

PETITIONER:
SURINDER MOHAN VIKAL

Vs.

RESPONDENT:
ASCHARAJ LAL CHOPRA

DATE OF JUDGMENT 28/02/1978

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1978 AIR 986 1978 SCR (3) 434
1978 SCC (2) 403
CITATOR INFO :
RF 1988 SC1729 (7)

ACT:
Limitation for taking cognizance of certain offences-
Criminal Procedure Code (Act 2 of 1974), 1973, -S. 468 r/w.
Sections 469(a), 470 & 473 Legislative policy behind the
statute of limitation.

HEADNOTE:
Section 468 of Criminal Procedure Code (Act 2 of 1974), 1973
bars taking cognizance after lapse of the period of
limitation. Under sub-s. (2) of S. 468 the period of
limitation shall be (a) six months, if the offence is
punishable with for only; (b) one year, if the offence is
punishable with imprisonment for a term not exceeding one
year and (c) three years, if the offence is punishable with
imprisonment for a term exceeding one year but not exceeding
three years.

The appellant, while working as General Secretary of the
Central Bank of India Employees Union, Ludhiana, filed a
criminal complaint on 15-3-1972 against respondents Ascharaj
Lal Chopra, who was his predecessor in office and also
against one Amreek Singh a treasurer for the commission of
an offence under ss. 406/420 IPC using the words viz.,
"criminal intention" and "fraudulently and with a dishonest
intention" etc. The trial Court convicted them on 11-2-1975
but the First Appellate Court by its order dated 1-4-1975
acquitted them' which was affirmed by the High Court by its
judgment dated 15-5-1975. Respondent Ascharaj Lal,
therefore filed a complaint under s. 500 I.P.C. against the
appellant on 11-2-1976. The Magistrate examined the
plaintiff and issued a summons to the appellant on 15-9-
1976. The appellant moved the High Court under s. 482 of
the Criminal Procedure Code for quashing the Magistrate's
order taking cognizance of the offence against him, and the
High Court rejected it.

Allowing the appeal by special leave, the Court
HELD : 1. The statutes of limitation have legislative policy
behind them. They shut out belated and dormant claims in
order to save the accused from unnecessary harassment and
from the risk of facing trial at a time when his evidence
might have been lost because of the delay on the part of the

prosecutor. [438 B-C]

2. Section 468 of the Criminal Procedure Code not only raises bar of limitation but also prescribes the period thereof.. The question when the period of limitation could be said to commence lies within the purview of s. 469 Sub-s. (1) of s. 469 specifically provides that the period of limitation prescribed in s. 468, in relation to an offence, shall commence inter alia "on the date of the offence". [436 F-G]

3. It is an essential requirement of sub-s. (1) of s. 470 Criminal Procedure Code, 1973 that the person who seeks its benefit should be able to establish that he was "prosecuting" another prosecution in one Court or the other referred to in the sub-section. [437 6]

4. In the instant case, (a) the date of the offence was March 15, 1972 when defamatory complaint was filed in the Court of the Magistrate and that was the starting point for the purposes of calculating the three years' limitation provided by s. 468; (b) the complaint under s. 500 I.P.C. was filed on 11-2-1976 much after the expiry of three years limitation prescribed for that offence. It was, therefore, not possible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation : (c) the question of

435

cause of action" contemplated in s. 469(1)(c) could not arise as the controversy related to "the commission of an offence" and (d) the provision of sub-s. (1) of s. 470 cannot avail the respondent as his case, was not so. He did not claim the benefit of s. 473 either. [436 II, 437 A-C, 438 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 246 of 1972.

(Appeal by Special Leave from the, Judgment and Order dt. 2-2-3-77 of the Punjab & Haryana High Court in Crl. Misc. No. 5979-M of 1977).

S. C. Agarwal, Swaraj Kaushal & S. C. Patel for the Appellant.

D. Mookerjee, B. M. Srivastva and Sarwa Mitter for the Respondent.

The Judgment of the Court was delivered by SHINGHAL, J.-This appeal by Special leave has been filed by accused Surinder Mohan Vikal against the judgment of the Punjab and Haryana High Court dated March 2, 1977, rejecting his application for revision of the Magistrate's order dated September 15, 1976 summoning him as an accused for the trial of an offence under section 500 I.P.C. at the instance of respondent Ascharaj Lal Chopra.

The appellant challenged the Magistrate's order for two reasons, but the controversy before us refers to his claim that the Magistrate could not take cognizance of the offence under section 500 I.P.C. as the period of limitation prescribed by section 468 of the Code of Criminal Procedure had expired. The controversy thus relates to a short point of law and can well be examined on the basis of the admitted facts.

