

**Court No. - 84**

**Case :-** APPLICATION U/S 482 No. - 11167 of 2022

**Applicant :-** Jai Krishna Dubey@ Raj Dubey And 4 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Satyendra Kumar Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Heard Sri Satyendra Kumar Mishra, learned counsel for the applicants and perused the record of the case.
2. The present application has been moved on behalf of applicants for quashing of the entire proceedings of Criminal Case No.207 of 2021 as well as summoning order dated 27.01.2021 and charge sheet dated 30.06.2017 (State Vs. Jai Krishan), arising out of Case Crime No.308 of 2017, under Sections 147, 148, 336, 332, 353, 504, 506 I.P.C., Police Station Sarpataha, District Jaunpur, pending before the court of Additional Chief Judicial Magistrate, Jaunpur.
3. Learned counsel for the applicants submitted that he is pressing the instant application on sole ground that cognizance order dated 27.01.2021 passed by court below is time barred and therefore proceedings pending against applicants is bad.
4. Shorn of unnecessary details, the relevant background with respect to the present matter is that on 11.06.2017, F.I.R. of the present case was lodged against applicants in respect of incident dated 10.06.2017 under Sections 147, 148, 336, 332, 353, 504, & 506 I.P.C. and investigation of the case was completed on 30.06.2017 and charge sheet was also prepared on 30.06.2017 under Sections 147, 148, 336, 332, 353, 504 & 506 I.P.C. against the applicants but charge sheet dated 30.06.2017 could only be filed before the court concerned on 27.01.2021 and the court concerned took the cognizance on 27.01.2021 i.e., after more than three years from the date of commission of offence i.e., 10.06.2017.
5. Learned counsel for the applicants submitted that the cognizance taken by the court below on 27.01.2021 is time barred as it was taken after more than three years from the date of incident. He further submitted that charge sheet against the applicants has been filed under Sections 147, 148, 336, 332, 353 & 506 I.P.C. and none of the offence is punishable with imprisonment more than three years and therefore by virtue of

Section 468 Cr.P.C., after three years of the incident, cognizance cannot be taken by the court below. He further submitted that as incident is said to have taken place on 10.06.2017 therefore, cognizance can only be taken by the court concerned within three years from the date of commission of offence i.e., 10.06.2017 but in the present case, the cognizance was taken by the court below on 27.01.2021, beyond three years from the date of incident i.e., 10.06.2017. Therefore, cognizance order dated 27.01.2021 is time barred and proceedings pending against the applicants is bad.

6. Per contra, learned A.G.A. submitted that as incident is said to have taken place on 10.06.2017 and F.I.R. of the present matter was lodged on 11.06.2017 i.e., next date. Therefore, it cannot be said that cognizance taken by the court below was time barred as F.I.R. of the present case was lodged well within three years from the date of the incident i.e., 10.06.2017. He further submitted that investigation was also concluded within three years from the date of incident and after investigation, charge sheet was also prepared well within time i.e., on 30.06.2017 but it was filed in the court concerned on 27.01.2021 and court below without any further delay took the cognizance on same day i.e., 27.01.2021. Therefore, complainant i.e., O.P. No.2 cannot be held liable for the delay in forwarding the charge sheet dated 30.06.2017 before the court concerned. Learned A.G.A., therefore, submitted that there is no illegality in the cognizance order dated 27.01.2021 passed by the court below. Therefore, present application is liable to be dismissed.

7. I have given my anxious consideration on the rival submissions advanced by both the parties and perused the record of the case.

8. Admitted facts of the case are, in respect of the incident dated 10.06.2017, O.P. No.2 lodged F.I.R. against the applicants under Sections 147, 148, 336, 332, 353, 504 & 506 I.P.C. on 11.06.2017 i.e., next date and investigation of the case was concluded on 30.06.2017 and charge sheet was also prepared on 30.06.2017 but charge sheet was submitted before the court below on 27.01.2021 and after submissions of the charge sheet on same day i.e., 27.01.2021, court below took the cognizance and issued summons to the applicants.

