

**Gurdip Singh Vs. State**

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**Court :** Delhi

**Decided On :** Feb-09-1990

**Reported in :** 1990RLR162

**Judge :** Y.K. Sabharwal, J.

**Acts :** Delhi Police Act - Sections 93; [Indian Penal Code \(IPC\), 1860](#) - Sections 448; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 468

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 486 of 1989

**Appellant :** Gurdip Singh

**Respondent :** State

**Advocate for Pet/Ap. :** J.L. Puri and; Tripurani Ray, Advs

**Judgement :**

**Y.K. Sabharwal, J.**

(1) Respondent No. 3, Ashok Kumar Bajaj, is the tenant of part of house No. 1/6-A, New Storey, Block I, Lajpat Nagar IV. Petitioner, Gurdeep Singh, is the son of the landlady. Some altercations seem to have taken place between respondent 3 and the petitioner on 22 9 87. In respect of the incident of 22.9.87 a Kalendra u/s 93/97 Delhi Police Act (the ACT) was filed by A S.I., Bal Kishan before the Met. Mgte. New Delhi. A copy of the Kalendra and statement of respondent 3 recorded

by A.S.I. on 22.9.87 has been placed on record. The Kalendra u/s 93/97 of the Act is an respect of the alleged incident of 22.9.87. On 28.11.87 the M.M. took cognizance of the offence u/S, 93/97 of the Act and framed a notice of the same date stating that 'it is alleged against you Gurdeep Singh s/o Shri Shadi Lal, aged 30 years, that on 22.9 87 at about 9.45 P.M. near house no 1/6A, Vikram Vihar, within the jurisdiction of P.P. Amar Colony, you are abusing Ashok Bajaj, your tenant, in the street causing annoyance to the inhabitants of the locality and there was likelihood of the breach of peace and thereby committed an offence punishable u/S. 93/97 D P. Act.' The notice was read over and explained to the accused who pleaded not guilty. After framing of the notice as aforesaid the matter was adjourned from time to to time but it did not make any progress. Ultimately, examination-in-chief of respondent 3 was recorded on 1.3 89. On the same day i.e, 1.3.89 the Magistrate came to the conclusion that from statement of respondent 3 it appears prima facie that in fact a case u/S. 448 Indian Penal Code , was made out against the accused. The charge was amended accordingly. On the request of the counsel for the petitioner the cross-examination of respondents 3 was deferred with a view to enable the petitioner to challenge the order amending the charge.

(2) Under the aforesaid circumstances, the present petition has been filed u/S. 482 of the Code of Criminal Procedure (the 'Code') seeking quashing of kalendra u/Ss. 93 of the Act and charge dated 1.3.89 u/S. 448 IPC. In order to appreciate the challenge in the petition it would be appropriate to reproduce Ss. 97, (o) and (r) of the Act which provisions read as under :-

'93-NO person shall use in any street or public place any threatening, abusive or I

(3) The challenge to the notice dated 28.11.87 framed u/S. 93 and 97 of the Act is that neither the kalendra nor the statement of respondent 3 recorded in relation to alleged incident of 22.9.87 makes out an offence u/Ss. 93 and 97 of the Act. I have been taken through the kalendra and the statement of respondent 3. It is evident there from that the alleged altercations between respondent 3 and the petitioner took place in house No 1/6A, Vikram Vihar, New Delhi, and not in any 'street' or 'public'. According to statement of respondent 3 he was abused in filthy language

by petitioner in the said house and the petitioner was ready to quarrel with him and to harm him. To the same effect are the averments made in the kalendra. Sec. 93 of the Act makes it an offence for any person to use in any street or public place any threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned. Under S. 97 of the Act on conviction such a person is punishable with fine which may extend to Rs. 100.00, or, in default of payment of such fine, with imprisonment for a term not exceeding eight days. It is a pre-requisite of S. 93 of the Act that the offending act shall be in any street or public place. The terms 'street' and 'public place' have been defined in S. 2(r) and (o) of the Act. The 'street' or 'public place' cannot be construed to mean an altercation in the private house. There was no material whatsoever before the Magistrate for even prima facie coming to the conclusion that petitioner had caused annoyance in the 'street', Accordingly, the kalendra u/Ss. 93 and 97 of the Act and notice dated 28.11.87 are liable to be quashed.

