IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.34165 of 2016

Arising Out of PS. Case No.-1175 Year-2012 Thana- NALANDA COMPLAINT CASE District- Nalanda

==========

Gangeshwar Sharma, son of Late Ram Charan Singh resident of Mohalla-Police Colony, Quarter No. C - 6, Anishabad, Police Station - Gardanibagh in the district of Patna.

... ... Petitioner

Versus

1. The State of Bihar
2. Shiv Kumar @ Raj Singh, son of Sri Ram Bilas Singh resident of Mohalla -Habibpura, Police Station - Soh Sarai in the district of Nalanda.

... ... Opposite Parties

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Code of Criminal Procedure—section 468, 469, 482---Indian Penal Code---sections 504, 506---Period of limitation for taking cognizance---Malicious prosecution---petition to quash order taking cognizance for the offence under Sections 504 & 506 of the I.P.C.---plea that order taking cognizance is hit by the provisions of Limitation Act as available under Section 468 of the Cr.P.C as it was passed 5 years after the filing of protest petition/complaint while maximum sentence for the offence in question is two years---further plea that present case is a malicious prosecution out of ulterior and oblique motive, due to matrimonial discord as surfaced between O.P. No.2 and daughter of petitioner----*Held*: Complaint in issue was within three years of the date of occurrence, therefore, order taking cognizance after five years is not hit by limitation as provisioned under Section 468 of Cr.P.C.--- owing to matrimonial discord there has been series of litigation between the parties--- no prima-facie case for offence under Section 504 & 506 of the I.P.C. made out in the facts and circumstances of the present case---impugned order quashed and set-aside. (Para 7, 8, 16, 17)

(1992) Supp (1) SCC 335, (2007) 7 SCC 394, (2022) 13 SCC 128

……..Relied Upon.

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... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Rajendra Narain, Sr. Advocate Mr.Prabhu Narain Sharma, Advocate
For the O.P. No.2	:	Mr.Arun Kumar Bhagat, Advocate
For the State	:	Mr.Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 24-04-2024

Heard Mr. Rajendra Narain, learned senior counsel assisted by Mr. Prabhu Narayan Sharma, learned counsel for the petitioner and learned A.P.P. for the State duly assisted by Mr. Arun Kumar Bhagat, learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing the order dated 11.02.2016 passed by learned Additional Chief Judicial Magistrate – III, Biharsharif, Nalanda in Complaint Case No. 1175(C) of 2012, by which process has been issued against the petitioner to face trial

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for the offence punishable under Section 504 and 506 of the Indian Penal Code (in short the 'I.P.C.') which also appears to file as protest in Sohsarai P.S. Case No. 81 of 2011.

3. The brief facts of the case is that while complainant-opposite party no. 2 alongwith his mother, father and younger sister had gone to appear before the court in a case lodged by his wife, in the meantime, his elder sister informed him on telephone that his wife has left the house without saying anything. Thereafter, she searched the wife of complainant-opposite party no. 2 in nearby places, but she could not locate her and, ultimately, she informed the Sohsarai Police Station and requested them to search. The complainant further alleged that when he reached at his sasural directly from the court, he found his wife present there and denied to go with him. The complainant stated that his father-in-law and brother-in-law had abused and threatened him. Thereafter, the complainant returned back to his home, where he found that his wife has taken away with her Rs. 1,00,000/- and golden jewelry etc., for which he immediately informed to the Superintendent of Police,

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Nalanda over telephone. The complainant-opposite party no. 2 further alleged that after marriage, which took place in the year 1999, her wife could not reside regularly in her matrimonial house. Her father, who was Dy.S.P. in police, had usually took away with him by giving threatening to the complainant-opposite party no. 2 and his family members, thereafter, she lodged a false case of torture against him and his family members. The complainant further alleged that she was living in her in-laws' house for last 1.5 years by the order of the court.

4. At the outset, Mr. Rajendra Narain, learned senior counsel appearing on behalf of the petitioner submitted that earlier against same impugned order, quashing petition was filed vide token No. 4432/2016 but the same was cancelled due to non-removal of defects within time and as such there is no order on merit.

