

Jandel Singh Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Aug-27-2002

Reported in : 2003CriLJ1044

Judge : P.C. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 473

Appeal No. : Crl. Revn. No. 80 of 2000

Appellant : Jandel Singh

Respondent : State of M.P. and ors.

Advocate for Def. : A.K. Ahirwar, Addl. Govt., Adv. for No. 1 and ;Vikrant Sharma, Adv. for Nos. 2 to 3

Advocate for Pet/Ap. : Arun Pateriya, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.C. Agarwal, J.

1. The petitioner had lodged an FIR on 23-10-97 and P.S. Gijora had registered a Crime No. 63/97 under Sections 341, 294, 324/34 of the Indian Penal Code (Code

for short). Anyhow, neither any charge-sheet was filed nor any final report was submitted by the Police. Hence the petitioner filed a criminal complaint on 28-10-98 in Criminal Court under Sections 341, 294, 324, 323, 506, Part II of the Code. The magistrate after usual enquiry took cognizance on 6-4-1999 under Sections 294 and 323 of the Code and the case was committed to the Court of Session as there was a cross case which was triable by the Court of Session. The Addl. Sessions Judge on 9-2-00 after hearing both the parties held that the criminal complaint was time barred and no cognizance under Sections 323 and 294 of the Code could be taken after elapse of a period of one year as both these offences were punishable at the most with imprisonment for one year.

2. The grievance of the petitioner has been that the learned Sessions Judge did not look into the provisions of Section 473 of the Code of Criminal Procedure 1973 which authorises the Court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied that on the facts and in the circumstances of the case the delay has been properly explained or that it is necessary so to do in the interest of justice. In the present case a cross-case was pending in the Sessions Court. Secondly, the Police had registered a crime under Sections 341, 294, 324 and 34 of the Code, instead of directing the petitioner to the Criminal Court holding that his case is not cognizable by the Police. The Police had not filed either any charge-sheet or any final report in due time. A final report was prepared on 31-12-1997 and was got initialed by the SDO (P), Dabra thereafter. Anyhow, the same was never produced before the competent Magistrate for its acceptance. The complaint by the petitioner was only 5 days delayed. In these circumstances, actually the delay in complaint was not only properly explained but it was necessary in the interest of justice to condone delay as there had been a pending cross-case in the Court of Session.

3. The learned Advocate for the respondent Nos. 2 to 5 has drawn my attention to Shankar Lal v. State of M.P. 1990 Jab LJ 782 a case under Excise Act. Gyaniram v. State of M.P. 1994 Jab LJ 733, a case under Section 498A of the Code in which delay in prosecuting the case was not explained. Mohammad Yakub Khan v. Mohammad Sharif Khan 2000 (1) C Cr J 292 (Madh Pra), a case under Sections 294 and 223 of the Code in which the complaints were held to be time barred in

absence of any explanation for delay. Of course, the provisions of Section 468 of the Code of Criminal Procedure have prescribed a time limit beyond which taking cognizance of the offence is barred but in the present case the petitioner was able to show the facts and circumstances in which the delay was properly explained.

4. In the State of Himachal Pradesh v. Tara Dutt (2000 (1) C Cr J 111 : (2000 Cri LJ 485) (SC)), the Apex Court has explained how the power of Court for extending the period of limitation for taking cognizance should be exercised. To quote the Apex Court itself.

'7. Section 473 confers power on the Court taking cognizance 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 and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognized principles. This being a cognizance, wherever the Court exercises this discretion the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. ' (Page 115 of C Cri J) : (at p 488 of Cri LJ) :

5. In view of the above pronouncement of the Supreme Court the delay in filing the complaint has to be condoned. The impugned order of learned Sessions Judge is set aside. He shall proceed with the trial according to law after framing necessary charges. The parties shall remain present before the Court of Session on 11-9-2002.