HIGH COURT OF ORISSA: CUTTACK.

CRIMINAL MISC. CASE NO. 10215 OF 2001

This is an application under Section 482 of Code of Criminal Procedure.

Rajani Kanta Padhi ..... Petitioner.

-Versus-

State of Orissa and others ..... Opp. Parties.

For Petitioner : M/s. S.Pujhari, P.K.Pattnaik, B.Sahoo, J.A.Reddy and N.P.Das

For Opp. Parties : M/s. H.M.Dhal and L.Pani. (for O.P. nos. 2 to 6)

M/s. B.R. Sarangi, P.K. Rout & P.K. Kar (for informant)

PRESENT:

THE HONOURABLE SHRI JUSTICE B.K. PATEL

Date of hearing -26.4.2010 : Date of judgment- 2.7.2010

B.K.PATEL, J. In this application under Section 482 of the Cr.P.C. the petitioner has assailed the legality of impugned order dated 20.10.2001 passed by learned J.M.F.C., Bhubaneswar in G.R. Case No. 3793 of 1993 rejecting the prayer of the accused persons, i.e., petitioner and opposite party nos.2 to 6 to quash the order of taking cognizance and to drop the criminal proceeding.

2. Marriage between petitioner and informant's daughter Manjula was solemnized on 4.5.1984. Petitioner is employed in UCO Bank and Manjula is a lecturer in History. Opposite party nos. 2 to 6 are petitioner's parents and other relations. G.R. Case No. 3793 of 1993 was registered for commission of offence under Section 498-A of the Indian Penal Code (for short 'I.P.C') on the basis of First Information Report submitted on 17.10.1993. It is alleged that informant had given gifts during the marriage as per demand and according to his capacity. After the marriage, petitioner and Manjula lived together merrily. However, problem started when they were blessed with a girl child in October, 1985 as Manjula's mother-in-law opposite party no. 5 took exception to it. Petitioner as well as opposite party nos. 2 to 6 started torturing Manjula on some plea or other. They combined together to dissuade her from continuing with her job and for that purpose also tortured her. They also resented when she registered herself for doing Ph.D. in Utkal University. Finally, petitioner and his parents expressed dissatisfaction against Manjula for not having been given colour T.V. or cash. Petitioner expressed his inability to drop Manjula in her college in his scooter. Petitioner assaulted Manjula on several occasions in connection with the demand for further dowry and opposite party nos. 2 to 6 joined hands with him. Ultimately, petitioner forcibly drove Manjula out of the house on 1.5.1990 with a direction not to return without scooter and colour T.V.. Informant alleges to have made

attempts for compromise before lodging First Information Report. Order dated 24.6.1995 taking of cognizance ofoffences on receipt of charge sheet reads:

> "Charge sheet is received against accused Rajanikanta Padhi, Harish Chy. Padhi, Bipin Bihari Padhi, Gopal Krishna Padhi, Urmila Padhi, Surama Padhi for the offence U/s 498(A)/406/34 IPC. Cognizance of the same is taken. Issue notice to bailor and summons to accused fixing the date 27.10.1995 for appearance."

3. It appears that prayer was made in the petition dated 21.6.2001 on behalf of petitioner and opposite party nos. 2 to 6 to drop the criminal proceeding on the ground of bar of limitation in taking cognizance. The impugned order dated 20.10.2001 rejecting the petition was passed observing that computation of limitation would start from the date of filing of the First Information Report and not from the date on which the petitioner was driven out by the in-laws.

4. It was submitted by the learned counsel for the petitioner that Section 468 of the Cr.P.C. prohibits taking of cognizance after expiry of period of limitation. Section 469 of the Cr.P.C. provides that the period of limitation commences on the date of the offence. Learned Magistrate took cognizance of offences under Sections 406 as well as 498-A of the I.P.C. beyond the prescribed period of limitation without assigning any reason. In the absence of any reason, as contemplated under Section 473 of the Cr.P.C., the order of cognizance is not sustainable and the criminal proceeding is liable to be quashed. It was

further argued that continuation of criminal proceeding on the basis of vague allegations shall amount to abuse ofprocess of the Court.

