appearing for and on behalf of the respondents, submitted that whatever contentions are being made for and on behalf of the petitioner can be very well raised before the trying Magistrate concerned as cognizance has already been taken in the case and it cannot be said to be an abuse of the process of the court.

6. It is admitted that at the relevant time there was an incident of bomb explosion and a heavy tension arose at Chakradharpur area because of disputes between the two groups which resulted in clamping of curfew for several days in the area. So, on factual aspect, there is no denial of fact that there was some dispute in the

area between the two groups and hence the administration had to clamp curfew. Whether the news item as published constitutes an offence under Section 153A of the Indian Penal Code or not is the only crux of dispute in this case. If no case under Section 153A of the Indian Penal Code is made out on plain reading of the news item, then the proceeding is definitely bad in the eye of law as there is no prima facie case. So, let me first of all take up the news item for consideration of the first submission made for and behalf of the petitioner.

7. It is the contention of Mr. N.N. Sinha, learned Counsel appearing for and on behalf of the petitioner that few days prior to this publication of the news item, some cartoons were published connecting the Deputy Commissioner, Chaibasa, which aroused the sentiment of the Deputy Commissioner and to satisfy his wrath, he had procured a denial letter from the correspondent of the Ranchi Express at Chaibasa to start criminal case against the petitioner. This is submitted to show the motive of the then Deputy Commissioner, Chaibasa to lodge the criminal case against the petitioner. The news item in Hindi had been annexed as Annexure 2 to this petition. In the first paragraph of that news item, it has been stated that the curfew which was clamped had been interim released on 7th August, 1992, and during that period of relaxation, there was no untoward incident happened but the situation remained tense. In the second paragraph, it has been mentioned that the District administration to protect tranquility and peace ordered for instant firing if any one attempts to break the public peace and tranquility and that Central Force had also reached at Chakradharpur and flag march was done. In the third paragraph, statement of facts had been given regarding the result of bomb explosion. It is stated that due to bomb explosion at Chandnari and Banglatanr mohallas on the previous night, seven persons were seriously injured including the Officer-in-charge of Chakradharpur Police Station and that combing operation was going on door to door in all the Mohallas in search of the assailants and in that course from the house of a Railway employee, some materials for preparation of bomb had been recovered and that in total 23 persons including three Advocates at Chakradharpur had been arrested in connection with attempt to breach of peace. In the next paragraph, it has been mentioned that two veteran criminals in the name of Sanu and Babu had also been arrested. Local M.L. As. Bahadur Oraon and Hibar Guria had visited the affected areas and it was opined by

Bahadur Oraon that because of negligence of the police condition of the area had been deteriorated for which the said incident of bomb explosion between the two veteran criminals and their groups had occurred.

8. On close scrutiny of the news item reading again and again, I did not find anywhere there is any exciting word to wards communal disharmony either ethnic or religious community rather it was made specific in the news item that the incident occurred due to clash between the groups of two veteran criminals.

9. Section 153A of the Indian Penal Code is attracted when any words spoken or written promotes enmity between the two different groups on the grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony. It might be a fact that two veteran criminals who had clashed belonged to two different religion or ethnic groups which caused incitement in two communal groups resulting in communal riots but the news item published is a later on-news regarding the situation after the incident had occurred. It had never stated anything which can give rise to any communal disharmony or prejudicial to maintenance of harmony rather the news item contends the tracts that the situations are going to normality and peace is being restored. Perhaps the statement of the local M.L. As. which was published had hurt the sentiment of the Deputy Commissioner and the Police as in the news item it has been quoted that the local M.L. As. made statement to the effect that deterioration of the situation resulted due to inaction and negligence of the police and the local administration. Thus, from the very news item, I failed to make out any case of communal disharmony. Moreover, for the purpose of making out a case under Section 153A of the Indian Penal Code, there must be an intention to cause disorder or incitement of people to violence. Here, there is no such wordings of incitement or causing disorder. Nothing has been stated in the first information report also regarding the intention of the petitioner for causing disorder of public peace and harmony in publishing the news item. In this respect, the recent judgment of the Apex Court in the case of Balwant Singh and Anr. v. State of Punjab 1996 BCCR (SC) 69 may be referred to.

