State Of Himachal Pradesh vs Tara Dutt And Anr on 19 November, 1999

Equivalent citations: AIR 2000 SUPREME COURT 297, 2000 (1) SCC 230, 1999 AIR SCW 4413, 2000 (1) UJ (SC) 498, (1999) 9 JT 215 (SC), 2000 (1) SRJ 79, 1999 (7) SCALE 183, 2000 CRILR(SC&MP) 156, 2000 CRIAPPR(SC) 105, 1999 (9) JT 215, 2000 (2) LRI 147, 2000 SCC(CRI) 125, 2000 CRILR(SC MAH GUJ) 156, 2000 UJ(SC) 1 498, (1999) 9 SUPREME 421, (2000) 1 MADLW(CRI) 379, (2000) 18 OCR 320, (1999) 3 CHANDCRIC 194, (2000) SC CR R 115, (2000) 1 EASTCRIC 156, (2000) 1 ORISSA LR 153, (1999) 4 CURCRIR 280, (1999) 26 ALLCRIR 2841, (1999) 7 SCALE 183, (2000) 40 ALLCRIC 294, (2000) 1 ALLCRILR 168, (2000) 1 CRIMES 15, (2000) 1 RECCRIR 41

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Bench: M.B. Shah

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           CASE NO.:
Appeal (crl.)  1224 of 1999

PETITIONER:
STATE OF HIMACHAL PRADESH

RESPONDENT:
TARA DUTT AND ANR.

DATE OF JUDGMENT: 19/11/1999

BENCH:
G.B. PATTANAIK & M. SRIN1VASAN & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 Supp(4) SCR 514 The Judgment of the Court was delivered by PATTANAIK, J. Leave granted.

The State of Himachal Pradesh has preferred this appeal against the Judgment of the learned Single Judge of the Himachal Pradesh High Court, who being of the opinion that conviction in respect of a minor offence where charges had been framed for a major offence becomes barred under Section 468 of the Criminal Procedure Code, as on the date of cognizance for such minor offence the provisions of Section 468 gets attracted. The short facts Necessary for disposal of this appeal are that the two respondents herein were challaned for offences under Sections 468. 420. 120-B of the Indian Penal Code and for the offence under Section 5(2) of the Prevention of Corruption Act, 1947, The offence in question was alleged to have been committed in the year 1983 by forging the receipts

under the `Scab Control Scheme, 1983'. The charge-sheet was submitted in November, 1987 and cognizance was taken in December, 1987. Charges were framed under Sections 468. 420. 120-B of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act. Learned Special Judge acquitted them of the charge under Section 468 and 420 IPC and Section 5(2) of the Prevention of Corruption Act but convicted them under Sections 417 and 465 read with Section 109 of the Indian Penal Code. Some other accused persons who had also been tried along with the respondents herein were acquitted fully. On appeal, the High Court of Himachal Pradesh on ananlysis of Section 468 of the Code of Criminal Procedure came to the conclusion that for the offences for which the two respondents have been convicted by the Special Judge namely Sections 417 and 465 of the Indian Penal Code, the cognizance taken on 31.12.1987 was barred by limitation and, therefore he acquitted the accused persons. The High Court also came to the conclusion that though under Section 473 of the Code of Criminal Procedure the power to condone the delay taking cognizance was there for cogent reasons but since the learned Special Judge had not exercised that power inasmuch no such reasons had been recorded, the said provisions cannot be pressed into service. Having recorded the conclusion that the cognizance itself was barred by limitation, the High Court also in the penultimate para of the impugned Judgment expressed opinion on merits and had held that the offences under Sections 417 and 465 would not stand proved.

When the matter was placed before a Bench of two learned Judges, it was felt that the decision of this Court in Arun Vyas and Anr. v. Anita Vyas. [1999] 4 SCC 690, requires reconsideration by a larger Bench of three Judges and that is how the matter has been placed before us Section 468 of the Code of Criminal Procedure provides period of limitation for taking cognizance in sub-section (2) thereof and puts an embargo on the Court from taking cognizance of an offence after the expiry of the period of limitation under sub-section (I) thereof. Sub-section (3), however which was introduced by way of an Amendment Act of 1978, provides that when accused is tried for several offences, the period of limitation in relation to the offence which is punishable with more severe punishment would be the period of limitation for taking cognizance. For better appreciation of the point in issue, Section 468 of the Criminal Procedure Code is quoted in extenso: "Sec. 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, of 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, of 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 mere

severe punishment or, as the case may be, the most severe punishment."

