Srinivas Gopal

Vs

Union Territory of Arunachal Pradesh (now State)

Criminal Appeal No. 385 of 1988

(Sabyasachi Mukharji, Ranganath Misra JJ)

18.07.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted. The appeal is disposed of by the order passed herein.

2. On November 20, 1976, the appellant was posted in the State of Arunachal Pradesh as an Executive Engineer (Elect.). An accident took place in the jeep which was alleged to have been driven by the appellant. The accident took place within the Bomdila Police Station in Arunachal Pradesh. In the said accident one of the occupants, J. K. Jain, Assistant Engineer (Elect.) died and another S. Karim, driver sustained grievous injuries. According to the police the accident is attributable to rash and negligent driving of the appellant. As per the case file, Shri R. B. Singh, Sub-Inspector submitted a report to the Deputy Commissioner, Bomdila on November 22, 1976, who according to the learned Magistrate took cognizance of the offence under Section 32 (c) of Regulation 1 of 1945 and the police registered the case. The learned Magistrate held that cognizance was taken on November 22, 1976. This finding, however, was not sustained by the High Court. The police is alleged to have registered the case and took up investigations and submitted the charge-sheet in September 1977 which, however, appears to have been placed before the Deputy Commissioner on March 31, 1986, and it was on that date that the cognizance of the offence was taken, according to the High Court. The learned Magistrate in his order stated that the reason why report could not be placed before the court promptly merited detailed probing, which showed that cognizance was taken on November 22, 1976 by the competent authority but the court proceedings thereof commenced on March 31, 1986. The appellant was charge-sheeted under Section 279 read with Section 304-A/338 of the Indian Penal Code. According to the appellant cognizance was only taken on March 31, 1986. The first question, therefore, in this case is : when was the cognizance taken. By the order of the learned Magistrate, the appellant was directed to appear on the next date of hearing, that is on September 8, 1986. The order was passed on July 14, 1986.

3. Challenging the said order, the appellant moved the High Court of Guwahati under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution for quashing the charges framed by the Magistrate 1st Class, Bomdila. The High Court in its judgment and order dated August 14, 1987 held that the investigations started on November 22, 1976 on the registration of the case under Sections 279, 304-A and 338 of the IPC and the investigation was completed on September 8, 1977 and cognizance was taken on March 31, 1986 when the Deputy Commissioner passed the following order : "Records perused. Issue summons to the accused to appear at Kameng on May 9, 1986." Therefore, the first question that arises is, when was the cognizance taken, on November 22, 1976 or March 31, 1986. The High Court held that cognizance was taken on March

31, 1986. The offence under Section 279 is punishable with imprisonment for a term not exceeding 6 months, or with fine, or with both. Offence under Section 304-A is punishable with imprisonment for a term not exceeding 2 years, or with fine, or with both. Offence under Section 338 is punishable with imprisonment for a term not exceeding 2 years, or with fine or with both. In the aforesaid view of the matter, the period of limitation for taking cognizance of the offences would be three years. Section 468 of the Code of Criminal Procedure provides as follows :

> 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.
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> (2) The period of limitation shall be-
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> (a) six months, if the offence is punishable with fine only;
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> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
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> (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

4. There is, however, a provision for extension of the period of limitation in certain cases, where on the facts and circumstances of the case, the delay has been properly explained or it is necessary in the interest of justice to do so. This is provided in Section 473 of the Criminal Procedure Code in the following terms :

> 473. Extension of period of limitation in certain cases.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

5. It was contended before us that the first question that arises in this appeal is : when the cognizance of the offence was taken in this case. This Court in Tula Ram v. Kishore Singh' explained the meaning of the words "taking cognizance" and held that it means judicial application of mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. In this connection reference may also be made to the observations of this Court in Bhagwant Singh v. Commissioner of Police. It was held by this Court as follows : [SCC pp. 541-42 : SCC (Cri) pp. 271-72, para 4]

Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2) (i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three thing : (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may

accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.... But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part... There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard to that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

6. The High Court was of the view that really cognizance in this case was taken on March 31, 1986. The High Court has set out the facts on which it relied. The said finding of the High Court has not been challenged. The appellant in this case before this Court has proceeded on that basis. Shri B. Datta, Additional Solicitor General contended that cognizance was taken at early in September 1977. It was contended before us on behalf of the respondent, as it was said before the High Court that if the cognizance was taken in 1986, then it was clearly beyond the time. If the principles of the Code of Criminal Procedure applied, the taking of cognizance of the offence was barred by Section 468 of the Code of Criminal Procedure.

7. It was submitted before the High Court of Guwahati and reiterated before us that the provisions of the Code of Criminal Procedure do not apply to the State of Arunachal Pradesh. In this connection reliance was placed on Regulation 32 of the Assam Frontier (Administration of Justice) Regulation 1945. Section 32 of the Regulations provides that the High Court, the Deputy Commissioner and the Assistant Commissioner shall be guided in regard to procedure by the principles of the Code of Criminal Procedure so far as these are applicable to the circumstances of the district and consistent with the provisions of the Regulations. There are exceptions to Regulation 32. Those exceptions are irrelevant for the present purpose. The High Court held, and in our opinion rightly, that Regulation 32 of the Said Regulations should be guided by the spirit of the Code and it will be proper to throw out a complaint if there was inordinate or undue delay, which was not explained. Indeed, this Court in State of Punjab v. Sarwan Singh observed at page 351 of the report (SCC p. 36, para 3) that the object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. This Court reiterated that the object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. Shri Raju Ramachandran submitted that the exercise of the power under Section 473 of the Criminal Procedure Code extending the period of limitation by condoning the delay in launching the prosecution, should precede the taking of cognizance of the offence. Reliance was placed on the Bench decision of the Madras High Court in Kathamuthu v. Balammal 4. It was held by the Punjab and Haryana High Court in the case of Ghansham Dass v. Sham Sundar Lal that cognizance taken by the Magistrate without deciding the point of limitation was beyond his jurisdiction. In this connection, reliance may be placed on the decision of this Court in Surinder Mohan Vikal v. Ascharaj Lal Chopra" where at page 407 of the report, while dealing with the provisions of Section 468 of the Code of Criminal Procedure, this Court observed that 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 which 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. Our attention was also drawn to the case of Vijay Kumar Agarwalla v. State of Assam, where the court held that taking of cognizance without condoning delay was bad and without jurisdiction.

8. The High Court in the instant judgment under appeal held that this aspect of the matter was not considered by the Magistrate and the High Court quashed the charges against the appellant and remitted the case to the Magistrate for considering the case afresh. In the instant case, the broad facts that emerge are that the alleged offence took place in November 1967, and until the High Court's order in August 1987 no investigation had taken place. The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society.

9. It is not necessary in the facts and circumstances of the case to decide whether cognizance was properly taken. It is also not necessary to decide whether the extension of period of limitation under Section 473 must precede the taking of the cognizance of the offence. It is also not necessary to decide whether cognizance in this case was taken on September 8, 1977 as held by the learned Magistrate or on March 31, 1986 as held by the High Court. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the appellant - 9 1/2 years for a trial for rash and negligent driving, is too long a time. Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 9 1/2 years without any cause at all - and none was indicated before the learned Magistrate or before the High Court or before us - cannot be with the spirit of the procedure established by law. In that view of the matter, it is just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. We do so accordingly.

10. In the aforesaid view of the matter, we are of the opinion that the proceedings cannot be proceeded with any further. We allow the appeal, set aside the order of the High Court of Guwahati, dated August 14, 1987 and quash the proceedings against the appellant. The proceedings against the appellant are hereby quashed.

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