

Krishna Sanghi and ors. Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-22-1975

Reported in : 1977CriLJ90

Judge : R.K. Tankha, J.

Appellant : Krishna Sanghi and ors.

Respondent : The State of Madhya Pradesh

Judgement :

ORDER

R.K. Tankha, J.

1. This order shall also govern the disposal of Misc. Criminal Cases Nos. 685, 686, 687 and 688 of 1974 (Krishna Sanghi and Ors. v. The State of M.P.).
2. These five petitions have been filed by the five accused persons in five separate cases pending against them in the Court of Chief Judicial Magistrate, Durg, for quashing the proceedings.
3. Five criminal cases which were registered against the accused persons before the Chief Judicial Magistrate, Durg, are Criminal Cases Nos. 6228, 6229, 6230, 6231 and 6232 of 1974. Proceedings in all these five cases have been initiated against the accused persons on a complaint filed by the State Scooter Controller,

Madhya Pradesh under Sections 24 and 24A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951) read with Clauses 5(1) and 10 of the Scooter (Distribution and Sale) Control Order, 1960. The trial Court took cognizance of the five complaints on 20-6-1974 on which date they were filed and ordered that the accused persons be summoned. Thereafter, on 1-8-1974 an application was moved on behalf of the accused persons under Section 468(2) of the Code of Criminal Procedure, 1973, raising an objection that the trial Court could not take cognizance of the alleged offence after the lapse of the period of limitation, which in the present case was one year. The date of the alleged offence is 17-9-1971 while the complaints were filed on 20-6-1974, much beyond the period of limitation. On that application the Court fixed 22-8-1974 as the date for arguments. In the meanwhile the accused persons filed the present petitions in this Court which were admitted and further proceedings before the trial Court were stayed.

4. Learned Counsel for the petitioners in all the petitions raised one common point for consideration. He contended that in view of the provisions of Section 468 of the Code of Criminal Procedure, 1973, the trial Court acted illegally and without jurisdiction in taking cognizance of the alleged offence against the accused persons after a lapse of the period of limitation prescribed under that section, which in the present case was one year since the offence alleged under Sections 24 and 24A of the Industries (Development and Regulation) Act, 1951 is punishable with imprisonment which may extend to three months, or with fine which may extend to two thousand rupees, or with both. Learned Counsel, therefore, contended that the entire proceedings before the trial Court have to be quashed. On the other hand, learned Counsel for the State contended that the proceedings need not be quashed at this stage as the trial Court has fixed a date for hearing on the question involved and as such no interference is required by this Court.

5. Having heard learned Counsel of the parties, I am of opinion that these petitions must be allowed. The only point for consideration, as stated earlier, is whether as to what course should be adopted by a Magistrate in taking cognizance of a case which prima facie falls under the purview of Section 468 of the Code of Criminal

Procedure, 1973. In my opinion, Section 468 of the Code clearly creates a bar for taking cognizance of the offence after a lapse of period of limitation in relation to the offences of the categories specified in Sub-section (2) of Section 468 of the Code. Section 469 deals with the commencement of the period of limitation, or to say how the period of limitation shall be computed while Section 473 gives a very wide power to the Court for taking cognizance even after the expiry of the period of limitation provided the Court 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. This power has been conferred on the Courts notwithstanding anything contained in the foregoing provisions of Chapter XXXVI in which Sections 467, 468, and 469 also appear. A reading of the aforementioned sections thus makes it very clear that the Court cannot take cognizance of an offence of the categories of cases specified in Sub-section (2) of Section 468 after the lapse of the period of limitation mentioned therein. If it does so, I am of opinion, it would be acting without jurisdiction as Section 468 creates a bar for taking cognizance of such cases. In this connection I may refer to the heading of Section 468:

Bar to taking cognizance after lapse of the period of limitation.

The wordings as they appear are mandatory and not directory. But in view of the provisions of Section 473 of the Code, the Court has power to take cognizance of the offence after satisfying itself 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. But the satisfaction for purposes of extending the period of limitation must be done before the cognizance of an offence is taken and not subsequently. If the Court acts otherwise it would be clearly acting without jurisdiction.

6. In the present case, it was not disputed before me by both the learned Counsel that the alleged date of offence is 17-9-1971 and the trial Court took cognizance of the offence without satisfying itself about the delay. On an objection raised by the accused persons, a reply was submitted by the prosecution explaining the delay. This was the novel procedure adopted by the trial Court for rectifying the mistake

committed earlier. I only wish that the trial Court should have looked into the provisions of law in that regard and after having understood them should have proceeded with the case in accordance with the same. The procedure adopted by the trial Court is wholly contrary to the provisions of law.

7. Learned Counsel appearing for both the parties requested me to lay down the procedure to be followed by the trial Courts in such cases since this is a new provision incorporated in the Code of Criminal Procedure, 1973. Whenever a complaint or a chalan is filed at the instance of any person or any police officer, the Court must first see that Section 468 of the Code of 1973 is attracted or not. If it does, it should not register the case but give an opportunity to the person or the police officer filing the complaint or chalan to satisfy it on the point 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 of the Code empowers the Court to condone such delay if sufficient cause has been shown or if the interests of justice make it necessary to do so. But the application of the section would always depend upon the facts and circumstances of each case of which the Court would be required to exercise its judicial discretion in the matter, like an application under Section 5 of the Limitation Act, 1963. At this stage I would also like to point out that the provisions of Section 473 of the Code should also be liberally construed like Section 5 of the Limitation Act so as to advance substantial justice when no negligence or junction or want of bona fides is imputable 'to the prosecutor but cannot be construed too liberally because the Government is the prosecutor or prosecution is upon police report. After the delay is condoned by the Court on its being satisfied by the process referred to above, then alone it would register the case and proceed with the same in accordance with law. Before condoning the delay, although I do not find any provision of giving of notice to the accused person in Chapter XXXVI of the Code, but natural justice demands that the accused persons must be heard before passing an order in that regard as such an order is bound to affect a valuable right which accrues to the accused and which cannot be allowed to be taken away lightly. As such, they have to be heard when an application under Section 473 of the Code is moved by the prosecution before cognizance is taken.

8. For the reasons stated above, the petitions succeed and are allowed. The proceedings in all the aforementioned cases are hereby quashed and the matter is remitted back to the trial Court with the directions as indicated above.

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