

Appu Ramani and ors. Vs. the State

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Court : Andhra Pradesh

Decided On : Feb-23-1993

Reported in : 1993(1)ALT370; 1993(1)ALT(Cri)373; 1993CriLJ1974

Judge : G. Radhakrishna Rao and ;Iyyapu Panduranga Rao, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 332 and 353; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 468; Andhra Pradesh Forest Act, 1967 - Sections 29(4)

Appeal No. : Criminal Revn. Case No. 632 of 1991 and Criminal Revn. Petn. No. 626 of 1991

Appellant : Appu Ramani and ors.

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : P. Gangaiah Naidu, ;K.G. Krishna Murthy and ;K. Venkateswara Rao, Advs.

Judgement :

ORDER

1. This Criminal Revision Case came up before this Bench on a reference made by our learned brother A. Gopal Rao, J., on the controversy as to whether the date

of filing of the complaint/charge-sheet in Court has to be taken into account for the purpose of reckoning the period of limitation or whether the date on which cognizance was taken by the Magistrate has to be taken into account for the purpose of reckoning the period of limitation.

2. The petitioners-accused were prosecuted for an offence under Rule 3 of the A. P. Sandal Wood and Red Sanders Wood Transit Rules 1969 read with Section 29(2)(b) of the Andhra Pradesh Forest Act, 1967 and they were convicted under section 29(4)(a)(1) of the Andhra Pradesh Forest Act, 1967 and sentenced to suffer R.I. for six months each, by the Judicial First Class Magistrate, Piler, in Calendar Case No. 33 of 1988, by his judgment dated 20-2-1990. On appeal, the same was confirmed by the learned Sessions Judge, Chittoor, in Criminal Appeal No. 35 of 1990, by his judgment dated 12-11-1991. Having been aggrieved by the said judgment of the learned Sessions Judge, Chittoor, the present revision is filed by the petitioners-accused.

3. The main and the lonely contention raised by Sri. P. Gangaiah Naidu, learned counsel appearing for the petitioners is that the offence, alleged to have been committed by the petitioners-accused, is barred by limitation.

4. The date of offence is 30-11-1986. The charge-sheet was filed on 19-10-1987. On the very same day the Magistrate returned the charge-sheet for rectifying certain defects and the same was represented on 25-4-1988 and ultimately cognizance was taken on 6-6-1988.

5. The learned single Judge, A. Gopal Rao, J., at whose instance the matter on hand, came up before this Bench, has disagreed with the view taken by another learned single Judge, Y. Bhaskar Rao, J. in Criminal Revision Case No. 409 of 1990 dated 17-9-1990. In the said case (i.e., CrI R.C. No. 409 of 1990), the charge-sheet was filed on 18-9-1989 for offences under sections 332 and 353, I.P.C. alleged to have been committed on 26-9-1986. The charge-sheet was returned on 18-9-1989 itself for complying with certain objections and it was represented on 8-2-1990, after a lapse of more than four months. After its representation, the offences were taken cognizance of on 17-2-1990, i.e., after three years from the date of offence. The learned single Judge in the above said

case ultimately held that though the charge-sheet was filed on 18-9-1990 the same on return was represented after four months and no explanation is forthcoming from the prosecution and in view of this the order taking cognizance of the offences after the period of limitation is quashed.

6. For proper appreciation of the issue involved in this case, it is necessary to reproduce here Section 468 of the Code of Criminal Procedure, 1973, which is in the following terms :

'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 one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, most severe punishment.'

7. It is contended by Sri. P. Gangaiah Naidu, learned counsel appearing for the petitioners that although the charge-sheet was filed on 19-10-1987, cognizance of the offence alleged to have been committed on 30-11-1986 was taken on 6-6-1988, that is after one year from the date of offence and so it is barred by limitation. It is further submitted by Sri. P. Gangaiah Naidu that no petitions was filed by the prosecution as required under section 473 of the Code of Criminal Procedure for extension of period of limitation. On the other hand, learned Public

Prosecutor submitted that the date of filing of the charge-sheet in Court alone has to be taken into account for the purpose of reckoning the period of limitation and not the date of taking cognizance by the Magistrate and that in this case the charge-sheet for the offence alleged to have been committed on 30-11-1986, having been filed on 19-10-1987, that is within the period of limitation prescribed by Section 468 of the Code of Criminal Procedure, there is no necessity to file an application for extension of period of limitation as required under section 473 of the Code of Criminal Procedure. The learned Public Prosecutor has further submitted that taking of the cognizance of the offence is a judicial act that has to be exercised by the Court and if the charge-sheet has been filed within period of limitation, the date of taking cognizance has to material bearing.

