SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Dharmendra Singh and anr. Vs. State of Orissa and anr.

Dharmendra Singh and anr. Vs. State of Orissa and anr.

SooperKanoon Citation : sooperkanoon.com/535294

Court : Orissa

Decided On : Jul-31-2000

Reported in : 2001CriLJ439

Judge : C.R. Pal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 156(3), 190, 190(1), 198(1), 199, 200, 202, 203, 208, 402 and 468(2); ;Indian Penal Code (IPC) - Sections 498A; Delhi Police Act - Sections 4; O.P. Act - Sections 4

Appeal No. : Crl. Misc. Case No. 2567 of 1997

Appellant : Dharmendra Singh and anr.

Respondent : State of Orissa and anr.

Advocate for Def. : R.K. Patnaik, Addl. Standing Counsel and S.K. Rath, Adv.

Advocate for Pet/Ap. : S.K. Mund, D.P. Das and J.K. Panda, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

C.R. Pal, J.

1. In this petition under Section 402, Cr.P.C. the petitioners have prayed to quash the order dated 29-3-1997 passed by the learned S.D.J.M., Talcher in G.R. Case No. 361 of 1993 taking cognizance of the offences under Section 498A, I.P.C. and under Section 4 of the D.P. Act.

2. The facts of the case are as follows :-

The opposite party No. 2 namely, Smt. Jashomati Kour was given in marriage to one Raju alias Rajendra alias Harbindar Singh in the year 1991 according to Sikh customs and rites and after their marriage they lived happily for about a year. It is alleged that thereafter the parents and brother of Harbindar demanded a cash of Rs. 40,000/- and a Hero Honda motor cycle as dowry. When she expressed the inability of her father to meet the demand of the family members of her husband, they illtreated her and drove her out from their house on 30-4-1992 while she was carrying two months. Having been driven away from her matrimonial home she took shelter in her father's house. While she was there a female child was born to her. But no one of the family of her husband took any care of her or her child and they did not even come to see the child. The father of the opposite party No. 2 conveyed a Panchayat and on the intervention of the gentry Harbinder took her back to his house. But again after a few days they renewed the demand and for nonfulfilment of the same, her husband along with his parents and another brother assaulted her and did not give her food. On 20-7-1993 she was assaulted and was threatened to be killed by pouring petrol on her. On 21-7-1995 morning when the opposite party No. 2 wanted to go back to her father's house, her husband along with his family members forcibly removed the ornaments from her body whereafter she came and took shelter in her father's house and lodged the F.I.R. in the Colliery Police Station which was registered as P.S. Case No. 120 of 1993 for the offences under Section 498A, I.P.C. and under Section 4 of the O.P. Act. The police after investigation filed final report stating the case to be a mistake of fact. On receiving the notice of the report, the opposite party No. 2 filed a protest petition before the learned S.D.J.M. on receiving which the learned S.D.J.M. took cognizance of the offences, enquired into the case and examined the witnesses as envisaged under Section 202, Cr.P.C. While the case was pending at the stage of enquiry under Section 202, Cr.P.C, the complainant on 17-3-1997 filed a petition

to Condone the delay on the ground that she being in distress and helpless condition in her father's house could not examine all her witnesses within the stipulated period. The learned Magistrate considering the materials on record, found that there are materials to make out a case under Section 498A and under Section 4 of the D.P. Act and took cognizance of the aforesaid offence against the accused persons and directed for issuance of process against them including the two petitioners. He also disposed of the petition filed on 17-3-1997, condoning delay. Being aggrieved by the aforesaid order, the petitioners who are two of the accused persons in the aforesaid case before the learned S.D.J.M., have filed this petition.

3. According to the petitioners since it is alleged that the offences were committed on 30-4-1992 and lastly on 20-7-1993 taking of cognizance of the same after expiry of three years from the date on which the alleged offences are said to have been committed is barred by limitation as prescribed under Section 468(2)(c), Cr.P.C. It is also contended that the order passed by the learned S.D.J.M., condoning the delay without hearing the petitioners is illegal. It is further contended that since the learned Magistrate has failed to consider the question of limitation before taking cognizance of the offences, the order passed by him condoning the delay subsequent to taking of cognizance is illegal. The learned counsel of the petitioners therefore contended that the impugned order is without jurisdiction and is liable to be quashed. The learned counsel of the opposite party No. 2, on the other hand, argued in support of the impugned order. There is no dispute that on the information lodged by the present opposite party No. 2, Colliery P.S. Case No. 120 of 1993 was registered and the police after investigation filed the final report. Having come to know about the filing of final report, opposite party No. 2 filed a protest petition on 9-5-1994 on the same allegations. It is an accepted position that such a protest petition is in the nature of a complaint and should be dealt with in accordance with the provisions of Chapter XV of the Criminal Procedure Code. On receiving such a petition the Magistrate is to examine the complainant on solemn affirmation and thereafter either process should be issued under Section 204, Cr.P.C. or for adequate reasons an inquiry may be ordered under Section 202, Cr.P.C. and if sufficient ground is not made out, the complaint may be dismissed under Section 203, Cr.P.C. In the instant case, on receiving the