5. Learned senior counsel, while arguing for the petitioner, submitted that the marriage of the daughter of the petitioner was solemnized in the year 1999 with the complainant-opposite party no. 2. Thus, the relation

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suggests petitioner is father-in-law of opposite party no. 2. It is pointed out that after passing of substantial time of about 10 years, certain matrimonial discord surfaced between the daughter of petitioner with opposite party no.2/husband, for which Gardanibagh P.S. Case No. 43/2009 under Section 498-A of the I.P.C. was lodged by the daughter of petitioner for committing cruelty and also regarding raising demand of dowry. When opposite party no. 2 and his family members approached the court in connection with their anticipatory bail, a compromise was worked out in furtherance of which, the daughter of the petitioner joined her matrimonial home alongwith opposite party no. 2 but again matrimonial discord re-surfaced after passing of six months, and now, this time, the daughter of the petitioner was tortured to the extent that her pregnancy was terminated forcibly. With aforesaid fact, a cancellation of bail was also filed before the learned trial court in the year 2011, which is still pending as opposite party no.2 is absconding after solemnizing marriage in the year 2012.

6. Mr. Narain, learned senior counsel for the

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petitioner submitted that when the daughter of petitioner approached the court for cancellation of bail, opposite party no. 2, by that time, also lodged a police case bearing Sohsarai P.S. Case No. 81 of 2011 for the offences alleged to be committed under Section 379 of the I.P.C. against the petitioner and his family members including his wife as to create a legal pressure to compromise in Gardanibagh P.S. Case No. 43 of 2009, but after fair investigation, police exonerated the petitioner and other accused persons by submitting final form, where a protest petition was filed on 13.02.2011, on the basis of which on 11.02.2016, the impugned order of cognizance was passed for the offence under Sections 504 & 506 of the I.P.C.

7. It is submitted by learned senior counsel that from the language of impugned order and also from the facts of the case, it is nowhere appears convincing that it is a case covering Part II of Section 506 of the I.P.C., where maximum sentence is extendable of seven years and as such the maximum sentence out of the facts of the present case is not more than two years. Same is the position for the

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offence committed under Section 504 of the I.P.C. where maximum sentence is of two years and by taking note of the fact and legal position as mentioned under Section 469 of the Code of Criminal Procedure (in short the 'Cr.P.C.'), the offence against which cognizance was taken by learned Magistrate appears hit by the provisions of Limitation Act as available under Section 468 of the Cr.P.C.

8. While concluding argument, learned senior counsel relied upon the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.** reported in **(1992) Supp (1) SCC 335** and submitted that, present is a malicious prosecution out of ulterior and oblique motive, due to matrimonial discord as surfaced between O.P. No.2 and daughter of petitioner.

9. Learned A.P.P. for the State has opposed the prayer made on behalf of the petitioner.

10. Mr. Arun Kumar Bhagat, learned counsel for the opposite party no. 2, while opposing the application, submitted that from the narration of complaint petition it can

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be gathered safely that *prima-facie* case is made out for the offence under Section 504 and 506 of the I.P.C. but he submitted fairly that cognizance in this matter was taken after about five years by learned Jurisdictional Magistrate.

11. It would be appropriate to reproduce Sections 468 and 469 of the Cr.P.C. for the sake of better understanding of legal position, which reads as under:

> **"468. Bar to taking cognizance after lapse of the period of limitation. -** (1) Except as otherwise provided elsewhere in this 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.
>
> (3) [For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]
>
> **469. Commencement of the period of limitation. - (1)** The period of limitation, in relation to an offender, shall commence, -
>
> (a) on the date of the offence; or
>
> (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer,

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whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

12. It would further be apposite to reproduce Sections 504 and 506 of the I.P.C. which are the offences for which cognizance was taken by learned magistrate through impugned order which is the subject matter of the present petition. The aforesaid sections are as under for a ready reference:

"504. Intentional insult with intent to provoke breach of the peace. - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal intimidation. - Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. - and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

13. It would further be apposite to reproduce

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paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **Bhajan Lal** case (supra), which runs as under:

> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

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> by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.''

14. In view of aforesaid legal and factual submission, issue related with limitation *qua* cognizance is required to discuss as foremost important issue, as emphasized by learned counsel for the petitioner. In this context, it would be apposite to go through the law settled by Hon'ble Supreme Court in the matter of **"Japani Sahoo Vs. Chandra Shekhar Mohanty"** reported as **(2007) 7 SCC 394**, where para 46, 46, 48, 49, 50, 51 and 52 appears relevant and same are as under:

> "**46**. We are unable to uphold the contention. We are equally not impressed by the argument of the learned

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counsel for the accused that the decision in **Bharat Damodar Kale v. State of A.P., [(2003) 8 SCC 559]** is per incuriam. We have gone through the said decision. We have also extracted hereinabove paragraph 10 wherein the contention of the accused had been dealt with by this Court and negatived. It is true that in that case, the Court observed that taking clue from Chapter Heading (Chapter XXXVI : Limitation for taking cognizance of certain offences), an argument was advanced that if cognizance is not taken by the Court within the period prescribed by Section 468(2) of the Code, the complaint must be held barred by limitation. But, it is not true that this Court rejected the said argument on that ground. The Court considered the relevant provisions of the Code and negatived the contention on 'cumulative reading of various provisions'. The Court noted that so far as cognizance of an offence is concerned, it is an act of Court over which neither the prosecuting agency nor the complainant has control. The Court also referred to the well-known maxim "actus curiae neminem gravabit" (an act of Court shall prejudice none). It is the cumulative effect of all considerations on which the Court concluded that the relevant date for deciding whether the complaint is barred by limitation is the date of the filing of complaint and not issuance of process or taking of cognizance by Court.