5. In reply, it was contended by the learned counsel for the State as well as the learned counsel for the informant that though in the cognizance order dated 24.6.1995 it has not been specifically mentioned that the period of limitation was extended in exercise of power conferred under Section 473 of the Cr.P.C., it is to be presumed that cognizance of the offences was taken in exercise of jurisdiction conferred by Section 473 of the Cr.P.C. It was vehemently argued that as allegations in the case relate to cruelty on a helpless woman, which is a continuing offence, provision under Section 473 of the Cr.P.C. requires to be construed liberally in the interest of justice. It has been consistently held in authoritative judicial pronouncements that in cases involving allegations of present nature rule of limitation should not be interpreted in a manner which gives unfair advantage to persons subjecting a woman to cruelty.

6. Learned counsel appearing for the parties relied upon decisions in **Smt. Venka Radhamanohari v. Vanka Venkata Reddy and others** : 1993 (II) OLR (SC) 173, **Arun Vyas and another v. Anita Vyas** : AIR 1999 SC 2071, **State of Himachal Pradesh v. Tara Dutt and another** : AIR 2000 SC 297, **Basant Kumar Mishra & Ors. v. State of Orissa** : (2007) 37 OCR 215, **Chandrasekhar Mohanty v.**

Japani Sahoo : (2006) 34 OCR 698 and **Sanapareddy Maheedhar Seshagiri v. State of Andhra Pradesh** : AIR2008 SC 787.

7. Neither in the impugned order dated 20.10.2001 nor in the order dated 24.6.1995 taking cognizance of offences there is any indication regarding extension of period of limitation in exercise of power under Section 473 of the Cr.P.C. Rather, in the impugned order, having made observation regarding nature of offence under Section 498-A of the I.P.C. it has been held by the learned J.M.F.C., Bhubaneswar that the computation of limitation in the present case would start from the date of filing of First Information Report and not from the date of which the petitioner was driven out from her matrimonial home. On the basis of such observation, it was held by the learned J.M.F.C., Bhubaneswar that as First Information Report was lodged on 17.10.1993 and cognizance was taken on 26.4.1995, question of taking cognizance after the expiry of the period of limitation does not arise. In making the observation learned J.M.F.C., Bhubaneswar appears to have lost sight of provision under Section 469 of the Cr.P.C. which provides that the period of limitation shall commence, *inter alia*, on the date of the offence. Date of lodging of First Information Report is not relevant for computing the period of limitation.

8. There is no dispute over the proposition that offence under Section 498-A of the I.P.C. is a continuing offence. The victim would

have a new starting point of limitation on each occasion on which she was subjected to cruelty. Period of limitation has, therefore, to be computed from the last act of cruelty committed against the victim. In this context, decision in **Arun Vyas and another v. Anita Vyas** (supra) may be referred to. Section 498-A of the I.P.C. provides that a person for commission of offence thereunder shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Section 406 of the I.P.C. provides that whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Therefore, period of limitation for taking cognizance of commission of offences under Sections 498-A as well as 406 of the I.P.C. is three years as provided under Section 468 (2)(c) of the Cr.P.C. Section 473 of the Cr.P.C. conferring jurisdiction on the court to extend period of limitation in certain cases reads:-

> "Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

9. Keeping the above in view, it is found that according to allegations made by the prosecution informant's daughter was forcibly driven out from her matrimonial home on 1.5.1990. All other acts of cruelty are alleged to have been committed against her before she was driven out from her matrimonial home. No instance of cruelty is alleged

to have been meted out to the victim thereafter. Therefore, period of limitation certainly commenced on 1.5.1990 and expired on 1.5.1993. Cognizance could not have been taken on 24.6.1995 without passing a speaking order extending the period of limitation. Even in the impugned order dated 20.10.2001 there is no reference to exercise of power under Section 473 of the Cr.P.C. Moreover, First Information Report itself was lodged after the expiry of period of limitation.

