

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 775 OF 2008

[Arising out of SLP(Crl.) No. 46/2008]

MAHENDRA SINGH SAINI

... APPELLANT(S)

:VERSUS:

STATE OF UTTARAKHAND AND ANR.

... RESPONDENT(S)

ORDER

1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 20.9.2007 passed by a learned Single Judge of the High Court of Uttarakhand in Criminal Miscellaneous Application No. 685/2007 whereby and whereunder the application filed by him under Section 482 of the Code of Criminal Procedure, questioning the legality or validity of the order dated 5.7.2000 passed by learned 1st Additional Civil Judge, Roorkee, was dismissed.

3. Appellant was elected as Gram Pradhan of Village Salempur in the year 1989 and remained on the said post till 1995. Indisputably, 95 persons, most of whom belonged to the Scheduled Caste, had been occupying the land of the Gram Panchayat. In or around March 1993, the appellant purported to have granted settlement of the lands occupied by them, after taking Rs. 10,000 from each of the allottees. He, however, in the meanwhile had initiated a

proceeding for their eviction and they were evicted from the lands occupied by them.

4. The successor in office of the appellant, through the said persons made a complaint to the Governor alleging that the appellant had taken money from them in March 1993 for allotting them the land and in stead of allowing them to continue to occupy the land allotted to them, he got them evicted.

5. The Nayab Tehsildar, Roorkee was asked to make an inquiry into the said allegations by the Sub Divisional Magistrate in terms of his letter dated 31st August, 1996.

6. The inquiry report was submitted on 11.9.1996 and pursuant thereto or in furtherance thereof, a first information report was lodged by the Naiab Tehsildar, Roorkee on 4.12.1996. A charge sheet was filed by the Investigating Officer.

7. By an order dated 15.7.1998 cognizance was taken by the learned Magistrate under Section 406 of the Indian Penal Code. Appellant herein filed an application for recall of the said order, inter alia on the premise that the said order was barred by limitation. The said application was rejected by order dated 5.7.2000.

8. As noticed hereinbefore, the said order has been affirmed by the High Court by reason of the impugned judgment.

9. Mr. Tiwari, learned counsel for the appellant would submit that keeping in view the provisions contained in Section 468 of the Code of Criminal Procedure (Cr.P.C.) vis-a-vis the

period which was required to be excluded in terms thereof, namely, the period between 30th August, 1996 and 11th September, 1996 i.e. a period of 11 days, the learned Magistrate must be held to have committed a serious error in opining that the order taking cognizance was barred by limitation. Reliance in this behalf has been placed on Japani Sahoo vs. Chandra Shekhar Mohanty, [2007 (7) SCC 394].

10. Mr. Bhatia, learned counsel for the respondents, on the other hand, would submit that keeping in view the fact that the appellant continued to hold the office of Gram Pradhan till 1995 and the aforementioned 65 persons having made complaints before the new Gram Pradhan, an inquiry was conducted by the Naib Tehsildar, Roorkee, and the same having found to be true, the first information report was lodged and in that view of the matter the order taking cognizance must be held to have been made with reference to the provisions of Section 469(1)(b) of Cr.P.C.

11. It was not the case of the first informant, namely, the respondent No.2 herein, that he was aware of the alleged commission of offence by the appellant in March 1993. He came to know thereabout when the persons concerned, keeping in view the change in the office of Gram Pradhan, made a complaint to the Governor of the State, with a copy forwarded to the Sub Divisional Magistrate.

12. It has been noticed by us heretofore that an inquiry was directed to be conducted immediately upon receipt of the said complaint by the Sub Divisional Magistrate and the Naib Tehsildar, Roorkee to whom the inquiry was entrusted, also completed the same within the period of 11 days. Indisputably, within a few days thereafter, a first information report was lodged. In that view of the matter, we are of the opinion that it is not a case where we should

interfere with the impugned judgment at this stage.

13. Section 468 and Section 469(1)(b) of Cr.P.C. read 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 offence, 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, whichever is earlier; or.....”

14. There cannot be any doubt whatsoever that the aforementioned provisions were inserted in the Code with a view to see to it that a criminal prosecution is launched and punishment inflicted before the offence is wiped off from the memory of the person concerned. It is not necessary for us to go into the underlying objects for insertion of the said provisions as the same has been recently been noticed by a Division Bench of this Court in Japani Sahoo (supra).

15. There cannot, however, be any doubt whatsoever that the concept of fairness both in initiation of prosecution as also in trial must be protected and preserved so as to uphold the fundamental and human rights of the accused as enshrined in Article 21 of the Constitution of India. But it does not mean that the Court shall shut its eyes over the actual state of affairs, namely, that although the persons concerned came to know about the commission of the offence on a later date, a person guilty thereof shall be allowed to go unpunished, having regard to the conflicting interests viz. the interest of the accused persons, on the one hand, and the society and the victim on the other.

16. Whereas the Parliament, on the one hand, created a right in favour of the accused, the same stands curtailed by enacting Sections 469 and 470 of the Cr.P.C. Thus each case with regard to application of the provision providing limitation, as envisaged under Section 468 of the Cr.P.C., must be decided on its own facts.

17. We may profitably notice a decision of this Court in Bharat Damodar Kale and Anr. vs. State of A.P., [2003 (8) SCC 559] wherein it was opined:

“It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the Court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or

the complainant has no control.”

18. In the circumstances, therefore, an order taking cognizance, whether barred by limitation or not would depend upon various factors.

19. We have been taken through the order dated 5.7.2000, passed by learned 1st Additional Civil Judge, Roorkee, from a perusal whereof it appears that therein cognizance of the provisions of Section 469 of the Cr.P.C. was taken by the learned Judge to conclude:

“In my opinion exclusion of the period for investigation from calculating the limitation period is justified because it is not necessary in each case that limitation period starts from the date of offence. Learned Assistant Public Prosecutor on behalf of State has agreed that various cases is also made out under different sections in the present matters on which limitation period does not apply.

I do not find it appropriate to discuss on the events of the matter because it will be justified to hear it at the time of framing of charges.

After considering the aforesaid facts and circumstances and keeping in view the relevant facts on record, I come to the conclusion that in calculating the period of limitation in the instant case it would be justified that the time taken by the Tehsildar for investigation be excluded and in the present case the limitation period will be calculated not from the date of incident but from the date of completion of investigation. And therefore I find no force in the application of the applicant and his application is liable to be dismissed. Accordingly order is being passed.”

20. We do not find any error in the said approach of the learned Magistrate. We would, however, like to observe that in the event the findings of fact arrived at by the learned

Magistrate appears to be incorrect at an appropriate stage of the trial, it would be open to the appellant to urge the said ground. The appeal is dismissed with the aforementioned observations.

.....J
(S.B. SINHA)

.....J
(MUKUNDAKAM SHARMA)

NEW DELHI,
APRIL 15, 2008.