47. We are in agreement with the law laid down in Bharat Damodar. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent.

48. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that

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stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.

49. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem gravabit" (an act of Court shall prejudice none) would indeed apply. [Vide Alexander Rodger v. Comptoir D'Escompte, (1871) 3 LR PC 465]. One of the first and highest duties of all Courts is to take care that an act of Court does no harm to suitors.

50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary,

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> irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14 of the Constitution.
>
> **52.** In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings."

15. Further,Hon'ble Supreme Court dealt same issue very elaborately in the matter of **Amritlal Vs. Shantilal Soni And others** reported in **(2022) 13 SCC 128,** where para 9, 10 and 11 appears relevant, which are as under:

> **9.** In *Sarah Mathew* [*Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , the Constitution Bench of this Court examined two questions thus : (SCC pp. 73-74, para 3)
>
> "*3*. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:
>
> > *3.1*. (*i*) Whether for the purposes of computing the period of limitation under Section 468CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

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> *3.2*. (*ii*) Which of the two cases i.e.*Krishna Pillai* [*Krishna Pillai* v. *T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] or *Bharat Kale* [*Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559 : 2004 SCC (Cri) 39] (which is followed in *Japani Sahoo* [*Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388]), lays down the correct law?"

10. The Constitution Bench answered the aforesaid questions as follows : (*Sarah Mathew case* [*Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , SCC p. 102, para 51)

> "*51*. In view of the above, *we hold that for the purpose of computing the period of limitation under Section 468CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance*. We further hold that *Bharat Kale* [*Bharat Damodar Kale* v. *State of A.P.*, (2003) 8 SCC 559 : 2004 SCC (Cri) 39] which is followed in *Japani Sahoo* [*Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] lays down the correct law. *Krishna Pillai* [*Krishna Pillai* v. *T.A. Rajendran*, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority fordeciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468CrPC."

(emphasis supplied)

11. Therefore, the enunciations and declaration of law by the Constitution Bench in *Sarah Mathew case* [*Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , do not admit of any doubt that for the purpose of computing the period of limitation under Section 468CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e. 4-12-2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10-7-

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> 2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e. 4-10-2009."

16. Complaint in issue, filed on 13.02.2012 for the occurrence of 11.08.2011, i.e. after four months only, i.e. within three years, therefore, argument of learned senior counsel for the petitioner that as learned jurisdictional Magistrate took cognizance after five years, therefore same is hit by limitation as provisioned under Section 468 of Cr.P.C. is not convincing argument, as per ratio settled by Hon'ble Supreme Court in **Japani Sahoo** case (supra) and also in view of **Amritlal** case (supra) and as such, on said ground alone, order cannot be quashed.

17. Now, as far argument of malicious prosecution is concerned, it appears that prior to lodging this case, daughter of petitioner lodged against his husband/O.P. No.2 for offence under Section 498-A of the I.P.C. and also under Section 3 & 4 of Dowry Prohibition Act. O.P. No.2, failed to appear before trial court in bail cancellation matter pending since 2011. He also alleged to be solemnized second marriage in the year 2012. Petitioner is father-in-law of O.P.

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No. 2. Facts of this case also not approving any *prima-facie* case, for offence alleged to committed under Section 504 *&* 506 of the I.P.C. on its face, as narration of allegation out of complaint appears failed to invite basic legal ingredients to established a *prima-facie* case for offence under Section 504 *&* 506 of the I.P.C. Hence, by taking a guiding note of guideline No. 1 and 7 of **Bhajan Lal** case (supra), the impugned order taking cognizance *qua* petitioner dated 11.02.2016 passed by learned Additional Chief Judicial Magistrate – III, Biharsharif, Nalanda in Complaint Case No. 1175(C) of 2012 with all its consequential proceedings, is hereby quashed and set-aside.

18. The application stands allowed.

19. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**NA**
Uploading Date	**29.04.2024**
Transmission Date	**29.04.2024**

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