

Surinder Mohan Vikal

Vs

Ascharaj Lal Chopra

Criminal Appeal No. 246 of 1972

(Syed M. Fazal Ali, P. N. Shinghal JJ)

28.02.1978

JUDGMENT

SHINGHAL, J. -

1. 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 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, IPC at the instance of respondent Ascharaj Lal Chopra.
2. 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, IPC 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.
3. The appellant was working as General Secretary of the Central Bank of India employee's Union, Punjab, Ludhiana, which was a registered body. The respondent was employed as Special Assistant in that Bank, and one Amreek Singh was 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, IPC 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 1 (A. L. Chopra) by adjustment vide voucher dated February 19, 1971 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, IPC and sentenced them to rigorous imprisonment for 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 11, 1976 for the commission of the offence under Section 500, IPC. 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, Cr. 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.

4. 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 :

486. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offences 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 (i) 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 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 date the offence under Section 500, IPC could be said to have been committed.

5. It will be recalled that the complaint for the commission of the offence under Section 406/420, IPC was filed on March 15, 1972. It has specifically been stated in the respondent's complaint under Section 500, IPC that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under Section 500, IPC was committed on March 15, 1972, which was the date of the offence within the meaning of Section 469(1)(a) of the Code, and the period of three years' limitation would be calculated with reference to that date for purposes of the bar provided by Section 468. But, as has been stated, the complaint under Section 500, IPC was filed on February 11, 1977, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

6. 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". As 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 that the question of "cause of action" could not really arise in this case as the controversy relates to the commission of an offence. As has been stated, sub-section (1) of Section 469 of the Code specifically provides that the period of limitation prescribed in Section 468, in relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of offence was March 15, 1972, when the defamatory complaint was filed in the Court of the Magistrate, and that was the starting point for the purpose of calculating the three years' period of limitation. The High Court clearly erred in taking a contrary view.

7. 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 subsection 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 was prosecuting the appellant in any other prosecution. It is also not his case that prosecution related to the "same facts" within the meaning of the proviso to the sub-section. The provision of 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 Section 473 which permits the extension of the period of limitation in certain cases.

8. 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.

9. 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.

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