

**Maluka Ram Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-21-1996

**Reported in :** 1997(1)WLC488; 1996(2)WLN536

**Judge :** Amaresh Ku. Singh, J.

**Appeal No. :** S.B. Criminal Misc. Petition No. 442 of 1993

**Appellant :** Maluka Ram

**Respondent :** State of Rajasthan

**Disposition :** Petition dismissed

**Judgement :**

**Amaresh Ku. Singh, J.**

1. Heard the learned Counsel for the petitioner and the learned Public Prosecutor for the State and nobody appears on behalf of non-petitioner No. 2.

2. In complaint case No. 5/87, Shri Ram v. Maluka Ram the learned Judicial magistrate took cognizance of the offences under Sections 323 and 452 of the Indian Penal Code and after holding an enquiry under Sections 200 and 202 of the Criminal Procedure Code issued process against the petitioner vide order dated 27th July, 1988.

3. Feeling aggrieved by that order the petitioner has filed this petition under Section 482 of the Criminal Procedure Code with a prayer that the proceedings initiated against him be quashed because they are barred by limitation.

4. I have carefully considered the submission made by learned Counsel for the petitioner under Section 482 of the Criminal Procedure Code. According to the learned lower Court on 11th June, 1987 Shri Ram non-petitioner No. 2 submitted a complaint in the Court of learned Judicial Magistrate, District Jodhpur. In the complaint he had alleged that on 21st March, 1987 Maluka Ram who was then posted as A.S.I. at Police Station Luni, district Jodhpur entered the house of the complainant's uncle merely on the ground of suspicion and arrested him, at the same time demanded Rs. 5,000/- as consideration for releasing him from the custody. It was also alleged in the complaint that the complainant pleaded innocence before Maluka Ram and thereafter, Maluka Ram beat the complainant with stick and belt and took him to the Police Station, Luni. At Luni Police Station also the complainant was beaten by Maluka Ram in presence of several persons. On the next day i.e., on 22nd March, 1987 the complainant was medically examined. He was ultimately released under the orders dated 10th June, 1987 passed by this Court. It was also stated in the complaint filed by Shri Ram that he has sent complaint about the aforesaid incident to the Superintendent of Police, Jodhpur. In the complaint offence under Section 323 and 452 of the Indian Penal Code were alleged. After the receipt of the complaint the learned Judicial Magistrate registered the complaint vide order dated 24th June, 1987 and fixed 8th July, 1987 for the statement of the complainant. It appears that from 8th July, 1987 to 27th July, 1988 the enquiry under Sections 200 and 202 of the Criminal Procedure Code remained pending before the learned Magistrate.

5. The crucial question to be decided is whether the proceedings initiated against the complaint are barred by limitation. Under Section 368 of the Criminal Procedure Code the limitation for the offence which is punishable with fine only is six months and if the offences be punishable with imprisonment for a term not exceeding one year then the period of limitation is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years then the period of limitation is three years. The submission of the

learned Counsel for the petitioner is that the offence under Section 323 of the Indian Penal Code is punishable with imprisonment not exceeding one year and, therefore, the period of limitation applicable to the case was one year from the date of the commission of the offence and the learned Magistrate has taken cognizance of the offence after the expiry of the period of one year. The argument made by the learned Counsel for the petition rests on the assumption that cognizance of the offence was taken on 27th July, 1988.

6. In this case two important questions arise for determination. (1) What offence or offences were mentioned in the complaint filed by Shri Ram non-petitioner No. 2 of which cognizance has been taken by the learned Magistrate under Section 190, Sub-section (1) Clause (a) of the Criminal Procedure Code. (2) which is that date on which the learned Magistrate took cognizance under Section 190 Sub-section(1) Clause (a) of the Criminal Procedure Code.