complaint the learned Magistrate without recording the statement of the complainant as required under Section 200, Cr. P.C. posted the case for inquiry under Section 202, Cr.P.C. Therefore, a question arises whether the omission to examine the complainant on oath is an illegality or a mere irregularity. Such a question came up for consideration before this court in Mahabir Prasad Agarwala v. State, reported in (1957) 23 Cut LT 395 : (1958 Cri LJ 63), arid this court held that omission to examine the complainant on solemn affirmation on a protest petition may prejudice the complainant but it cannot prejudice the accused. It is merely on irregularity. Here in the instant case the complainant and her witnesses have been examined on solemn affirmation in course of inquiry under Section 202, Cr.P.C. and their statements are available to the petitioners for the purpose of cross-examining the witnesses. The petitioners, thereafter, cannot urge that the omission has in any way prejudiced them. So non-examination of the complainant on oath as required under Section 200, Cr. P.C. being an irregularity cannot vitiate the proceeding.

4. The next question arises as to when the learned S.D.J.M. took cognizance of the offences alleged. In this case the complaint/ protest petition has been filed on 9-5-1994. The question when a Magistrate takes cognizance on the complaint came up for consideration in Jamuna Singh v. Bhadai Shah, reported in AIR 1964 SC 1541 : (1964 (2) Cri LJ 468). In the said case a question arose whether the Magistrate took cognizance on the basis of the complaint petition filed by the complainant on 22-11-1955 or on the basis of the report filed by the S.I. of Police on 13-12-1956. The Apex Court held as follows :-

It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint, when however he applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence.

The Apex Court in the case of Devarapalli Lakshminarayana v. V. Narayana, reported in AIR 1976 SC 1672 : (1976 Cri LJ 1361) considered the question what is meant by taking cognizance of an offence and observed as follows :-

14... What is meant by 'taking cognizance of an offence' by the Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court take, cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 198(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is ought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 208 and the succesding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

In the instant case, on receiving the protest petition on 9-5-1994, the learned Magistrate posted the same to a subsequent date for inquiry under Section 202, Cr.P.C. It is clear that on receiving the petition he decided to proceed under Section 202, Cr. P.C. Therefore, it must be deemed that the learned Magistrate took cognizance of the offence on 9-5-1994 as taking cognizance precedes action under Section 202, Cr.P.C. Therefore, the contention of the learned counsel of the petitioners that the learned Magistrate took cognizance of the offences only on the date he passed the impugned order i.e. on 29-3-1997 is not acceptable. Since the cognizance has been taken on 9-5-1994 and within the prescribed period of limitation from the date of the commission of the offence, the contention that taking cognizance was barred under Section 468(2)(c) is also not sustainable.

5. The learned counsel of the petitioners relying on the decision Orient Paper and Industries Limited v. Registrar of Companies, Orissa, reported in (1988) 1 OCR 612 and Rama Chandra Agarwalla v. Sri Bijay Kotan Sonsarma, reported in (1992) 73 Cut LT 44 contended that the condonation of delay without giving notice to the petitioners before disposal of the question of limitation is illegal. The learned counsel for the petitioners also relying on the decision Ladder Siddabasappa v. State of Karnataka, reported in 1988 Cri LJ 213 submitted that condonation of delay and taking of cognizance without hearing the accused vitiates the proceeding. Citing the principle laid down in Shantilata Agarwalla v. State of Orissa, reported in (1991) 71 Cut LT 238 it is submitted that Court loses its power to take cognizance after expiry of the period of limitation and condonation of delay must be considered before taking of cognizance. The learned counsel also relied on the principles laid down in Sharadchandra Vinayak Dongre v. State of Maharashtra, reported in 1991 Cri LJ 3329 and submitted that taking cog nizance of the offence and later on considering the petition for condonation of delay is illegal and without jurisdiction. Relating to the principles laid down in the cases cited above, there is no dispute. Here, in the instant case it has already been shown that cognizance of the offence has been taken on 9-5-1994 and as such on facts the principles laid down in the cases cited above, on which the learned counsel of the petitioners placed reliance, are not applicable. No doubt the learned Magistrate in the impugned order, considering the petition filed by the complainant has condoned the delay. But such an order is redundant since the cognizance of the offences had already been taken on 9-5-1994 within the period of limitation. Since there is no delay at all, the question raised by the petitioners about giving opportunity of hearing on the question of condonation of delay becomes irrelevant. Hence, I do not see any reason to interfere with the impugned order.

Accordingly, the Criminal Misc. Case is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com