

The State Vs. S.P. Jaiswal

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Court : Punjab and Haryana

Decided On : Aug-07-1953

Reported in : AIR1954P& H9

Judge : Kapur, J.

Acts : [Constitution of India](#) - Article 134(1)

Appeal No. : Criminal Misc. No. 263 of 1953

Appellant : The State

Respondent : S.P. Jaiswal

Advocate for Def. : H.L. Sarin, Adv.

Advocate for Pet/Ap. : S.K.S. Chawla, Asst. Adv. General

Disposition : Petition dismissed

Judgement :

Kapur, J.

1. This is an application for leave to appeal to the Supreme Court under Article 134(1)(c) of the [Constitution of India](#) which in the heading: of the application filed by the Advocate-General is wrongly described as an application under Article 134(c) of the Constitution.

2. A preliminary objection has been taken by the respondent that no leave should be given in this case because of the long delay after which the present petition has been filed. The order against which this appeal is sought to be taken was made by this Court on 12-11-1962. The application which has been filed in this Court is dated 28-5-1953, i.e., 197 days after the judgment was delivered, in the Limitation Act no period of limitation is prescribed for such applications made in criminal cases nor have any rules been made by this Court prescribing any period for the filing of such applications. But in the Supreme Court Rules of 1950 in Order 21, Rule 1, at page 20 a period of 60 days is prescribed for applications under Article 134(1)(a) & (b) and 30 days under Articles 132(1) and 134(1)(c). These rules have since been modified and the period has been curtailed to 30 days in both the cases. This rule was amended on 25-4-1950. Thus there is no provision in any of the statutes or the rules prescribing a period for an application for the grant of leave to appeal.

3. But Mr. Sarin submits that stale claims should not be allowed to be brought even in criminal cases. He relies on a passage in -- 'Mohammad Yunis v. Tilog Chand', AIR 1935 All 323 at p. 326 (A) where it is stated:

'It is to be remembered that public policy requires that there should be speedy decisions of disputes and adjustments of conflicting claims and that stale claims should, as far as possible, be discouraged. It is also of cardinal importance for the progress of a civilized society on healthy lines that title should not be left in doubt and the unsettling of apparently settled facts should not be the order of the day.'

Reference may also be made to the statement of the law as given in Rustomji's Law of Limitation, 1938 edition, page 9, where it is stated:

'The law is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence, and to prevent oppression..... The statute is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. These statutes are among the most beneficial to be found in our books. They rest upon sound policy and tend to the peace and welfare of society and are essential to the

security of all men. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. It has been said by Join Voet, with singular felicity that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal.'

Reference may also be made to the observations of Mahmood J. in -- 'Mangu Lal v. Kandhai Lal', 8 All 475 at page 483 (B) and to -- 'Amme Raham v. Zia Ahmad' 13 All 282 at p. 287 (FB) (C). Thus the object of refusing to allow stale claims to be brought into Court is that by this means we 'take away all solid grounds of complaint.'

4. Mr. Sarin has then relied on certain judgments where it was held that although there is no period of limitation prescribed, Courts will not entertain applications if they are made after an inordinately unexplained delay. In -- 'Emperor v. Kesri Chand', AIR 1945 All 207 (D), where the Provincial Government had applied for enhancement of the sentence, one of the grounds on which it was dismissed was its belated nature. Iqbal Ahmad, C. J. said at p. 211:

'Further, this application in revision is a belated application and was filed more than six months after the appellate decision of the Sessions Judge.'

Daniels J. in -- 'Emperor v. Ram Narain', AIR 1926 All 577 (E) referred to the practice of Allahabad High Court and held:

'Although there is no law of limitation applicable to revision applications, it is the settled practice of the Allahabad High Court not to admit them unless they are made within a reasonable time after the order complained of.'

The order there was made on the 31st August and the revision application filed on 26th of January of the following year.

Similarly in an earlier Allahabad case -- 'Emperor v. Jagan Nath', 27 All 468 (F), it was held:

'Unexplained delay in applying for revision of an order passed to the prejudice of the applicant is a reason for the High Court, in the exercise of its discretion, declining to interfere.'

5. The Calcutta High Court has also taken the same view in -- 'Khetra Mohan v. Darpra Narain', AIR 1917 Cal 849 (G), although in that case also the judgment was based on the practice of the High Court. It was argued that there was no provision in the Criminal Procedure Code or the Limitation Act for application under Section 439, Criminal P. C., but sixty days' limit had been fixed by analogy to criminal appeals and Section 4, Limitation Act would apply for the same reason by analogy. This petition was dismissed because there was unexplained delay. The same rule has been followed in the Patna High Court: see -- 'Bholanath Missir v. Bishun Prasad', 152 Ind Gas 311 (Pat) (H). In all these cases established practice seems to have been that if an appeal had to be filed within sixty days a petition for revision could not until special circumstances were shown, be entertained after more than that period.

6. On the analogy of these cases Mr. Sarin has advanced a two-fold argument. He submits that if the matter had fallen under Article 134(1)(a) and (b), the State would have had to appeal within a period of sixty days and after the amendment thirty days of the judgment and even in the High Court appeals by the State have to be filed within six months and the application of the State of Punjab in this case had been filed more than six months after the decision of this Court. And the second argument that he has raised in this connection is that in civil appeals the period of limitation prescribed is only ninety days and it cannot be that in the matter of leave to appeal in criminal matters the State can come up at any time without explaining the reason for the delay as they have not done in the present case. Taking the observation of Mahmood J. founded on Story's Conflict of Laws as discussed at p. 483 of-- 8 All 475 (B)', in my view the submissions of learned counsel are well-founded but I shall revert to this matter a little later.