(4) In regard to the charge framed against the petitioner on 1.3.89 u/S. 448 Indian Penal Code the contention of counsel for the petitioner is that the M.M. took cognizance of the offence punishable u/S. 448 Indian Penal Code . for the first time on 1.3.89 which was beyond the period of limitation prescribed u/S. 468 of the Code. Under S. 448 Indian Penal Code . the punishment prescribed is for a term which may extend to one year or, with fine which may extend to Rs. 100.00 or with both. For such an offence, S. 468 of the Code creates a bar to the taking of the cognizance after lapse of one year. Cognizance was taken by the Magistrate on 1.3.89 in respect of offence u/S. 448 I.P.C. pertaining to the incident of 22.9.87. Clearly it was beyond a period of one year. There can be no doubt that charge u/S. 448 Indian Penal Code was framed for the first time on 1.3.89. It is on the said date that the Magistrate had applied her judicial mind and had thus taken cognizance of the offence under the said provision. Though in the order dated 1.3.89 the learned Magistrate stated that charge is amended accordingly but the question : Does it in fact amount to the amendment of the charge As noticed above, the notice u/Ss. 93/97 of the Act was framed on 28.11.87 I have already reached the conclusion in the earlier part of this order that there was no material for issue of the notice u/Ss. 93 and 97 of the Act. The matter remained pending

thereafter. It did not make any progress and ultimately on 1.3.89 cognizance of an offence u/S. 448 Indian Penal Code was taken. The principles regarding framing a new charge or altering a charge would not apply on the facts and circumstances of this case as the limitation provided for u/S. 448 Indian Penal Code . was over looked by the Magistrate. Learned counsel for the petitioner rightly relies upon *Girdhari Lal Gupta vs. State* 1983 Criminal L.J. N.O.C. 97 where it was held that the approach of the Magistrate that even if the case u/S. 160 Indian Penal Code . ended in acquittal or conviction, a case for offence u/S. 323 Indian Penal Code . would still be maintainable was held to be wrong as Mgte had over-looked limitation provided for u/S. 468 of the Code. A statutory obligation is cast upon the court u/S. 448 of the Code not to take cognizance of offence of the categories specified in sub section 2 thereof after lapse of period of limitation. Although u/S. 473 of the Code a discretion is conferred on the court to take cognizance of the offence even after expiry of period of limitation if the court is satisfied, on the facts and circumstances of the case, that the delay in the institution of the prosecution have been properly explained or that it was necessary to do so in the interest of justice, the discretion u/S. 473 has to be exercised judiciously on well recognised principles. In the present case, the Magistrate did not exercise jurisdiction u/S. 473 of the Code in condoning the delay. While amending or altering a charge it is the duty of of the court to see that the accused is not prejudiced by additions, alterations or amendment of the charge. The judgment in the case of *S.M. Jafri vs State*, 1955 Allahabad 318, relied upon by learned counsel for the respondent for the proposition that the accused is not prejudiced by mere framing of a charge against him, has no applicability to the present case. In the said case the charge had been framed by the Magistrate after examination of the prosecution evidence on prima facie case having been made out and under these circumstances it was observed that the accused had not been prejudiced by mere framing of the charge against him. The said judgment has no applicability to the facts and circumstances of the present case. It was not a case of framing or amending of charge after the expiry of the period of limitation provided u/S. 468 of the Code. The provisions of limitation were provided for the first time in the Code of 1973. There was no similar provision in the old Code. The object of the legislature in prescribing periods of limitation for taking cognizance of offence mentioned in S. 468(2) is to put

pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly. The Magistrate did not advert to any of the aspects as aforesaid and the framing of the charge has resulted in miscarriage of justice to petitioner and thus I am of the view that the charge framed on 1.3.89 is liable to be quashed.

(5) Petition allowed.

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