

CASE NO.:
Appeal (crl.) 901 of 2004

PETITIONER:
Harnam Singh

RESPONDENT:
Everest Construction Co. & Ors.

DATE OF JUDGMENT: 17/08/2004

BENCH:
P. VENKATARAMA REDDI & B.P. SINGH

JUDGMENT:
J U D G M E N T

ARISING OUT OF
SPECIAL LEAVE PETITION (Crl.) NO.5540 OF 2002

P. VENKATARAMA REDDI, J.

Leave granted.

It is the case of the appellant that his mother (who is no more) entered in to a written agreement on 13.10.1981 with the first respondent-firm for the purchase of flat No. 606 in the multistoried complex proposed to be constructed at Prabha Devi, Mumbai by the said firm, pursuant to which she paid earnest money initially and later on after the construction of the building commenced in 1987, she tendered a sum of Rs.50,000 through a demand draft on 28.1.1987. About a year later, the appellant's mother received a letter from the respondent denying the agreement and the draft of Rs.50,000 was also returned along with the letter. After exchange of notices, appellant's mother filed a suit being suit No. 82 of 1989 in the High Court of Delhi seeking the relief of specific performance. The respondent firm filed a written statement on 19.5.1989 setting up the plea that the flat in question was sold to one Sukhbinder Singh by an agreement of sale dated 30.7.1981. On 8.7.1991, the respondent filed a photocopy of the alleged agreement dated 30.7.1981 according to which the flat was agreed to be sold to Sukhbinder Singh. However, the original agreement has not been filed in the Court till now. It is alleged that the appellant's mother, on getting certain information from the alleged purchaser, filed a private complaint under Sections 420, 467, 471 and 474 etc. of IPC in the Court of Additional Chief Metropolitan Magistrate, Delhi alleging that she was duped and a fabricated/forged agreement has been set up in the suit, a photocopy of which was filed. On recording the statement of the complainant on 8.3.2001, it appears that the learned Magistrate took cognizance of the offence and issued summons to the accused as well as to Sukhbinder Singh. In the meanwhile, the appellant's mother i.e. the complainant died in May, 2001 and the appellant has been substituted as complainant in the case.

In May, 2002 a petition was filed under Section 482 Cr.P.C. in the High Court of Delhi for quashing the criminal complaint. By the impugned order, the said application came to be allowed by the High Court on the ground of delay in

preferring the complaint. It is against this order the SLP has been preferred by the complainant.

It appears that two questions were raised before the High Court\027one is about the bar under Section 195 Cr.P.C. and the other regarding limitation.

As regards the bar under Section 195 Cr.P.C., the learned Judge, though noted the contention of both sides, did not express any view thereon. However, the complaint was quashed on the only ground that it is not maintainable "at this belated stage". The learned Judge observed thus:

"I am of the view that the complainant being aware of the fact that the agreement dated 13-10-1981 has been filed before the High Court on 8-7-1991, cannot maintain this complaint at this belated stage in respect of a document which is filed along with written statement for defence by the petitioner in the suit pending at the relevant time at the High Court and is being adjudicated upon."

We are unable to perceive any legal basis for the observation quoted above. The bar against cognizance after the lapse of the prescribed period of limitation is laid down under Section 468 of Cr.P.C. It is within the parameters of that provision that the Court called upon to take cognizance of the offence should act. Most of the offences alleged against the respondents viz., Sections 420, 467, 471 & 474 IPC are punishable with imprisonment for a term exceeding three years and therefore as contended by the learned counsel for the appellant, the bar of limitation under Section 468 is not attracted. The complaint cannot therefore be thrown out at the threshold on the ground of limitation. If, apart from the question of limitation, the effect of delay if any in instituting the complaint is necessary to be determined for considering the merits of the charge, that can only be done at the stage of trial on the basis of the evidence on record. Obviously, the High Court did not bear in mind the explicit provision contained in Section 468 and the allied provisions of chapter XXXVI of Criminal Procedure Code.

Still the question whether the complaint is barred by the provisions of Section 195 Cr.P.C. arises for consideration. The High Court, as already stated, did not express any view on this aspect. As it is a contentious issue and the order of the High Court is found unsustainable as regards the other point decided by it, the proper course would be to remit the matter to the High Court for fresh consideration. Accordingly, the impugned order is set aside and the matter is remitted to the High Court for fresh disposal. Appeal is allowed to this extent without costs.