

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction**

Present:

The Hon'ble Justice Madhumati Mitra

C.R.R. No.563 of 2015

Rabindra Nath Pal

-Versus-

Ratikanta Paul & Ors.

Advocate for the Petitioner : Mr. Imtiaz Ahmed,
Mr. Sk. Saidullah,
Ms. Arunima Mukhopadhyay,
Mr. Debopam Roy,
Mr. Koustava Ratan Chatterjee.

Advocate for the Opposite party No.1 : Mr. Arindam Sen,
Mr. Sandeep Prasad Shaw

Advocate of the State : Mr. Protick Bose

Judgment on : 06.03.2020

Madhumati Mitra, J. :

Petitioner being the accused of complaint Case No.377C/2010 under Sections 500/109B/34 of the Indian Penal Code has approached praying for

quashing of the said proceedings pending before Learned Judicial Magistrate, 1st Court, Uluberia, District-Howrah.

The background aspects of the matter, so far relevant for the present purpose, may be narrated, in brief, as follows:-

In the year 1993, the petitioner filed a petition of complaint under Section 156(3) of the Code of Criminal Procedure before the then Sub-Divisional Judicial Magistrate, Uluberia District, Howrah, for commission of alleged offences punishable under Sections 451/323/380/504/506/109 of the Indian Penal Code against the present opposite party and others. The said petition of complaint was registered as an FIR as per the direction of Learned Magistrate. Investigation ended in submission of charge-sheet against the accused for commission of alleged offences punishable under Section 147/451/380/323/504/506/109 of the Indian Penal Code. Charge was framed against all the accused persons for commission of alleged offences punishable under Section 323/380 of the Indian Penal Code. After conclusion of trial, Learned Magistrate acquitted all the accused persons under Section 248(1) of the Code of Criminal Procedure. The said judgment of acquittal passed by the Learned Magistrate dated 02.09.2009 was challenged by the present petitioner who was the de facto complainant of that case by way of preferring an appeal along with an application under Section 5 of the Limitation Act.

The present opposite party/complainant was one of the accused persons of the criminal case being G.R.Case No.396 of 1994 initiated by the petitioner. After

the judgment of acquittal, the present opposite party filed a complaint case being C-377 of 2010 before the Learned 1st Judicial Magistrate, Uluberia, Howrah against the present petitioner. Learned Magistrate took cognizance of the alleged offences and issued process against the present petitioner to face trial for commission of alleged offences punishable under Sections 500/190B/34 of the Indian Penal Code. The copy of petition of complaint of the complaint case No.377-C of 2010 has been annexed to the application under Section 482 of the Code of Criminal Procedure praying for quashing of the proceedings. From the said petition of complaint, it reveals that the complainant alleged that they were falsely implicated in the G.R.Case No.396 of 1994. The complainant and other accused were arrested in respect of that case. That criminal proceedings continued for about 15 years and caused harm to his reputation and dignity.

I have carefully examined the submission and counter submission advanced by the Learned Counsel for the parties and documents placed on record.

In order to appreciate the matter in its correct perspective, it is essential to deal with the offences alleged in the written complaint. Section 499 of the Indian Penal Code has defined the offence of defamation.

Section 499 is set out as follows:

“Defamation.- *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to*

harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter excepted, to defame that person.”

In the present case, the allegation in the complaint against the petitioner/accused is that he filed a petition of complaint falsely which was treated as an FIR. Investigation ended in submission of charge-sheet and the complainant and others faced criminal trial. Subsequently, the complainant and other accused were acquitted. The copy of the judgment of G.R. Case No.396 of 1994 has also been annexed to the petition for quashing of the proceedings. From the copy of the said judgment, it appears that the complainant and others were given benefit of doubt. That judgment of acquittal has been challenged by the present petitioner/accused by preferring an appeal. Learned Counsel for the parties submitted that appeal is pending for disposal.

From the materials placed on record, it appears that First Information Report was lodged on 31.12.1993 and the accused including the present opposite party complainant were acquitted on 02.09.2009.

Admittedly, the complainant/opposite party filed the complaint for defamation against the present petitioner/accused in the year 2010.

In ***Naresh Chand Jain Vs. State of U.P. and Others*** reported in 1991 Cri.L.J. 1888 (All) it has been held that the starting point of limitation for filing

the complaint of the defamation is the date of publication and within three years thereof, the complaint has to be filed, otherwise the complaint would be barred by limitation. In the case at hand, the FIR was lodged in the year 1993 but the complaint of the defamation for the alleged writing of false and defamatory statement was filed in the year 2010 i.e., after three years from the date of registration of the First Information Report against the complainant/opposite party.

In the case at hand, the criminal proceeding was ultimately ended in acquittal of the complainant/opposite party and others in the year 2009 and one appeal is pending challenging the said order of acquittal. It has been contended on behalf of the opposite party/complainant that the complaint was filed within three years from the date of the order of acquittal.

Now, the question comes when and how cause of action arises in a defamation of case. In the present case, it was alleged in the complaint of defamation that in the First Information Report, the petitioner/accused made false allegation of theft against them.

In the instant case, the cause of action arose from the date when First Information Report was registered and not from the date on which the complainant was acquitted from the charge. In the present case, complaint was filed for alleged defamation in the year 2010 though the FIR was lodged in the

year 2003. As such, it can be said that the complaint for defamation under Section 500 of the Indian Penal Code is barred by limitation. In this connection, it would not be out of place to cite the decision of **Surinder Mohan Vikal Vs. Ascharaj Lal Chopra** reported in AIR 1978 SC 986.

It is well settled that the High Court is invested with plenary power to quash criminal proceedings pending in inferior Courts where it appears that there is a legal bar against the continuance of the proceeding in respect of the offence alleged. A time barred complaint/proceeding cannot be allowed to be continued. Continuance of a time barred proceeding would be an abuse of the process of Court.

In view of above, I am of the view that it is a fit case to exercise inherent power to quash the proceeding being complaint case No.377C/2010, pending before the Learned Judicial Magistrate, 1st Court, Uluberia Howrah. Accordingly, the proceeding of complaint case No.377C/2010 is hereby quashed.

Thus the C.R.R.No.563 of 2015 is disposed of.

Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance of all formalities.

(Madhumati Mitra, J.)