9. Therefore, question arises, whether the cognizance taken by the court below on 27.01.2021 is time barred or not.

10. Section 468 Cr.P.C. Criminal Procedure Code, 1973 deals with bar to taking cognizance after lapse of the period of

limitation and runs as follows:

468. "(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."

11. Thus as per Section 468 (2)(c) Cr.P.C. for offences punishable with maximum three years imprisonment limitation for taking cognizance is three years.

12. The law is settled that period of limitation shall be computed from the date of commission of offence, which is in this case 10.06.2017.

13. The matter of computing the period of limitation under Section 468 Cr.P.C. was referred to Constitution Bench of the Apex Court in case of **Sarah Mathew Vs. Institute of Cardio Vascular Diseases (2014) 2SCC 62**. The Constitution Bench of the Apex Court after discussing the matter in detail observed in Paragraph No.51 as:

51. " In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. .... "

14. Therefore, as per the law laid down by the Constitution Bench of the Supreme Court in case of **Sarah Mathew (Supra)**, the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C. is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.

15. The present case is a state case and cognizance was taken by the court below on the basis of police report. Therefore, in the present case, relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C. would be the date

of institution of prosecution.

16. Now, question arises, what is the date of institution of prosecution. The word "*prosecution*" has not been defined under Criminal Procedure Code but the Division Bench "*Lucknow Bench*" of this Court in ***Criminal Misc. Application No.22715 of 2019*** and ***Criminal Appeal No.724 of 2017*** "decided on 18.02.2019" in case of ***Suneel Kumar Singh Vs. State of U.P.*** in paragraph No.42 observed as

42."..... So the prosecution starts with giving information of commission of crime and continued during investigation or inquiry, trial of offender and if any appeal is filed finally end by an order passed in Appeal. ...."

17. The Single Bench of this Court in case of ***Rajitram Shukla and others. Vs. State of U.P. and others 2022 (118) ACC 183***, after discussing the Apex Court judgments of ***Darshan Singh Saini Vs. Sohan Singh and another (2015) 14 SCC 570 & Johnson Alexander Vs. State by C.B.I. MANU/SC/0443/2015*** observed in paragraph No.19 as:

19. The aforementioned authorities in the case of Darshan Singh Saini and Johnson Alexander, would go to show that 'institution of prosecution' would refer to the date of filing of the complaint or registering of the FIR, and in a case where the same is within the period of limitation, proceedings cannot be held to be barred by Section 468 merely for the reason that the order of cognizance or issuance of process is made on a subsequent date.

18. Recently, the Apex Court in case of ***Amritlal Vs. Shantilal Soni and others 2022 (119) ACC 682*** after relying the Constitution Bench judgment of ***Sarah Mathew case (Supra)*** accepted the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C. is the date of filing of the F.I.R. In the case of ***Amritlal (Supra)***, the F.I.R. was lodged on written complaint dated 10.07.2012 given to Superintendent of Police and Apex Court in paragraph no.9 observed as:

9."Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 Code of Criminal Procedure, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court had made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009."

19. Therefore, the relevant date for taking cognizance in the

State case is the date of institution of prosecution and in view of the Apex Court judgment of ***Amritlal (Supra)*** and Division Bench and Single Bench judgments of this Court in cases of ***Suneel (Supra)*** and ***Rajitram (Supra)*** respectively the date of institution of prosecution is the date of registration of the F.I.R.

20. Therefore, if F.I.R. of a case has been filed within time then cognizance taken by the court cannot be held time barred, even if date of taking cognizance by the court is beyond time.

21. In the present case as the date of commission of offence is 10.06.2017 and F.I.R. was lodged on 11.06.2017 i.e., next date. Therefore, the date of institution of prosecution in the present matter is 11.06.2017 i.e., the date on which F.I.R. was lodged, therefore, in view of the Constitution Bench Judgment of the Apex Court in case of ***Sarah Mathew (Supra)***, it cannot be said that the cognizance taken by the court below on 27.01.2021 is time barred as prosecution was instituted well within time on 11.06.2017.

22. Therefore, from the reasons made above, I find no merit in the instant application and instant application is hereby **dismissed**.

**Order Date :- 5.7.2022/Shivangi**