

CASE NO.:
Appeal (crl.) 1010 of 2003

PETITIONER:
Ramesh Chandra Sinha & Ors.

RESPONDENT:
Vs.
State of Bihar & Ors.

DATE OF JUDGMENT: 18/08/2003

BENCH:
SHIVARAJ V. PATIL & BRIJESH KUMAR.

JUDGMENT:
O R D E R

(Arising out of S.L.P. (Crl.) No. 3784 of 2001)

SHIVARAJ V. PATIL J.

Leave granted.

In this appeal, the appellants have questioned the legality, validity and correctness of the impugned order. The appellants filed a petition before the High Court for quashing the entire criminal proceedings including the order dated 4.2.2000 by which the Chief Judicial Magistrate, Patna, had taken cognizance for the offences under Sections 341, 323, 504/34 and 120-B of the Indian Penal Code on a complaint filed by the respondent no. 2.

The appellant no. 1 was the Chairman of the Bihar State Pollution Control Board, Patna. Prior to joining the Board, he served as Professor in the Department of Geology, Patna University and he had teaching experience of 26 years. The respondent no. 2 was an employee of the Pollution Control Board. On account of certain irregularities and misconduct, he was dismissed from service after holding enquiry. He challenged the order of dismissal before the High Court in a writ petition. He lodged the F.I.R. at Harijan Police Station (Patna Sadar) alleging that right from the day he filed the writ petition, he was pressurized by the officials of the Pollution Control Board to withdraw the said writ petition. He complained that on 30.11.1992, the appellant no. 1 had abused and scolded him. Subsequently on 28.10.1993, he was beaten by the other appellants.

The appellants earlier filed a Criminal Misc. No. 16672 of 1994 in the High Court for quashing the criminal proceedings. On 11.11.1994, the High Court passed the following order:-

"Pending admission of the application further proceedings in the court below shall remain stayed and no coercive action shall be taken against the petitioners."

The said order was modified on 6.2.1995 as under:-

"Pending disposal of this application Police Investigation shall continue but no coercive

action shall be taken by the police against the petitioners."

The said Criminal Misc. case was finally disposed of on 5.10.1999.

In the impugned order, it is stated thus:-

"While disposing Cr. Misc. Case No. 16672 of 1994 a Bench of this Court had observed that although on the face of the record charge-sheet has been submitted after more than three years and no cognizance has been taken till the date of final order passed in that Cr. Misc. Case more than three years had elapsed and, as such, it was barred by limitation. But the matter was sent back to the court below for consideration whether cognizance is barred or not."

The learned Chief Judicial Magistrate (for short 'the CJM') by the order dated 4.2.2000 held that considering the date of occurrence being 24.9.1994 and the charge-sheet having been submitted in the year 1998 after a period of three years, bar of limitation under Section 468 of the Criminal Procedure Code (for short 'the Code') was attracted but on the petition filed by the respondent no. 2 on 6.1.2000, the learned magistrate condoned the delay exercising power under Section 473 of the Code stating that from 11.11.1994 till 5.10.1999 further proceedings in the court of the learned magistrate should be construed as stayed in view of the orders passed in Criminal Misc. No. 16672 of 1994. As already noticed above, the said order dated 4.2.2000 passed by the learned CJM was under challenge in the impugned order. Before the High Court, the only point that was urged on behalf of the appellants for quashing the entire criminal proceedings was that the charge-sheet having been filed after a period of three years, taking of cognizance was barred under Section 468(2) of the Code. Although, High Court in the impugned order found that some error was committed by the learned CJM in passing the order dated 4.2.2000, it was not much of consequence, expressing that "On perusal of all the orders passed in Cr. Misc. No. 16672 of 1994, I do not find that the court below has committed much error in computing the limitation period. It is true that in the order dated 11.11.1994 further proceedings in the lower court was stayed pending admission of the application but then the petition was admitted vide order dated 6.2.1995 proceedings in the lower court had not been stayed but no specific order has been passed to that effect in the order dated 6.2.1995 and if the court below construes that stay order still remained in respect of the proceedings in the court below then perhaps it can not be said much error has been committed by the learned CJM while construing that from 11.11.1994 till 5.10.1999 the date of final order in Cr. Misc. No. 16672 of 1994 the CJM ought not to have taken further steps in the proceedings itself."

Having said so, the High Court dismissed the petition filed by the appellants taking a view that the CJM had power to condone the delay under Section 473 of the Code and as such there was no need to exercise the jurisdiction under Section 482 of the Code.

Learned counsel for the appellants urged that having regard to bar contained under Section 468(2) of the Code, the CJM as well as the High Court committed a serious error in refusing to quash the criminal proceedings; it is clear from the records that the cognizance was taken by the CJM almost after a period of four

years; in the light of the order passed on 6.2.1995 by the High Court in earlier proceeding, there was no scope to contend that the proceedings before the Magistrate were stayed.

Learned counsel for the respondents made submissions supporting the impugned order. She pointed out that in spite of stay order passed by the High Court, at one stage the learned Magistrate had taken cognizance but subsequently recalled the order realizing the mistake; the delay was condoned by the discretion of the Magistrate while taking cognizance and under the circumstances, the impugned order need not be interfered with.

There is no dispute that cognizance was taken of the offences by the learned Magistrate long after a period of three years. The Magistrate condoned the delay on the ground that the proceedings were stayed by the High Court till 5.10.1999. On 11.11.1994, further proceedings had been specifically stayed but by the order dated 6.2.1995, the order dated 11.11.1994 was modified in effect to vacating the earlier order staying further proceedings. This position is abundantly clear by a bare perusal of the orders dated 11.11.1994 and 6.2.1995 extracted above. When the order of 11.11.1994 was specifically modified, there was no reason to understand the orders otherwise. It was not correct for the learned Magistrate to say that there was stay of further proceedings till 5.10.1999 in the face of order dated 6.2.1995 read with the order dated 11.11.1994. No other reason or ground is given in the order of the Magistrate to condone the delay under Section 473 of the Code. If the discretion is exercised on relevant considerations, possibly no fault could be found with such discretion. The High Court although noticed in the impugned order as to the effect of order dated 6.2.1995 and found that there was error committed by the Magistrate but took the view that it was not a serious one. Added to this, the proceedings are of the year 1994. Having regard to the facts and circumstances of the case, the CJM as well as the High Court committed serious error in upholding taking cognizance when it is clearly barred by Section 468(2) of the Code.

Under these circumstances, the impugned order affirming the order of the CJM cannot be sustained. Hence, the appeal is allowed. The impugned order is set aside and the criminal proceedings in P.S. Case No. 16/94 in the court of CJM, Patna, are quashed.