10. In **Smt. Venka Radhamanohari vs. Vanka Venkata Reddy and others** (supra) while analyzing the provision under Section 473 of the Cr.P.C. with reference to offence under Section 498-A of the I.P.C., it was held by the Hon'ble Supreme Court:-

> "4. At times it has come to our notice that many Courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the Court that there was sufficient cause for condonation of delay under Section 5 of the Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the Court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the Court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever, the bar of Section 468 is applicable, the Court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take notice of the nature of offence, the class to which the victim belongs, including the back-ground of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the

relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim *vigilantibus, et non, dormientibus jura subveniunt* (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women.

It is true that the object of introducing Section 468 was to put a bar of limitation on prosecution and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of **State of Punjab v. Sarwan Singh** AIR 1981 SC 1054. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that wife openly comes before a Court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, Courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband should judge that question, in the light of Section 473 of the Code, which requires the Court; not only to examine as to whether the delay has been properly explained, but as to whether " it is necessary to do so in the interest of justice".

In the case of **Bhagirath Kanoria v. State of M.P.** AIR 1984 SC 1688 this Corut even after having held that non-payment of the exployer's contribution to the Provident Fund before the due date, was a continuing offence, and as such the period of limitation prescribed by Section 468 was not applicable still referred to Section 473 of the Code. In respect of Section 473 it was said:

> "That section is in the nature of an overriding provision according to which notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice.

> The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and considerations to the provisions contained in Section 473 of the Code.""

11. In **Arun Vyas and another v. Anita Vyas** (supra) also it was held that offence under Section 498-A of the I.P.C. is a continuing offence and that there would be a new starting point of limitation on each occasion on which the victim was subjected to cruelty. It was specifically held that the last act of cruelty was committed when the victim was forced to leave matrimonial home. It was held :-

> "13. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offece and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under Sections 406 ad 498-A from October 13,1988 and ended on October 12,1991. But the charge-sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468(2) (c) Cr.P.C.
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> 14. It may be noted here that Section 473 Cr.P.C. which extends the period of limitation is in two parts. The first part contains *non obstante* clause and gives overriding effect to that section over Sections 468 to 472. The second part has two limbs. The first limb confers

> power on every competent Court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a Court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression in the interest of justice in Section 473 cannot be interpreted to mean in the interest of prosecution. What the Court has to see is 'interest of justice'. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of limitation in the interest of justice. This is only illustrative not exhaustive."

12. Thus, in view of nature of offence under Section 498-A of the I.P.C., it has been consistently highlighted that court should adopt liberal approach in favour of extending of period of limitation under Section 473 of the Cr.P.C. However, it is now well-settled that while taking cognizance after expiry of period of limitation, the Magistrate has to pass a speaking order assigning reasons for exercise of the discretion under Section 473 of the Cr.P.C.

13. While reconsidering the decision in **Arun Vyas and another v. Anita Vyas** (supra), rendered by a Bench of two Judges, it was held by a Bench of three Judges in **State of Himachal Pradesh v. Tara Dutt and another** (supra) :-

"7. Section 473 confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explaine and that it is necessary so to do in the interest ofjustice. Obviously, therefore in respect of the offences for which a period of limitation has been provide in Section 468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognized principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence. xx xx

8. In view of the observations made by a Bench of two Judges of this Court, while this appeal was placed before their Lordships, for hearing that the decision in the case of **Aruna Vyas v. Anita Vyas**, (1999) 4 SCC 690: (1999 AIR SCW 1793 : AIR 1999 SC 2071 : 1999 Cri LJ 3479), requires reconsideration, we think it necessary to notice the same. In the said case of Aruna Vyas, one of the questions for consideration was whether the offence u/S. 498-A of the IPC is a continuing offence. The Court ultimately answered that the essence of the offence in Section 498-A, being cruelty, the same is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. On fact, the Court found that the last act of cruelty being committed on 13.10.1988 and the period of limitation having commenced from that date, the charge-sheet that was filed on 22.12.1995 and the subsequent cognizance on that basis was clearly barred by limitation under Section 468(2)(c) of the Code of Criminal procedure, we see no infirmity with the said conclusion. One other question that was raised and adverted to in the aforesaid case is that in the absence of any specific order by the Magistrate, taking cognizance, after the period of limitation provided in Section 468(2)(c) of the Code of Criminal Procedure by invoking the power under Section 473 and condoning the delay, the Magistrate committed error by discharging the accused on the ground

