

Hema Bhalla Vs. State

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Court : Delhi

Decided On : Oct-23-2002

Reported in : 102(2003)DLT906

Judge : J.D. Kapoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 380 and 448; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Crl.M.(M) No. 3434 of 2002 and Crl.M. No. 4346 of 2002

Appellant : Hema Bhalla

Respondent : State

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. Petitioner is the landlady of the complainant. Garage portion was let out to the complainant who used it as godown for storing articles relevant for cent. On 24.8.1987 at 8.30 p.m. when he went to godown he found that door which was locked was removed and a wall had been put and entire goods lying inside were removed. He made inquiries from the petitioner Along with one person who stated himself to be an Advocate namely Sh. S.S. Lingwal. They both started giving

threats and abuses. He alleged that both these persons after breaking the lock and shutter have constructed a wall and have taken possession of his godown. Charge sheet was filed for the offences under Sections 448/380 read with Section 34, IPC. However, the learned M.M. framed the charges for the offence under Section 448, IPC and discharged the petitioner so far as offence under Section 380, IPC is concerned.

2. Learned Counsel for the petitioner states that the learned M.M. did not consider his arguments that the cognizance for the offence under Section 448, IPC cannot be taken after 3 years which is the period of limitation nor did he refer to the authorities cited by him in this regard, The matter was taken to the learned ASJ by way of revision petition. However, the learned ASJ did not touch the order of the learned MM whereby the petitioner was discharged for the offence punishable under Section 380, IPC and banked upon the charge-sheet wherein offence under Section 380, IPC Along with offence under Section 448, IPC figured.

3. Admittedly the State did not prefer any revision against the order of the learned Magistrate discharging the petitioner so far as offence under Section 380, IPC is concerned. That being so, the learned ASJ was only concerned with the proposition whether charge for the offence under Section 448, IPC could be framed or cognizance for the said offence can be taken beyond the period of three years as prescribed under Section 468(3), Cr.P.C. Admittedly charge sheet including both the offences under Sections 448 and 380, IPC was filed and, therefore, the plea that the cognizance beyond the period of three years could not be taken was not available to the petitioner as no limitation has been prescribed for taking cognizance for the offence under Section 380, IPC. Once the learned MM had come to the conclusion that the offence under Section 380, IPC was not made out against the petitioner, it was incumbent upon the Magistrate to see whether charge for the offence under Section 448, IPC can be framed or cognizance can be taken for the said offence after the period of limitation. It appears that both the Courts below did not take this aspect of the matter into consideration and proceeded on the presumption that once charge-sheet has been filed for the offences for there is no limitation prescribed not only for the cognizance but the charge can also be framed beyond the period of three years.

There was apparently erroneous presumption they proceeded on.

4. Merely in the charge-sheet certain offences are such cognizance for which is not subject to any limitation does not mean that the Court is empowered to take cognizance beyond the period of limitation for the offence which is found to have been actually committed. It is the Court which is required to peruse and scan the material and the facts of the case to arrive at conclusion which particular offence is made out for the purpose of framing charge and trial and not to follow blindly as to the offence referred to or resorted to in the charge-sheet filed by the police.

5. Having once come to the conclusion that the offence which the petitioner can be accused of or tried is punishable under Section 448, IPC there was no option open to the Magistrate and for that purpose learned ASJ than to resort to the provisions of Section 468, Cr.P.C. as Sub-clause (c) of Sub-section (2) provides that the period of limitation shall be three years if the offence is punishable with imprisonment for a term of one year but not exceeding three years.

6. Perusal of the impugned order passed by learned ASJ shows that the learned ASJ proceeded on erroneous presumption that when the case is tried for severe offences, period of limitation in relation to the offences which is punishable with more severe punishment would be the period of for taking cognizance. The petitioner was ordered to be tried for the offence under Section 448, IPC alone and not for the offence under Section 380, IPC which involves more severe punishment. Thus, both the Courts have erred not only on factual matrix but on legal proposition also.

7. In view of foregoing reasons, petition succeeds and the proceedings against the petitioner stand quashed.