10. Regarding the second point, on the point of limitation, it is clear that under Section 153A of the Indian Penal Code, the punishment is recorded with imprisonment not exceeding to three years or with fine or with both. Section 468 of the Code of Criminal Procedure has been inserted to put a bar in taking cognizance after the lapse of the period of limitation. Section 468(2)(C) where punishment is for three years then cognizance is barred if the same is not taken within three years from the date of offence. Here, in the present case, the date of offence is 7.8.1992/8.8.1992 and the cognizance has been taken on 16.1.1997 which is definitely bared on the face of it, but there is saving clause under Section 473 of the Code of Criminal Procedure by which the court has power to take cognizance even after the period of limitation in certain cases. The extension of period of limitation can be made by a court while taking cognizance 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 interests of justice, (as per Section 473 of the Code of Criminal Procedure). Although in the section itself, nothing has been mentioned whether there should be an application by the prosecution agency for the purpose of condonation of delay and whether such condonation can be done without hearing the parties or not but the wordings, as mentioned above, it definitely pre-supposes that there must be a prayer from the side of the prosecution for the purpose of condonation of delay and then the same can be heard only after giving due notice to the adverse party or the party who is going to be aggrieved by such condonation. This can be based on the principle of natural justice.

11. Various High Courts have dealt with this matter as to how the limitation as prescribed under Section 468 of the Code of Criminal Procedure can be condoned on the application of Section 473 of the Code of Criminal Procedure. Madhya Pradesh High Court in the case of Krishna Sanghi and Ors. v. The State of Madhya Pradesh 1977 Cri LJ 90, held that natural justice demands that the accused persons must be heard before passing any order with regard to the condonation of delay under Section 473 of the Code of Criminal Procedure, otherwise, a valuable right which had already accrued in favour of the accused persons would be denied in their absence. This judgment of Madhya Pradesh High Court has been followed by the different High Courts i.e. the Andhra Pradesh High

Court in *Bharat Hybrid Seeds and Agro Enterprises v. The State* 1978 Cri LJ 61, then Rajasthan High Court in *Panney Singh and Ors. v. State of Rajasthan* 1980 Cri LJ 339, Allahabad High Court in *Prakash Chandra Sharma v. Kaushal Kishore* 1980 Cri LJ 578, Ultimately, the matter was settled by the Apex Court in the case of *State of Maharashtra v. Sharad Chandra Vinayak Dongre and Ors.* : AIR 1995 SC231 , wherein it has been categorically held that delay in launching the prosecution can only be condoned by giving notice to other side i.e. adverse party or the aggrieved party on the principle of natural justice.

12. Now the position remains the same as that of Section 5 of the Limitation Act. Condonation of delay under Section 5 of the Limitation Act can only be done after giving an opportunity of hearing to the adverse party. Here, in the criminal case, when a right to the accused has already been accrued due to the delay in taking cognizance then the said right can not be taken away without giving proper notice and without giving opportunity of hearing to him. In the present case, it appears that the learned Magistrate took up the matter although there is no prayer or mention in the charge-sheet regarding the condonation of delay, but suo motu, the Magistrate took up the matter and condoned the delay on application of Section 473 of the Code of Criminal Procedure holding that as the investigating agency had to await sanction as required under Section 196 of the Code of Criminal Procedure, the delay was caused in submitting the charge-sheet, and hence, as the same was not in the hands of the investigating agency, the delay was condoned and cognizance was taken, but such finding has taken away the right of the accused when delay in getting the sanction was not due to any tact negligence of the accused concerned then the right of the accused should not have been taken away without giving an opportunity of hearing to him. On that ground also, the cognizance is bad.

13. In view of the observations made above, both on merit and on the point of limitation, I hold that the prosecution is bad and the same is quashed being an abuse of the process of the court.