8. In view of the rival contentions of both parties, let us have a look at Section 473 of the Code of Criminal Procedure also, which is as follows :-

'473. Extension of period of limitation in certain cases :- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstance of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.'

We may also refer to sub-section (4) of the Andhra Pradesh Forest Act, which is relevant for the purpose of this case and it is in the following terms :-

'29(4)(a). Whoever contravenes any rule made under this section, shall be punishable -

(i) in every case, where such contravention relates to sandal wood or red sanders wood, with imprisonment for a term which shall not be less than three months but which shall not exceed one year and with fine which shall not exceed ten thousand rupees;

(ii) in any other case, with imprisonment for term which may extend to one year or with fine with may extend to two thousand rupees or with both.'

In support of his contention, the learned Public Prosecutor has relied upon the decisions reported in *Basavantappa v. Shankarappa*, 1990 Cri LJ 360 (Kant), *Kamal H. Javeri v. Chandulal Gulabchand Kothari*, 1985 Cri LJ 1215 (Bombay) and *V. Krishna v. State of A.P.*, (1989) 1 Andh LT 16. In the case reported in *Basavantappa v. Shankarappa* (supra) a private complaint for the offences under sections 447 and 323, I.P.C. alleged to have been committed by the accused on 22-3-1985, was filed on 2-4-1985 and the Magistrate, before whom the said complaint was lodged, took cognizance of the said offences by order dated 1-1-1988. The Karnataka High Court, following the decision of the Bombay High Court in *Kamal H. Javeri v. Chandulal Gulabchand Kothari*, dismissed the revision petition filed by the petitioners. In the decision in *Kamal H. Javeri v. Chandulal Gulabchand Kothari*, referred to by the Karnataka High Court in *Basavantappa v. Shankarappa* (supra) it was held that the limitation prescribed under section 468, Cr.P.C., has to be read with reference to filing of complaint and not with reference to date of cognizance or issue of process. It was further observed in *Kamal H. Javeri v. Chandulal Gulabchand Kothari* (1985 Cri LJ 1215) as follows :-

'The proper construction of sub-section (1) of Section 468 namely that no Court shall take cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation, is that a bar is created in taking cognizance of an offence wherein the complaint is barred by limitation. Suppose a complaint is filed on the last day of limitation and on that date the Magistrate is on leave and/or otherwise unable to hear the party and/or apply his mind to the complaint on that date or suppose a complaint is filed quite in advance before the expiry of the period of limitation and the Magistrate in his discretion postpones the issue of process by directing an investigation under section 202, Cr.P.C. and that investigation is not completed within the prescribed period of limitation. In such contingencies, can be complainant be blamed who has approached the Court quite within limitation but no cognizance could be taken for valid and good reasons on the part of the Magistrate and should the complainant suffer for no fault on his part. This could not be the object of the framers of the provisions of Section 468. Having regard to the scheme of Ch. XXXVI, Cr.P.C., and having regard to the provisions of Section 468, the only proper construction that could be placed on Section 468, in connection with the limitation is that if the complaint is filed beyond

the prescribed period of limitation under sub-section (1) subject, however, to the power vested in Court to extend the period of limitation under section 473. The submission that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation from the date of offence is without any substance. The true construction of S. 468 is that it lays down a bar on a Court from taking cognizance of an offence in which a complaint is lodged after the expiry of the period of limitation prescribed under sub-section (2) of S. 468, subject, however, to the extension of time as provided under section 473. Thus, the limitation prescribed under Section 468 is to be read with reference to the filing of the complaint and not with reference to the date of cognizance or issuance of process.'

In *V. Krishna v. State of A.P.*, (1989 (1) Andh LT 16) the petitioners filed petition under section 167(2) Cr.P.C. to release them on bail on the ground that the statutory period of 90 days of their judicial custody expired by the time the charge-sheet was filed into Court. The charge-sheet in that case was filed on 18-7-1988 and as it did not contain the original statements of the witnesses recorded under Section 161, Cr.P.C. and the original documents as per the memo of evidence, the charge-sheet was returned on 20-7-1988 and it was represented on 1-8-1988 and again it was returned and again it was represented on 17-8-1988. In those set of circumstances it was observed by one of us (G. Radhakrishna Rao, J.) as follows :-

