

Manoj Kumar Vs. State of Jharkhand

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Court : Jharkhand

Decided On : May-04-2006

Reported in : [2006(4)JCR460(Jhr)]

Judge : D.K. Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 368(2), 468, 468(2) and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Cri. M.P. No. 282 of 2006

Appellant : Manoj Kumar

Respondent : State of Jharkhand

Advocate for Def. : APP

Advocate for Pet/Ap. : P.K. Sinha and; A.K. Kashyap, Advs.

Disposition : Petition allowed

Judgement :

ORDER

D.K. Sinha, J.

1. The petitioner Manoj Kumar, proprietor of Nitin Marble has preferred this petition under Section 482 of the Code of Criminal Procedure for quashing the impugned

order dated 3.9.2005 passed by Chief Judicial Magistrate, Hazaribagh in Chauparan PS Case No. 229 of 2000, corresponding to GR. Case No. 2823 of 2000. whereby and whereunder cognizance of the offence has been taken under Section 406 of the Indian Penal Code against the petitioner herein including quashing of the entire criminal proceeding in the said case.

2. The brief facts of the case are recapitulated hereunder.

3. The informant-Circle Officer of Chauparan Circle presented a written report before the Officer-in-charge of Chaparah Police Station on 12.12.2000 stating inter alia, that as against the construction of 180 units of Indira Awas work order was given to the petitioner for supply of 180 doors with angle made of iron and 180 windows, to which the petitioner entered into an agreement on 25.8.1998 for the said supply and in lieu of that, two different cheque of the denomination of Rs. 1,20,000/- each total sum of Rs. 2,40,000/- was advanced to the petitioner by the then Circle Officer. It is alleged that the petitioner supplied only 55 pairs of doors and winddws valued at Rs. 99,000/- and therefore, a balance of Rs. 1,41,000/- was remained with him. However, on persuasion, the petitioner deposited a sum of Rs. 70,000/- on 28.6.2000 and a sum of Rs. 25,000/- on '22.7.2000 but even then the remaining balance of Rs. 46,000/- was with him with the interest thereon to the tune of Rs. 25,380/- total sum of Rs. 71,380/- to which in spite of repeated demand, the petitioner did not deposit the same. When the informant had reason to believe that the informant was not inclined to return the same, on the instruction of the Sub- divisional Office, Barhi, he lodged the present case under Section 406 of the Indian Penal Code against the petitioner.

4. Learned Counsel for the petitioner submitted that the case was instituted against the petitioner on 12.12.2000 for the offence under Section 406 of the Indian Penal Code but, the charge-sheet was submitted after investigation by the police much beyond three years of limitation, vide charge-sheet No. 116 of 2005 dated 31.7.2005 with the case diary for the offence under Section 406 of the Indian Penal Code. On the basis of materials thereon, learned Chief Judicial Magistrate, Hazaribagh took cognizance of the offence under the said Section on 3.9.2005.

5. Learned Counsel further contended that punishment prescribed for the offence under Section 406 of the Indian Penal Code is for imprisonment for a term of three years or with fine or both. On the other hand, the period of limitation prescribed under Section 468 of the Code of Criminal Procedure for taking cognizance of such offence is only three years. From the order impugned dated 3.9.2005, it is obvious that cognizance of the offence under Section 406 of the Indian Penal Code was taken much beyond three years and, therefore, the cognizance is barred by limitation under Section 368(2)(c) of the Code of Criminal Procedure.

6. Having regard to the facts and circumstances of the case, there appears substance in the argument advanced on behalf of the petitioner that the cognizance of the offence under Section 406 of the Indian Penal Code by the impugned order dated 3.9.2005 is barred by limitation. The case was instituted by the informant on 12.12.2000 but the police after investigation submitted charge-sheet and it was sent to the Chief Judicial Magistrate on 3.9.2005 and on the same day cognizance of the offence was taken under Section 406 of the Indian Penal Code. It is apparent that the learned Chief Judicial Magistrate lost sight of the provisions of Section 468(2)(c) of the Code of Criminal Procedure and without applying his judicial mind and considering the provisions of law the said cognizance was taken erroneously which is illegal. It would not be out of place to mention that a petition was filed on behalf of the petitioner on 24.6.2005 under Section 468 of the Code of Criminal Procedure with a copy to the prosecutor for hearing on the said petition. But no order was passed by the Chief Judicial Magistrate thereon and ignoring such petition, cognizance of the offence was taken illegally in contravention to the provision of law of limitation under Section 468 of the Code of Criminal Procedure.

7. Accordingly, the order impugned dated 3.9.2005 passed by the Chief Judicial Magistrate, Hazaribagh as well as entire prosecution arising out of Chauparan PS Case No. 229 of 2000, corresponding to G.R. Case No. 2823 of 2000 is quashed. This petition is allowed.