7. It was then submitted by Mr. Sarin that this case does not fall within the rule laid down by their Lordships of the Privy Council in regard to certificate of fitness in criminal matters. In a case which went from Lahore to the Privy Council 'Mahomed

Nawaz v. Emperor', AIR 1941 PC 132 (I), Viscount Simon L. C. laid down the principles in such cases. His Lordship there said:

'Broadly speaking the Judicial Committee will only interfere where there has been an infringement of essential principles of justice. An obvious example would be a conviction, following a trial, where it could be seriously contended that there was a refusal to hear the case of the accused or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, of course, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Another and obvious example would arise if the Court had no jurisdiction either to try the crime, or to pass the sentence.'

This application is made in a matter where In the peculiar circumstances of the case this Court quashed the proceedings under Section 561-A, Criminal P. C. S. P. Jaiswal, the present opposite party, who is the only person against whom the present application is directed, although there were several other against whom prosecution had originally been started, was ordered to be arrested under Ss. 452 and 147, Penal Code. He is the Managing Director of the Karnal Distillery Company and he had stated on oath that the case had been started against him because of the strained relations between him and the District Magistrate of Karnal. The incident out of which that case arose was dated 11-9-1952. A report was made by one Mehta Mangal Sain at a Police post but no names were mentioned. Assistant Sub-Inspector Barkat Ram, started investigation on the same day and examined certain witnesses on that day as well as on the next when Jaiswal was interrogated. The Head Constable, who was the first person to reach the spot, neither mentioned Jaiswal nor his Manager B. L. Chopra having taken part in pulling down the house which was the subject-matter of the complaint. On the 12th after recording the statements of various witnesses and Jaiswal and others the Assistant Sub-Inspector, who was investigating. was not satisfied with the correctness of the case of the complainants. On the following day there was an attempt at compromise between the complainant and the Manager, of the distillery, B. L. Chopra. Upto this stage the investigating officers were not satisfied as to what offence, if any, had been committed.

8. On the 15th from the letter of the Superintendent of Police the number and particulars of which are given in the judgment of this Court, it was stated that the offence was of a technical nature and, therefore, the opinion of the Prosecuting Inspector and Public Prosecutor should be obtained and the investigation should be finished one way or the other within a week. After the investigation had been concluded the police was still of the opinion that the complainant was not proved to be in full possession of the house in dispute and that higher authorities should be consulted. This was on the 17th of September.

9. On the 18th at 10 a.m. the District Magistrate called the Sub-Inspector and at about 12 a.m. gave verbal orders to the Sub-Inspector to arrest S. P. Jaiswal, the opposite party, and others and present a 'challan' to the Court on that very day and 'at all costs.'

10. And on the 19th September Jaiswal made an application to this Court for quashing of the proceedings malting all kinds of allegations of highhandedness on the part of the District Magistrate and referred to the strained relations between him and the District Magistrate including the attempt to start proceedings as if he were an absconder and cancelling his gun licence etc. In the Judgment of this Court which is reported in --'S. P. Jaiswal v. The State', AIR 1953 Punj 149 at p. 152 (J), it was observed:

'The Superintendent of Police on the 15th September, presumably on some report made by Investigating Officer, was of the opinion that the offence was a technical one and that legal advice should be sought. It is incorrect to say therefore that the Police had not come to the conclusion that there was no case to go to the Court. It is true that the opinion of the Police is not binding on Courts, but at the stage of investigation it is the statutory duty of the police to make up their mind as to the sufficiency or otherwise of the evidence for the purpose of sending the accused for being tried by a Magistrate or not.'

At page 155 it was observed by this Court:

'I note with regret that the Station House Officer Arjan Das has made a false affidavit when he says that the District Magistrate gave him advice that judicial

pronouncement should be obtained in regard to the case. I have already mentioned that the District Magistrate ordered the arrest and prosecution of the accused. Why this Police Officer should tell an untruth is difficult for me to see unless it is to please the District Magistrate. It may be technically true that the Police had not come to the conclusion that no offence had been made out, but it is quite obvious that Barkhat Ram did make a report in which it was stated that the complainant was not proved to be in full possession of the house and thereupon the District Superintendent of Police wrote saying that the offence appeared to be a technical one. I should not have expected officials of the State to twist facts and not to state them in this Court in a straightforward manner or to keep back important documents which might help the accused.'

11. The District Magistrate had in this case denied in his written statement the allegation made against him by Jaiswal. The written statement that he filed was not on solemn affirmation nor was there any affidavit in support of it, but an affidavit was made by Sub-Inspector Arjan Das which was not believed by this Court nor did this Court accept that the District Magistrate only gave advice.

At page 90 it was finally held by this Court:

'I would not like to say anything more excepting this that it is not a very pleasing chapter in the administration of Karnal District, and officers of the Government would do well even where they feel strongly in regard to certain alleged offences to proceed in accordance with law. In the present case the authorities have allowed their exuberance and their belief in the guilt of the petitioner and his co-accused to get the better of their discretion and in a free State where a great deal depends upon the judicious use of judicial powers and exercising discretion in accordance with the established judicial precedents it gives the whole administration a bad name if actions taken by Magistrates have the look of malice.'

12. On these findings Mr. Sarin submits that it is not a case which falls within the rule laid down by the Privy Council in -- 'Mahomed Nawaz's case (I)'. I agree with this submission and am of the opinion that the circumstances which were proved in this case show that it is not a case which I could certify as a case fit for appeal to their Lordships of the Supreme Court.

13. On these findings Mr. Sarin reverts to his submission that this belated application should not be allowed to go and a citizen of this State should not be harassed after the lapse of such a long period of time, a contention which I accept.

14. I would, therefore, dismiss this petition.

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