'..... The question of taking cognizance on a subsequent date after complying with the provisions required under section 173(5) Cr.P.C. does not arise. The moment the police report, as defined in the Code and as contemplated under section 173(2), has been filed, it is for the Magistrate to apply his mind judiciously. Mere return of the report on the ground of complying with certain omissions as contemplated under section 173(5) does not mean that the police report as filed detailing all the particulars as prescribed in the form under Section 173(2) is not a proper police report. There is a clear distinction in the words used in Section 173(2) and 173(5) of the Code. It is for the Magistrate to apply his mind judiciously. The fact that the Magistrate has taken cognizance does not necessarily mean that there will be proceedings against anyone. For example, where cognizance is taken

upon a complaint, the complaint may be summarily dismissed or may be dismissed after inquiry under section 203, Cr.P.C. In fact, the person complained against may never become an accused person in the technical sense. Nevertheless, having regard to the terms of Section 200, Cr.P.C. it is clear that in such a case cognizance has been taken. Similarly, where cognizance is taken upon a police report, the Code seems to contemplate that it shall be taken upon the preliminary report which is sent up by the police with the first information under section 157, Cr.P.C. Cognizance of an offence in a cognizable case under clause (b) of sub-section (1) of Section 190, Cr.P.C. can be taken by the Magistrate after the police have completed investigation.'

It was further observed in that decision as follows :-

'..... But on facts, in this case, the report is only one and that report has been returned for complying with certain omissions as required under section 173(5), Cr.P.C. The filing of the report and the returning of the same for complying with certain omissions under Section 173(5) shall be deemed that the Magistrate has applied his mind judiciously. In a case where the party wants to claim benefit on the ground that the 90 days period has been expired during remand, they have to establish that the report as defined in the Code and as contemplated under section 173(2) of the Code has not been filed within the time. The crucial date in this case is the date of return of the police report for compliance i.e. 20-7-1988.'

A cumulative reading of the above three decisions, with which we are in complete agreement, leads as to the irresistible conclusion that the relevant date for the purpose of limitation is the date on which the complaint/charge-sheet was filed in court and not the date on which cognizance was taken by the Magistrate. The limitation prescribed under section 468, Cr.P.C., has to be read with reference to filing of complaint/charge-sheet and not with reference to date of taking cognizance by the Magistrate. If the complaint/charge-sheet has been filed within the period of limitation as prescribed under section 468, Cr.P.C., and if it was returned for rectifying certain defects, and it was represented after complying with the defects after the period of limitation, the complainant cannot be blamed who has approached the Court quite within the period of limitation. At certain times

certain particulars, not mentioned in the charge-sheet/complainant, or certain clarification may be necessary and the Court, by virtue of inherent powers conferred on it, is within its power to return the same for compliance of those defects. When once the Court has returned the charge-sheet pointing out certain defects or calling for certain more particulars, it has to be construed that the Court has applied its mind. Power to receive a complaint/charge-sheet by a Court includes the power to return for representation after complying with or rectifying with the objections pointed out. But, by that itself does not mean that the limitation prescribed under section 468, Cr.P.C. is to be read with reference to the taking of cognizance or issuance of process. The original date of filing of the charge-sheet/complaint alone has to be taken into consideration for reckoning the period of limitation.

9. We are having yet another case on the issue reported in *Satyanarayana General Traders v. State*, (1993) 1 Andh LT (Cri) 163 decided by one of us (Iyyapu Panduranga Rao, J.). In that case petitioners 2 and 5 to 7 were carrying on the business under the name and style of the 1st petitioner, that the premises of the 1st petitioner was surprised (searched) by the Officers of the Agricultural Department and samples were taken on 30-11-1987, and they were sent for analysis and that the report of the Analyst dated 10-2-1988 shows that the articles were misbranded and consequently the prosecution was launched on 29-12-1989 and thereafter the charge-sheet was returned on some technical grounds and that ultimately the Court took cognizance of the offence on 8-4-1991. In that case it was contended on behalf of the petitioners that the prosecution which was not launched within three years from 30-11-1987 the date on which samples were taken, is barred by limitation. It was held in that case, after considering the rival contentions, as follows :-

'The cognizance of this case was taken only on 8-4-1991, i.e., about two months beyond three years from the date of receipt of Analyst's report dated 10-2-1988. But it is to be noted that the complaint was filed as early as on 29th December, 1989, i.e., about one year and ten months after the report of the Analyst, but for various reasons, the complaint petition was returned for compliance of objections on administrative grounds and the delay was occurred only to comply with the said

objections by the complainant and Section 473 of the Code can be invoked to extend the period of limitation in such cases. This is what exactly the lower Court has done. The lower Court held that the complaint since returned number of times, the said period has to be taken into consideration under section 473 of the Code. Viewing from that perspective, the complaint is filed well within the period of limitation taking into consideration the provisions of Section 268(2)(c) r/w. Section 473 of the Code.'

