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Ravi Dutt Sharma Vs. State of U.P.

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Court : Allahabad

Decided On : May-11-2001

Reported in : 2001CriLJ4408

Judge : U.S. Tripathi, J.

Acts : Indian Electricity Act - Sections 39; Indian Penal Code (IPC) - Sections 379; Code of Criminal Procedure (CrPC) - Sections 468, 468(2), 473 and 482

Appeal No. : Cri. Misc. Application No. 7791 of 1990

Appellant : Ravi Dutt Sharma

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : G.C. Saxena, Adv.

Disposition : Petition allowed

Judgement :
ORDER

U.S. Tripathi, J.

1. This petition Under Section 482, Cr. P.C. has been filed for quashing the order dated 12-5-87, 21-3-89 and 17-5-90, passed by Munsif Magistrate Bijnor and

Special Judge, Bijanor for discharge of the applicant in Criminal Case No. 1720 of 1987 and for quashing the proceedings in the above criminal case.

2. A report was lodged against the applicant Under Sections 379, I.P.C. and 39 of Indian Electricity Act on 5-11-1983, on the basis of which a case at crime No. 547 of 1983 was registered under the said sections. After investigation the police submitted charge-sheet in the said case. However, the charge-sheet was placed before the Magistrate on 12-5-1987. The Magistrate ordered registration of the case and issued summons to the applicant. The applicant moved an application for discharging him on the ground that the occurrence took place on 5-11-1983 and cognizance of the offence was taken on 15-12-1987 that is much after three years of limitation and, therefore, his prosecution was barred Under Section 468, Cr. P.C. The learned Magistrate held that Ahalmad has received charge-sheet within the time of limitation but he produced the same on 12-5-1987 before the Court and, therefore, the delay has been properly explained. With these findings he rejected the above application.

3. The applicant filed a revision before the Sessions Judge. The Sessions Judge held that the charge-sheet in the case was submitted on 16-1-1984 was received by the Court Moharir on 28-7-1986 and handed over to the then Ahalmad of the Court on the same day. But due to mistake of Ahalmad it was produced before the Court on 12-5-87. The learned Magistrate had condoned the above delay Under Section 473, Cr. P.C. Therefore, there was no ground for interference with the order under revision. Accordingly he dismissed the revision.

4. Heard learned counsel for the applicant and learned A.G.A.

5. It was contended by the learned counsel for the applicant that condonation of delay Under Section 473, Cr. P.C., if any, was made by the Magistrate after taking cognizance and receiving objections on limitation by the applicant. He further contended that condonation, if any, had to be made prior to taking of cognizance.

6. Section 468, Cr. P.C. says as below :-

(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)... (b) (c) 3 years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

7. The offence punishable under Sec tion 379, I.P.C. is punishable with maximum imprisonment of three years and the offence punishable Under Section 39 of Indian Electricity Act is also punishable with imprisonment of three years. Thus maximum punishment in the instant case was three years and, therefore, limitation for taking cognizance was three years as provided Under Section 468(2)(c).

Section 473, Cr. P.C. which deals with condonation of limitation reads as under :-

Notwithstanding 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.

8. The bare reading of above section indicates that the condonation of delay, if any, has to be made prior to the cognizance. If the cognizance is taken without condoning the delay it shall be hit by the provisions of Section 468, Cr. P.C. It is settled law that grounds for extension of period of limitation must be canvassed before the trial Court when the proceedings in the trial Court is instituted, the Court should be satisfied that the time of limitation can be waived and an order to that effect will have to be passed extending the period of limitation. No such procedure has been followed in the present case and, therefore, the contention of the learned counsel for applicant has to be upheld.

9. The petition is accordingly allowed and the proceedings against the applicant in criminal case No. 1720 of 1987 are hereby quashed.

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