The, appellant was working as General Secretary of the Central Bank of India Employees Union, Punjab Ludhiana, which was a registered body. The respondent was employed as Special Assistant in that 'Bank, and one Amreek Singh as employed there as a clerk. The respondent worked as the

General Secretary of the Union while Amreek Singh worked as its Treasurer before the appellant took over as General Secretary. The appellant filed a complaint in the Court of Judicial Magistrate First Class, Ambala Cantt. on March, 15, 1972, for the commission of an offence under section 406/420 I.P.C. alleging that the respondent and Amreek Singh with "a common intention and collusion with each other, transferred a donation entry of Rs. 1100/in the personal account of accused No. 1 (A. L. Chopra) by adjustment vide voucher dated 19-2-71 at Ambala Cantt." It was also alleged that the accused misappropriated a sum of Rs. 1100/- of the Union with "criminal intention" and "fraudulently and with a dishonest intention." By his judgment dated February 11, 1975, the Magistrate convicted the respondent and Amreek Singh of the offence under section 408/34 I.P.C. and sentenced them to rigorous imprisonment for

436

one year and a fine of Rs. 1000. The additional Sessions Judge of Ambala however acquitted both of them by his judgment dated April 1, 1975, and that judgment was upheld by the High Court on May 15, 1975. Respondent Ascharaj Lal Chopra then filed a complaint against the present appellant Surinder Mohan Vikal in the Court of Judicial Magistrate First Class, Ambala, dated February II, 1976, for the commission of the offence under section 500 I.P.C. The Magistrate examined the complainant and his witnesses, and made the order dated September 15, 1976 for the issue of summons for the appearance of the, present appellant in that case. That was why the present appellant applied to the High Court under section 482 Crl. P. C. for quashing the Magistrate's order taking cognizance of the offence against him. As his application has been rejected by the High Court, accused Surinder Mohan Vikal has preferred the present appeal as aforesaid.

Chapter XXXVI of the Code of Criminal Procedure, 1973, deals with limitation for taking cognizance of certain offences. For purposes of that chapter, section 467 defines the expression "period of limitation" to mean the period specified in section 468 for taking cognizance of an offence. In its turn, section 468, which bars the taking of cognizance of an offence after the expiry of period of limitation, reads as follows,-

"468 (1) Except as otherwise provided elsewhere in the Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

The section thus not only raises the bar of limitation, but also prescribes the period thereof. It is not in controversy before us that the period of limitation in the present case would be three years as prescribed in clause (c) of sub-section (2). The question is when the period of limitation could be said to commence for purposes of the present case? That is a matter which falls within the purview of section 469. Clause (a) of sub-section (1) of that section provides that the period of limitation, in relation to an offender, shall commence,-

"(a) on the date of the offence;"

It is not urged before us that clause (b) or (c) of the sub-section, or Sub-section (2), have any bearing on the present controversy. It has therefore to be examined on what data the offence under section 500 I.P.C. could be said to have been committed.

It will be recalled that the complaint for the commission of the offence under section 406/420 I.P.C. was filed on March 15,

437

It has specially been stated in the respondents' complaint under section 500 I.P.C. that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under section 500 I.P.C. was committed on March 15, 1972, which was the date of the within the meaning of section 469 (1) (a) of the Code, and the three years' limitation would be calculated with reference to the date for purposes of the bar provided by section 468. But, as has been stated, the complaint under section 500 I.P.C. was filed on February 11, 1976, much after the expiry of that period. It was therefore permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

The High Court ignored the bar of limitation on the ground that the "cause of action for proceeding for defamation could not arise before he (respondent) was acquitted by the Court of Session." The respondent was acquitted on April 1, 1975, it appears that the High Court took the view that the "protection of section 468(c) was not available to the appellant. We are constrained to say the question of "cause of action could not really arise in this as the controversy relates to the commission of an offence. It been stated, sub-section (1) of section 469 of the Code specifically provides that the period of limitation prescribed in section 468, relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of the offence was March 15, 1972, when the defamatory complaint was filed before the Court of the Magistrate, and that was the starting point for the purpose of calculating the three years' period of limitation. High Court clearly erred in taking a contrary view.

An attempt was made to argue before us that the respondent was, at any rate, entitled to the exclusion of time under sub-section (1) of section 470 of the Code in computing the period of limitation. The sub-section reads as follows, -

"470 (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded :

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

It is an essential requirement of the sub-section that the person who seeks its benefit should be able to establish that he was "prosecuting" another prosecution in one Court or the other referred to in the sub-section. But it is not the case of the respondent that he, as prosecuting the appellant in any other prosecution. It is not his case that the prosecution related to the "same facts" within the meaning

of the proviso to the sub-section. The provision of
438

sub-section (1) of section 470 cannot therefore avail the respondent, and he is not entitled to the exclusion of any time thereunder. It may, be mentioned that the respondent has not sought the benefit of sub-section (1) of section 473 which permits the extension of the period of limitation in certain cases.

It would thus appear that the appellant was entitled to the benefit of sub-section (1) of section 468 which prohibits every Court from taking cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under section 468 of the Code of Criminal Procedure and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case.

The appeal is allowed, the impugned judgment of the High Court dated March 2, 1977 is set aside and the order of the Magistrate dated September 15, 1976 taking cognizance of the offence against the appellant is quashed.

S. R. Appeal allowed.

439