Bharat Damodar Kale & Anr vs State Of A.P on 8 October, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4560, 2003 AIR SCW 5333, 2004 (1) SRJ 227, 2004 SCC(CRI) 39, 2004 CRILR(SC&MP) 51, 2004 (1) UJ (SC) 203, 2003 (8) SCC 559, 2003 CALCRILR 1069, 2003 (6) SLT 440, (2003) 12 ALLINDCAS 857 (SC), 2003 (8) SCALE 392, 2003 ALL MR(CRI) 2681, 2003 (12) ALLINDCAS 857, 2004 CRILR(SC MAH GUJ) 51, (2004) ILR (KANT) (1) 174, (2004) 1 SERVLR 653, (2003) 6 ANDHLD 497, (2003) 4 RECCRIR 924, (2004) 1 ALLCRIR 592, 2004 CHANDLR(CIV&CRI) 266, (2004) SC CR R 484, (2003) 11 INDLD 644, (2003) 3 CHANDCRIC 170, (2003) 4 CURCRIR 218, (2003) 7 SUPREME 736, (2003) 8 SCALE 392, (2004) 1 UC 339, (2004) 48 ALLCRIC 34, (2004) 1 ANDH LT 41, (2003) 4 ALLCRILR 988, (2003) 4 CRIMES 420, 2004 (1) ALD(CRL) 27

Bench: N.Santosh Hegde, B.P.Singh

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           CASE NO.:
Appeal (crl.)  1251 of 2003

PETITIONER:
Bharat Damodar Kale & Anr.

RESPONDENT:
State of A.P.

DATE OF JUDGMENT: 08/10/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
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J U D G M E N T (Arising out of SLP(Crl.)No. 2367 of 2003) SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

This appeal is preferred against the judgment and order made by the High Court of Judicature: Andhra Pradesh at Hyderabad on 18.2.2003 whereby the High Court dismissed the criminal petition filed by the appellants under Section 482 of the Code of Criminal Procedure (the Code). The prayer of the appellants in the said petition was to quash the criminal proceedings initiated against them in CC No.201/2000 on the file of the II Metropolitan Magistrate, Vijayawada.

The challenge of the appellants before the High Court in the said petition was based on the ground that the cognizance of the alleged offence taken by learned Magistrate was barred by limitation under Section 469 of the Code. It was also urged that the Magistrate could not have taken cognizance of the offence based on a complaint made by Drug Inspector, Zone I, Vajayawada who was not one of the authorised officers under the Notification issued by the Government of Andhra Pradesh under the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 [the Central Act of 1954].

The High Court considering the said objections of the appellants rejected the same holding that the Notification issued by the Government of A.P. based on which the complainant Drug Inspector had initiated the complaint, is a notification applicable to the entire State of A.P. and not confined only to the Telangana area of the said State, therefore, the complainant was a competent person to lodge the complaint. The High Court also accepted the argument advanced on behalf of the prosecution that the offence having been detected on 5.3.1999 and the complaint having been filed on 3.3.2000, the same was well within the limitation prescribed under Section 469 of the Code. The High Court further accepted the argument of the prosecution that assuming there was a delay, the same is condonable under Section 473 of the Code because the said delay occurred due to the time taken by the Government in granting sanction which was excludable while computing the period of limitation.

Mr. R.K. Anand, learned senior counsel appearing for the appellants, contended that the High Court erred in coming to the conclusion that the Notification issued by the Government of A.P. dated 16.9.1963 issued in G.O.M.S. No.2515 Health, also applied to all Drug Inspectors in the State of A.P. According to him, that Notification was applicable to the Drug Inspectors of Telangana area of the State of A.P. only and the Drug Inspectors of Vijayawada which is outside the Telangana area, could not have assumed the jurisdiction flowing from the said Notification. Learned counsel further contended that the High Court was in error in coming to the conclusion that the limitation prescribed under the Code was applicable only for the filing of the complaint and not for taking of the cognizance which according to learned counsel, is opposed to the very language of Chapter XXXVI of the Code. He further submitted that the court below was in error in coming to the alternate conclusion that on the facts of this case the period of limitation, can be extended because said time was taken in obtaining sanction from the Government. For this purpose, he relied on a judgment of this Court in State of H.P. v. Tara Dutt & Anr. (2000 1 SCC 230).

