Ram Naraln Vs. the State

Ram Naraln Vs. the State

SooperKanoon Citation : sooperkanoon.com/692121

Court : Delhi

Decided On : Jan-16-1980

Reported in : 17(1980)DLT230

Judge : J.D. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 468; Delhi Panchayat Raj Act, 1954 - Sections 53A

Appeal No. : Criminal Revision Appeal No. 4 of 1978

Appellant : Ram Narain

Respondent : The State

Judgement :

J.D. Jain, J.

(1) The facts leading to this revision petition succinctly are that on 19th of April, 1975, a report was lodged by one Partap Singh at Police Station Najafgarh complaining that the petitioner had broken open the locks of the main gate as well as store-cum-office of his factory which he was running as a partner under the name and style of M/s Dawar Engineering Works, on plot No. 38B, Khasra Number 100, at village Matiala, the said plot having been taken on rent by him from the petitioner on 12th of December, 1973 on monthly rent of Rs 125.00 . He

explained that after taking the plot in question on rent he constructed the factory and installed the machinery therein at a huge expenses. Further according to him the petitioner was found sitting inside the office of the factory and on enquiry by him with regard to the breaking of locks of the factory premises he retorted that he had done every thing and that the complainant was at liberty to do anything. A case under Section 448/454/380 of the Indian Penal Code was registered on the strength of that report and eventually a charge-sheet was put in by the Police under Section 173 Criminal Procedure Code for prosecuting the petitioner for offence under Section 448 of the Indian Penal Code. Having regard to the allegations contained in charge-sheet, the petitioner was summoned by the Metropolitan Magistrate concerned. However, on putting in appearance, the petitioner raised an objection that charge-sheet having been filed much after the expiry of the prescribed period of limitation, the Court was not competent to take congnisance thereof. Another objection was that the offence was triable by the G am Panchayat under the provisions of Delhi Panchayat Raj Act and as such the Metropolitan Magistrate was not competent to try the same. However, both these contentions were repelled by the learned Metropolitan Migistrate vide his order dated 5th October, 1977 and notice under Section 251 of the Code of Criminal Procedure was given by the Court to the petitioner as to why he should not be convicted of an offence under Section 448 of the Indian Penal Code for committing tresspass in the premises of the aforesaid factory.

(2) None turned up on behalf of the petitioner. Hence, I went through the record with the help of the counsel for the State. The first submission made by the petitioner in the revision petition is that the first information report in this case had been lodged on 19th April, 1975 but the charge sheet was filed on 23rd of December, 1976, much after the expiry of period of limitation as prescribed by Section 468 of the Code of Criminal Procedure and as such the learned Magistrate had no jurisdiction to entertain the same. Further rejection by the learned Magistrate of his objection to that effect is not warranted by law.

(3) Chapter xxxvi which is newly introduced chapter contains Sections 467 to 473-waich lay down bar of limitation and prescribe varying periods of limitation for launching criminal prosecution. Section 468 not only raises the bar of limitation but

also prescribes the period thereof. It is not in controversy that the period of limitation in the present case would bs one year, as prescribed in clause (b) of sub-section (2) thereof. Section 469 lays down the terminus a quo for the period of limitation in various types of cases. Under clause (a) the period of limitation, in relation to an offender, shall commence on the day of the offence. We are nit concerned with Clause (b) and (e) thereof in the instant case. Thus computing the period of limitation from the date of the report in this case when the commission of the crime by the petitioner was detected, there can bs no doubt thatthe complaint should -^ have been filed by or before 19th of April 1976. This there was a delay of about eight months in filing the charge-sheet on the part of the Investigating Agency.

(4) Section 473 of the Code enables the Court to take cognizance of offence even after the expiry of period of limitation if it is satisfied on the facts and in the circumstance of the case that (i) delay has been properly explained or (ii) that it is necessary so to do in the interest of justice. Significantly the prosecution in this case did not furnish any Explanationn whatsoever for belated filing of the challan, even though the challan purports to have been forwarded by the Station House Officer concerned as far back as 19th July, 1975. It is not known where the charge-sheet remained all this time: So there is substance in the contention of the petitioner that the delay could not have been condened on the ground of its having been properly explained. Indeed, even the learned Magistrate did not invoke the first part of this Section and he simply observed that 'I have already used my judicial discretion and have waived the above conditions by my taking the cognizance of the case and summoning the accused. Even otherwise I do not find any reason as to why the case where the alleged right of peaceful possession and enjoyment of property is concerned it should be allowed to collapse due to technical reason'. Evidently the delay has been condoned by the learned Magistrate under the second part of Section 473 viz. that it is necessary so to do in the interest of justice. The phrase 'interest of justice' is of wide amplitude. It implies conditions which assist or are in aid of or in furtherance of justice and it imports exercise of discretion which considers interests of parties concerned as well as Administration of Justice. Thus while the Court is vested with wide discretion to waive the bar of limitation for the institution of a criminal case, there can be no