7. So far as the first question is concerned a bare reading of the complaint filed by Shri Ram (non-petitioner No. 2) shows that he alleged that on 21st March, 1987 the petitioner Maluka Ram who was then posted as A.S.I. at Police Station Luni entered into the house of Khema Ram, arrested the non-petitioner No. 2 and demanded money. Non-petitioner No. 2 did not pay the money and, therefore, he was taken to the Police Station where he was beaten and kept in lock-up. Ultimately he was released under the orders passed by this Court. Allegations made in the complaint attract Sections 323, 448 and 384 of the Indian Penal code. Offence under Section 384 of the Indian Penal Code is punishable with imprisonment which may extend to a term of three years or with fine or with both but offence under Section 323 of the Indian Penal Code which is punishable with imprisonment which may extend to one year or with fine or with both. It is true that in the complaint filed by the non-petitioner No. 2 in Para 6 it is mentioned that the act of the accused was punishable under Section 323 and 452 of the Indian Penal Code and there was no mention of Section 384 of the Indian Penal Code but that does not affect the legal position. Whenever any Magistrate before whom facts are placed, takes cognizance, he takes cognizance of all the offences constituted by the facts placed before him, unless he lacks jurisdiction to take cognizance of one or more of the offences constituted by facts brought to his notice. If that is the legal

position the Magistrate who took cognizance of the offence on the basis of the facts mentioned in the complaint dated 11th June, 1987 must be deemed to have taken cognizance of the offence under Sections 323, 448 and 384 of the Indian Penal Code.

8. The next question to be decided in this case is as to on which date the learned Magistrate took cognizance of the offence. The learned Counsel for the petitioner has submitted that the Magistrate took cognizance of the offence on 27th July, 1988 when he issued process against the petitioner in respect of offence punishable under Section 323 of the Indian Penal Code. The submission is that cognizance is taken of the offence by the Magistrate when process is issued against him under Section 204 of the Criminal Procedure.

9. I have carefully considered this submission, it does not appear to be well founded. What is meant by the expression 'taking cognizance of the offence' has not been defined anywhere in the Criminal Procedure Code. But the High Courts and the Apex Court have consistently taken the view that 'taking cognizance does not require any formal action or indeed any action of any kind but it occurs as soon as the Magistrate as such applies his mind to the suspected commission of an offence'. This definition of taking cognizance was given by a Division Bench of Calcutta High Court in 'King Emperor v. Surendra Mohan Chakraborty' (1). The definition clearly shows that as soon as the Magistrate applies his mind, judicially to the facts placed before him with a view to proceed under the Criminal Procedure Code against the offenders then he must be said to have taken cognizance of the offence. It is true that in the absence of any other circumstances showing that the Magistrate had taken cognizance earlier, the issue of process under Section 204 of the Criminal Procedure Code conclusively proves that the Magistrate has taken cognizance of the offence but it does not mean that the taking of the cognizance before issue of process under Section 204 of the Criminal Procedure Code is not possible. So far as the complaint case is concerned the Criminal Procedure Code contemplates an enquiry under Sections 200 and 202 of the Criminal Procedure Code. Section 200 provides that the Magistrate taking cognizance of an offence should examine the complainant without delay and after the examination of the complainant he may either issue process without

postponing the enquiry initiated by him or if he considers it necessary he may postpone the enquiry under Section 202 and thereafter examine witnesses which may be produced by the complainant. The enquiry under Sections 200 and 202 of the Criminal Procedure Code is, therefore, conducted after taking cognizance of the offence or offences by the Magistrate and not before that. After the completion of the enquiry under Section 200 and 202 of the Criminal Procedure Code the Magistrate has to proceed either by issue of process under Section 204 of the Criminal Procedure Code against the offenders or if he finds that there is no sufficient ground to proceed against him he may dismiss the complaint under Section 203 of the Criminal Procedure Code. Orders under Section 203 and 204 both orders are passed after taking cognizance of the offence and not before that. Therefore, the assumption that the Magistrate takes cognizance when he makes an order under Section 204 of the Criminal Procedure Code is not in accordance with law. The Magistrate must be said to have taken cognizance in this case on 24th June, 1987 when he directed that the complaint filed by non-petitioner No. 2 be registered and fixed a date for examination under Section 202 of the Criminal Procedure Code.

10. In view of above finding it cannot be said that the Magistrate has committed any illegality by taking cognizance of the offence.

11. In view of above reasons this petition has no force, it deserves to be dismissed and it is hereby dismissed. A copy of the order be sent to the Judicial Magistrate for necessary action. The stay granted by this Court on 10th September, 1993 and 7th November, 1994 is hereby vacated. The Magistrate is directed to dispose of the case as early as possible.