

**Deena Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Sep-29-1986

**Judge :** Desai, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 468(2)

**Appeal No. :** Crl. Petn. No. 854 of 1984

**Appellant :** Deena

**Respondent :** State of Karnataka

**Advocate for Def. :** C.H. Jadhav, HCGP

**Advocate for Pet/Ap. :** J.T. Rajan, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Desai, J.**

1. The petitioner is the accused in C. C. No. 513/83 on the file of the Metropolitan Magistrate, Vth Court, Bangalore, One Sri. B.N. Prabhakar Rao, a police constable No. 2898 attached to Ulsoor police station who is the neighbour of the accused filed a complaint in the Ulsoor police station on 17-8-79 alleging that on that day at

1.55 p.m. while he was, proceeding to his house, the accused wrongfully restrained him and assaulted him with chappals and thereby committed offences punishable under Sections 341 and 355 IPC. After completing the investigation, the charge-sheet was filed in the Court-below against the accused on 14-3-1983 i.e., after more than 3 1/2 years from the date of offence.

2. According to Section 468(2)(c) of the Code of Criminal Procedure, 1973, (hereinafter referred to as the 'Code') the charge-sheet ought to have been filed within three years from the date of offence as the offence under Section 355 IPC is punishable with imprisonment for two years or with fine, or with both. Therefore, the Counsel for the accused contended that the prosecution was barred by Section 468(2)(c) of the Code.

3. The learned Magistrate, after hearing both sides, held that as the accused was arrested on 20-10-1982 he must be absconding till then and so the period from the date of offence till that date has to be excluded in computing the period of limitation according to Section 470(4)(b) of the Code and hence, the charge-sheet filed was in time. Hence, this Petition by the accused.

4. In considering the scope and object of Section 468 of the Code, in *State of Punjab v. Sarwan Singh*, 1981 CrL. L.J 722 the Supreme Court was pleased to observe thus :

'The object of Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation....'

5. In this case, the date of offence was 17-8-79 and the charge-sheet was filed on 14-3-83 i.e., beyond the period of limitation prescribed under Section 468(2)(c) of

the Code. When the charge-sheet was prima facie barred by lime, it was incumbent on the prosecution to file an application for condonation of delay stating the grounds for such condonation. No such endorsement is made on the charge-sheet. It is not even alleged in the charge-sheet that the accused was absconding till 20-10-82. No affidavit of the Investigating Officer was also filed to that effect as can be seen from the records. Even the case diary maintained by the Investigating Officer was not produced before the Trial Court to convince the Court that the accused was absconding. Under the circumstances, it cannot be said that the accused was absconding because the possibility of the Investigating Officer making up his mind to arrest the accused on 20-10-82 itself cannot be ruled out. Therefore, the learned Magistrate was not justified in presuming that the accused was avoiding arrest till 20-10 1982 merely because he was arrested on that day. As the charge-sheet has been filed beyond the period of limitation prescribed under Section 468(2)(c) of the Code, the learned Magistrate ought not to have taken cognizance of the offences. Hence, I think it proper to quash the proceedings against the petitioner in the Court-below.

6. In the result, the Petition is allowed and the proceedings against the petitioner in C. C. No, 513/83 pending on the file of the Metropolitan Magistrate, Vth Court, Bangalore, are hereby quashed.

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