

The Indian Law Reports

Before, M. M. Pundhi, J.

GHANSHAM DASS,—Petitioner.

versus

SHAM SUNDER LAL,—Respondent.

Criminal Revision No. 628 of 1981.

January 4, 1982.

Indian Penal Code (XLV of 1860)—Section 500—Code of Criminal Procedure (II of 1974)—Complaint filed for an offence under Section 500 of the Penal Code—Magistrate taking cognizance without applying his mind to the ground of limitation—Question of limitation—Whether to be decided at the pre-cognizance stage—Failure of the Magistrate to decide the issue at that stage—Whether vitiates the subsequent proceedings—Extension of period of limitation under section 473—Whether could be sought by the complainant.

Held, that the period of limitation for filing a complaint for an offence under section 500 of Indian Penal Code 1860 is three years from the date of making of the defamatory statement. If it appears to the Magistrate that the complaint is beyond limitation then he has to decide the question of limitation at the pre-cognizance stage and on his failure to do so, the subsequent proceedings become without jurisdiction and the orders summoning the accused and other orders are liable to be quashed. However, the complainant can seek the benefit of Section 473 of the Code of Criminal Procedure 1973 for extension of period of limitation, but the complainant has to satisfy the court by giving reasonable explanation for the delay caused or the court has to be satisfied that the complaint needs to be proceeded within the interest of justice. (Paras 3, 4 & 5).

Petition under section 401 read with Section 402 Cr. P. C. for the revision of the order of the court of Shri Harjit Singh J.M.I.C. Ludhiana dated 23rd April, 1981 summoning the accused for 15th May, 1981.

Surjit Kaur Taunque, Advocate, for the Petitioner.

Roshan Lal Batta, Advocate, for the Respondent.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) In this petition for revision, the summoning and charging of the petitioner to stand trial under Section 500, Indian Penal Code has been challenged solely on the ground that the Magistrate took cognizance of the offence beyond the period of limitation. It stands undisputed that offence under Section 500, Indian Penal Code, can attract punishment to the accused upto two years' simple imprisonment and the complaint has to be filed in court within a period of three years from the date of the commission of the offence. The offence in the instant case was committed by the accused-petitioner on May 20, 1975 by lodging a First Information Report at the Police Station, allegedly containing defamatory statements against the complainant-respondent. The trial on that First Information Report was launched in court on July 13, 1977 but it ended in acquittal of the complainant-respondent on February 11, 1980.

(2) Learned counsel for the petitioner contends that the Magistrate was required at the pre-cognizance stage to first settle the question of limitation, as *prima-facie*, the complainant had disclosed that the period of limitation had been computed from the date of the acquittal, though erroneously. Reliance has been placed on *Surinder Mohan Vikal v. Ascharaj Lal Chopra*, (1), where it has been held that the period of limitation commences from the date when the defamatory matter is publicised. In the instant case, it is the First Information Report, dated May 20, 1975, which contained the defamatory material. Learned counsel for the petitioner also contends that from that date the complaint was undisputably beyond the period of limitation. It has further been maintained that even if the said statement was taken to be privileged and not published within the meaning of the expression known in Section 500, Indian Penal Code, the launching of the prosecution clinched the matter on July 13, 1977 and even then the complaint was filed beyond the period of limitation. On the other hand, learned counsel for the respondent takes shelter in the provisions of Section 473, Code of Criminal Procedure, to contend that the period is extendable not only when the delay is explained but otherwise in the interest of justice. He, however, concedes that no

(1) 1978 Criminal L.R. 199 (S.C.)

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formal application had been made to the court for extending the period of limitation and the court itself had not applied its mind with regard to proceeding in the complaint in the interest of justice.

(3) Having noticed the respective contentions of the learned counsel for the parties, it becomes patent that the Magistrate did not apply its mind at all to the question of limitation. This, he had to at the pre-cognizance stage, which he failed. On his failure to do so, the proceedings become obviously without jurisdiction. Necessarily the sequential orders of summoning the accused-petitioner as also framing the charge against him are beyond jurisdiction and deserve to be quashed for these reasons. The course adopted is unexceptionable.

(4) The next question which has been pressed into service by the learned counsel for the petitioner is that the complaint itself should be thrown out as being beyond limitation, as was done in *Surinder Mohan Vikal's case* (supra). In that precedent it was mentioned that the complainant had not sought the benefit of Section 473, Code of Criminal Procedure, which permitted the extension of the period of limitation in certain cases. It is on those facts that the Supreme Court quashed the order of the Magistrate taking cognizance of the offence against the appellant. The complaint, as such, can also be spelled as to have been left formally on the file of the Magistrate, but without any cognizance having been taken thereon. Learned counsel for the respondent says that if the complainant can now satisfy the court, by giving reasonable explanation for the delay caused or otherwise if the court is satisfied that the complaint need be proceeded with in the interest of justice, it should be left open to the court to do so. To this course, learned counsel for the petitioner has objection on the strength of *Krishna Singhi and others v. The State of Madhya Pradesh*, (2). In that eventuality, the Magistrate will be required to call for the accused-petitioner before condoning the delay on either cause.

(5) It would seem to me that it would be futile to keep the complaint even on the file to be formally pending at the pre-cognizance stage; all the more when nearly seven years have elapsed from the date of the commission of the offence. There has

to be an end to litigation at some point of time. If the complainant had failed to appreciate the starting point of limitation, there would be nothing now for him to explain the delay when he stands confronted that such period commences from the date of making the defamatory statement. There is nothing on the complaint, as also from the judgment of acquittal, to suggest that the interest of justice would require this old matter to be raked up for the sake of satisfying private vendetta. The complainant having neglected to explain the delay rightfully in the first instance cannot be permitted to do now.

(6) For the foregoing reasons this petition is allowed. Not only are proceedings from the cognizance stage onwards quashed, but the complaint is dismissed as well. Ordered accordingly.

N.K.S.

Before D. S. Tewatia, J.

SHIV DAYAL,—Petitioner.

versus

KEWAL VERMA,—Respondent.

Civil Revision No. 2453 of 1979.

January 21, 1982.

Haryana Urban (Control of Rent & Eviction) Act (II of 1973)—Section 13—Landlord filing appeal against order of Rent Controller refusing application for ejection—Compromise order passed in such appeal—Appeal allowed and tenant ordered to be ejected on a future date—Tenant refusing to vacate demised premises on such date—Tenant challenging the compromise order on the ground that it did not state the grounds for ejection—Such objection—Whether tenable—Compromise order—Whether a nullity.

Held, that it is not necessary that in a compromise order the Court must necessarily refer to the ground on which the tenant is being evicted, nor is it necessary for the court to mention that it was satisfied that one or more statutory grounds of eviction is prima facie made out by the landlord. What the courts are required to guard against is the eviction of a tenant as a result of compromise decree on a ground other than those which are envisaged by the