doubt that the discretion has to be exercised on sound principles and not capriciously or arbitraily. In other words exercise of judicial discretion must advance substantial equity justice, having regard to the exigency of situation and its primary obligation to protect the legal rights of a citizen. In the instant case the petitioner took the law into his own hands and wrongfully trespassed into the factory premises of the complainant in his absence. Certainly the Court can legitimately hold that he should not be allowed to go scot free with wrongful gains of illegal act on the technical plea of bar of limitation. It is true that having regard to the definition of the offence of criminal trespass in Section 441 of the Indian Penal Code, the offence is complete as soon as there is unlawful entry and it can be said to be continuing offence only when the entry is lawful but the subsequent possession becomes unlawful. Where the original entry is unlawful, the possession must be presumed to have commenced with unlawful entry and as such there is no fresh act of criminal trespass on any subsequent date. So strictly speaking Section 472 of the Code which lays down that 'in all cases of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues' can not be invoked in the instant case. All the same it cannot be gainsaid that the petitioner is prepetuating his illegal possession to great chagrin and helplessness of the complainant. The fact that civil remedy is available to him is hardly a ground to throw away the prosecution of the petitioner for the criminal offence under Section 448 of the Indian Penal Code. Hence, discretion exercised by the Trial Court, cannot be considered to be arbitrary or injudicious. At any rate, there is no good ground for this Court to interfere with the same.

(5) The second submission of the petitioner that the instant case is exclusively triable by the Circle Panchayat is equally ill-founded. Section 50 of the Delhi Panchayat Raj Act (hereinafter referred to as the Act) lays down 'that the Sarpanch shall for the trial of every criminal case or proceeding, form a bench of five panches from the panel of Circle Panchayat to constitute a Panchati Adalat for the purposes of the trial of that suit or proceeding, in the manner prescribed.' Section 53-A, sub-Section (1) of the Act enumerates the offences which shall be triable by a Panchayati Adalat, offence under Section 448 of the Indian Penal Code, being one of them. Sub-Section (3) thereof empowers the Chief

Commissioner to withdraw from Panchayati Adalat the power to try all or any of offences referred to in clauses (a) to (g) of sub-Section (1). Thus it is crystal clear that the said section simply empowers Panchayati Adalat to try certain types of offences as implying that Panchayati Adalat alone is competent to try such offence. Having regard to the provision contained in sub-Section 3 of Section 53-A the word 'shall' ceases to be mandatory in nature and should be looked upon merely directory. The use of expression 'triable' in contra distinction to the word 'tried' is also significant and lends support to the above construction. Further subSection (. 2) of Section 53-B of the Act provides that a Panchayati Adalat may impose a fine not exceeding one hundred rupees but no imprisonment may be awarded in default of payment. It is thus manifest that the Panchayati Adalat cannot in fairness to the parties concerned, be entrusted with the trial of cases of serious or complicated nature calling for a higher degree of punishment in the even of the trial culminating in conviction of the accused. Section 53-C whittles down the power of the Panchayati Adalat to try cases of previous convicts of certain categories and even public servants. Lastly, Section 64 lays down the procedure in case a person wishes to institute a suit, criminal case or proceeding under the Act before a Circle Panchayat. Thus on a conjoint reading of all these Sections of the Act it would appear that the State is not bound to institute criminal cases pertaining to cognizable offences in the Adalti Panchayat. Indeed. I wonder if any machinary has been set up to prosecute the caees on behalf of the State before Adalti Panchayats. Thus intendment of the Legislature in conferring judicial powers in respect of certain offences on the Panchayati Adalats simply is that Private parties who wish to institute criminal proceeedings against inhabitants of the same Circle Panchayat may approach them for redress of their grievances. It is apprently designed to ensure cheap and speedy remedy in cases of petty nature and it is highly doubtful that the prosecutions launched by the State must as well be tried by Panchayati Adalat.

(6) Hence, the view taken by the learned Magistrate does not appear to be erroneous. At any rate, the instant is certainly not a case of the type, the decision of which should be left in the hands of Adalti Panchayat having regard to the gravity of offence.

(7) As a result, I find no merit in this revision petition, it is accordingly dismissed.