> of limitation. The aforesaid observations made by this Court indicates that the order of the Magistrate a the time of taking cognizance in case of an offence under Section 498-A, should indicate as to why the Magistrate does not think it sufficient in the interest ofjustice to condone the delay inasmuch as an accused committing of an offence under Section 498-A should not be lightly let of. We have already indicated in the earlier part of this Judgment as to the true import and construction of Section 473 of the Code of Criminal Procedure. The said provision being an enabling provision, whenever a Magistrate invokes the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied on the facts and circumstances of the case that the delay has been properly explained and that it is necessary in the interest of justice to condone the delay. But without such an order being there or in the absence of such positive order, it cannot be said that the Magistrate has failed to exercise jurisdiction vested in law. It is no doubt true that in view of the fact that an offence under Section 498-A is an offence against the society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be satisfied, in case of period of limitation for taking cognizance under Section 468(2)(c) having been expired that the circumstances of the case requires delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Code of Criminal Procedure."

14. This Court also in **Chandrasekhar Mohanty v. Japani Sahoo** (supra) held:-

> "5. In the code of Criminal Procedure 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observance of the principle of fairness in the trial of the offences by barring belated and vexatious prosecution. Delay in prosecution of cases causes undue hardship as it keeps the sword hanging on the head of the accused persons and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are

> excluded under Central Act 12 of 1974 or any State Act. It contains seven Sections being Sections 467 to 473. Section 467 defines 'period of limitation' used in the Chapter. Section 468 creates a bar for taking cognizance of offences after lapse of period of limitation. Section 473 vests power upon the Court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied in the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. Thus in a given case where the Court is satisfied in the facts and circumstances of the case that in the interest of justice the delay in the prosecution may be condoned, it can do so but then by giving reasons. It has been held by the Supreme Court in the case of **State of Himachal Pradesh v. Tara Dutt and another** reported in AIR 2000 Supreme Court 297 that the power to taking cognizance by Court after expiry of period of limitation has to be exercised judiciously and on well recognized principles. xx xx xx xx xx"

15. In **Basant Kumar Mishra & Ors. v. State of Orissa** (supra) also it has been reiterated by this Court that the order of taking cognizance by extending the period of limitation in exercise of power under Section 473 of the Cr.P.C. has to be a speaking order.

16. It is not disputed that in the meanwhile by exparte judgment dated 9.12.2004 passed by learned Additional Civil Judge (Senior Division), First Court, Bhubaneswar in O.S. 313 of 2004 (326 of 1991) marriage between petitioner and informant's daughter has been dissolved. Admittedly, they are living in separation for the last twenty years. Though First Information Report was lodged more than three years after the victim was allegedly driven out from her matrimonial home, specific allegation of cruelty has not been made against each of the accused persons. In **Sanapareddy Maheedhar Seshagiri v. State**

of Andhra Pradesh (supra), in holding that the continuation of criminal proceeding for commission of offences under Sections 498-A and 406 of the I.P.C. read with Sections 4 and 6 of the Dowry Prohibition Act instituted against the appellant no. 1 would amount to abuse of process of the Court in view of bar of limitation, the Hon'ble Supreme Court took note of the fact that marriage between him and the victim had been dissolved in the meanwhile. In **Neelu Chopra and another v. Bharti** : (2009) 10 SCC 184, it has been held that in order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

17. Obviously, order dated 24.6.1995 was passed mechanically and without application of mind taking cognizance of offences under Sections 498-A and 406 of the I.P.C. without extending the prescribed period of limitation. In the absence of any reason making it manifest that period of taking cognizance has been extended, the order of taking cognizance cannot be legally countenanced and, under the facts and circumstances of the case, continuance of the criminal proceeding against the petitioner and co-accused persons shall be an abuse of the process of court.

18. For the reason stated above, the Criminal Misc. Case is allowed. The impugned order dated 20.10.2001 and the order dated 24.6.1995 taking cognizance of offences are quashed. Criminal proceeding in G.R. Case No.3793 of 1993 in the court of learned J.M.F.C., Bhubaneswar is dropped.

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B.K.Patel, J.

Orissa High Court, Cuttack,
The 2nd July, 2010/*Aks*