Per contra, Mr. G. Prabhakar, learned counsel appearing for the State of A.P. submitted that the High Court was justified in coming to the conclusion that the Notification in question was applicable to the whole of State of A.P. and not confined to the Telangana area of the said State. He pointed out from the various paras of the said Notification that this was a notification issued by the Government of A.P. to comply with the requirement of the Central Act of 1954, and an inadvertent reference to the Telangana area in the preliminary part of the notification would not change the actual effect of the notification. Learned counsel also submitted that the bar of limitation prescribed under Section 468 of the Code is applicable only in regard to taking cognizance of offences in respect of which complaints are filed after the expiry of limitation mentioned in Section 468 of the Code.The use of the words 'Bar of taking cognizance' is not with reference to the act of the court in taking cognizance

but is with reference to taking cognizance of the case which is barred by limitation under the Act. In support of this contention learned counsel relied upon a judgment of this Court in Rashmi Kumar (Smt) v. Mahesh Kumar Bhada (1997 2 SCC 397).

We have perused the notification of the Government of A.P. dated 16.9.1963 issued under the Central Act of 1954. As held by the High Court, in our opinion too, the Notification in question is issued in furtherance of the 1954 Act and on the directions issued by the Government of India with a view to control the advertisements of drugs in certain cases and to provide for matters connected with the Central Act of 1954. Paragraph 2 of the said Notification authorises the Officers of the Drugs Control Adminsitation, Drugs Inspectors appointed under Section 21 of the Drugs Act, 1940 and other officers mentioned therein to act under Section 8 of the Central Act of 1954 to seize and detain any document, article or thing which such officer has reason to believe to contain any advertisement which contravenes the provisions of the Act. The said Notification also provides for obtaining the necessary previous sanction under Section 14(1)(d) of the Act, wherever necessary. These provisions of the Act, in our opinion, as also the object of the Notification clearly indicate that the Government of A.P. has issued this Notification empowering all its Drugs Inspectors appointed under Section 21 of the Drugs Act to exercise the power under Section 8 of the Central Act of 1954 for the purpose mentioned therein throughout the State of A.P. and an inadvertent reference to the Telangana area in the preliminary part of the said notification, in our opinion, would not in any manner restrict the operation of this Notification in other parts of Andhra Pradesh. Even otherwise there is no other indication or purpose reflected in the notification why the State of A.P. would want to restrict the operation of the notification which is in furtherance of a Central enactment only to Telangana area of A.P. State, with no stretch of imagination we can conclude that the Government of A.P. intended to confine the operation to Telangana area of A.P. State. We are also of the opinion that giving a narrow interpretation confining the operation of the Notification to a part of Andhra Pradesh would defeat the public purpose for which this notification is issued, therefore, such argument which would not subserve the public purpose in the interpretation of a notification, should be avoided, hence, we are in agreement with the finding of the High Court that the notification in question is applicable to the entire State of A.P. and the complainant in this case had the necessary authority to seize and detain any material which would indicate the commission of an offence under the Central Act of 1954 as also to file a complaint as has been done in this case.

This takes us to the next argument addressed on behalf of the appellants in this case that is the bar of limitation. It is an undisputed fact that in this case the detection of the offence was on 5.3.1999. The complaint in question was lodged in the court on 3.3.2000 which is within the period of limitation of one year. However, the Magistrate took cognizance of the offence on 25.3.2000. If the statute has put the period of limitation on the court taking cognizance then in this case the period of limitation being one year, the appellant is right in contending that the bar of limitation applies because the cognizance was taken on 25.3.2000 which is beyond the period of one year. The High Court accepted the argument addressed on behalf of the State and observed that since the complaint was filed within the period of one year of the detection of the offence, it is within the period of limitation though it did not give reasons for this finding and it also alternatively held that assuming that there was some delay in taking cognizance, said delay is condonable under Section 473 of the Code because the delay was caused in the process of obtaining sanction from the concerned

Government.

On facts of this case and based on the arguments advanced before us we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to delay in instituting the prosecution or to delay in taking cognizance. As noted above according to learned counsel for the appellants the limitation prescribed under the above Chapter applies to taking of cognizance by the concerned court therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the Chapter-Heading of Chapter XXXVI of the Code which reads thus : "Limitation for taking cognizance of certain offences". 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 471 indicates 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. Therefore a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit"

> which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the early decision of this Court in the case of Rashmi Kumar (supra) If this interpretation of Chapter XXXVI of the Code is to be applied to the facts of the case then we notice that the offence was detected on 5.3.1999 and the complaint was filed before the court on 3.3.2000 which was well within the period of

limitation, therefore, the fact that the court took cognizance of the offence only on 25.3.1999 about 25 days after it was filed, would not make the complaint barred by limitation.

In view of our above finding, we do not think it is necessary for us to go to the next question argued on behalf of the appellants that the court below was in error in invoking Section 473 of the Code for extending the period of limitation nor is it necessary for us to discuss the case of Tara Dutt (supra) relied on by the appellants.

For the reasons stated above, this appeal fails and the same is hereby dismissed.