10. In *Basavantappa v. Shankarappa's case* (1990 Cri LJ 360) (Kant), already referred to supra, the undisputed facts are that the respondent has filed the complaint on 2-4-1985 for the offences under Sections 447 and 323, I.P.C. against the accused therein, i.e., within ten days of the offences alleged to have been committed by the accused on 22-3-1985. The said complaint was referred to police for investigation. After making necessary investigation the Police filed a 'B' report on 25-6-1985. Thereafter, the respondent filed a protest petition on 13-12-1985 whereupon an inquiry under section 202, Cr.P.C. was conducted by the Magistrate and finally on 1-1-1988 order was passed taking cognizance of the offences under sections 447 and 323, I.P.C. against the accused. It was contended in that case that the Magistrate himself has observed in the course of the order that the last date for taking cognizance of the offences alleged against the petitioners was 22-3-1986 and without there being any application by the respondent for condoning the delay, he has chosen to condone the delay by ignoring the provisions of Section 473, Cr.P.C. and, therefore, the impugned order is vitiated by illegality. After considering the rival contentions, it was held by the Karnataka High Court that the respondent-complainant cannot be attributed with any laches as he has diligently filed the complaint within 10 days of the occurrence and following the decision of the Bombay High Court reported in *Kamal H. Javeri v. Chandulal Gulabchand Kothari* (1985 Cri LJ 1215), referred to supra, the court dismissed the revision petition filed by the accused against the order passed by the Magistrate taking cognizance of the offences under sections 447 and 323, I.P.C.

11. In view of the above discussion, the following points emerge :-

(1) Whenever a complaint or a charge-sheet is filed, the court must first see whether it is within the period of limitation with reference to Section 468, Cr.P.C. taking into account the original date of its filing in court and if it is found to be within time, the complaint/charge-sheet has to be registered and proceeded with. But, if it is found to be not within the period of limitation, the court should not register the case but give an opportunity to the person or to the police officer who filed the complaint or charge-sheet, as the case may be, to satisfy on the question of limitation for purposes of condonation of delay. As regards the condonation of delay, it should not be done as a matter of course. The delay has to be condoned with exercise of judicial discretion. Section 473, Cr.P.C. should also be liberally construed.

(2) Principles of natural justice demand that the accused persons must be heard before passing an order on the application filed under S. 473, Cr.P.C. as such an order is bound to affect a valuable right which accrues to the accused.

(3) If the complaint/charge-sheet is filed within the period of limitation, the Court has got powers to return the same for complying with the defects pointed out by it. Even if the complaint/charge-sheet is represented after complying with the defects/objections pointed out by the Court within the time granted by the Court and if that date falls beyond the period of limitation, still the Court has to take cognizance of the case by duly taking into account the original date of filing of the complaint/charge-sheet filed in the first instance as the limitation prescribed under S. 468, Cr.P.C. is to be reckoned with reference to the date of filing of the complaint/charge-sheet in the Court in the first instance but not with reference to the date of taking cognizance.

12. Following the above principles, let us examine the facts of the present case. The date of offence in this case is 30-11-1986 and the charge-sheet was filed in the first instance on 19-10-1987 and it was returned for rectifying certain defects on the same day, i.e., 19-10-1987 and the same was represented on 25-4-1988 and ultimately cognizance was taken by the Magistrate on 6-6-1988. As the charge-sheet was filed on 19-10-1987 i.e., within one year from the date of offence alleged to have been committed on 30-11-1986, we hold that it is within the period

of limitation and that taking of the cognizance of the case by the Magistrate 6-6-1988 is valid and does not suffer from any infirmity or error. We are unable to agree with the unreported decision of Bhaskar Rao, J. dated 17-9-1990 in Crl.R.C. No. 409 of 1990 and it is accordingly overruled.

13. In the result the reference is answered accordingly holding that the complaint that has been filed and taking of cognizance of the same is within time and it is not barred by limitation and the Crl.R.C. No. 632/91 is remitted back to the learned single Judge for disposal in accordance with law.

14. Order accordingly.

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