The plain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure makes it crystal clear that under sub-section (2) (a) of Section 468 where the offence for which the accused is charged is punishable with fine only, the prosecution must be launched within six months from the date of commission of the offence. Similarly, under sub- section (2Xb) of Section 468, the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year and under sub-section (2Xc) of the said Section where the offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation provided is three years for taking cognizance. Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment) Act, 1978, provides that in relation to offences which may be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of Section 468 makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of the offence charged and not in respect of offence finally proved. This being the position, in the case in hand, when the respondents were charged under Section 468 read with Section 120-B for which the imposable punishment is seven years and Section 5{2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. The High Court in recording its conclusion relied upon the decision of this Court in the case of State of Punjab v. Sarwan Singh, [1981] 3 SCC 34. In the said case, the respondent was charged under Section 406 for misappropriation. The challan was presented on October 13, 1976 and therein it was clearly mentioned that the offence was committed on August 22, 1972. The learned trial Judge acquitted the accused of the charges under Section 468 but convicted him of the charge under Section 406 of the Code of Criminal Procedure. This Court came to the conclusion that since the charge-sheet itself mentions that the offence was committed on August 22, 1972, the cognizance was barred under Section 468(2)(c) of the Code. At the outset it may be stated that in the aforesaid case the Court had not considered the provisions of sub-section (3) of Section 468 which was in fact not there on the statue book when the alleged offence was held to have been committed. But in view of the provisions of sub-section (3) of Section 468 which we have already considered this decision will be of no application and the High Court committed error in relying upon the aforesaid decision to come to the conclusion that in the case in hand the cognizance itself was barred by limitation.

The learned counsel for the appellant contended that Section 469 of the Criminal Procedure Code can also be taken recourse to in the present case for finding out the commencement of the period of limitation. But since in respect of the offences providing punishment for more than three years no period of limitation has been provided under Section 468, question of examining the applicability of Section 469 of the Criminal Procedure Code to the case in hand does not arise.

Section 473 confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore in

respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court taking cognizance, where-ever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence. But the provisions are of no application to the case in hand since for the offences charged, no period of limitation has been provided in view of the imposable punishment thereunder. In this view of the matter we have no hesitation to come to the conclusion that the High Court committed serious error in holding that the conviction of the two respondents under Section 417 would be barred as on the date of taking cognizance the Court could not have taken cognizance for the said offence. Needless to mention, it is well settled by a catena of decisions of this Court that if an accused is charged of a major offence but is not found guilty thereunder, he can be convicted of a minor offence if the facts established indicate that such minor offence has been committed.

In view of the observations made by a Bench of two Judges of this Court, while this appeal was placed before Their Lordships, for hearing that the decision in the case of Aruna Vyas and Anr. v. Anita Vyas, [1999] 4 SCC 690, requires re-consideration, we think it necessary to notice the same. In the said case of Anna Vyas. one of the questions for consideration was whether the offence under Section 498A of the JPC is a continuing offence. The Court ultimately answered that the essence of the offence in Section 498A, being cruelty, the same is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation- On fact, the Court found that the last act of cruelty being committed on 13.10.88 and the period of limitation having commenced from that date, the charge-sheet that was filed on 22.12.95 and the subsequent cognizance on that basis was clearly barred by limitation under Section 468(2)(c) of the Code of Criminal Procedure, we see no infirmity with the said conclusion. One other question that was raised and adverted to in the aforesaid case is that in the absence of any specific order by the Magistrate, taking cognizance, after the period of limitation provided in Section 468(2)(c) of the Code of Criminal Procedure by invoking the power under Section 473 and condoning the delay, the Magistrate committed error by discharging the accused on the ground of limitation. The aforesaid observations made by this Court indicates that the order of the Magistrate at the time of taking cognizance in case of an offence under Section 49SA, should indicate as to why the Magistrate does not think it sufficient in the interest of justice to condone the delay inasmuch as an accused committing of an offence under Section 498A should not be lightly let of. We have already indicated in the earlier part of this Judgment as to the true import and construction of Section 473 of the Code of Criminal Procedure. The said provision being an enabling provision, whenever a Magistrate invokes the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied on the facts and circumstances of the case that the delay has been properly explained and that it is necessary in the interest of justice to condone the delay. But without such an order

being there or in the absence of such positive order, it cannot be said that the Magistrate has failed to exercise jurisdiction vested in law. It is no doubt true that in view of the fact that an offence under Section 498A is an offence against the society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be satisfied, in case of period of limitation for taking congnizance under Section 468(2)(c) having been expired that the circumstances of the case requires delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Code of Criminal Procedure.

It has no doubt been indicated in the penultimate paragraph of the impugned Judgment that even on merits the offence under Sections 417 and 465 IPC has not been established but that was only a casual observation without application of mind and without consideration of the facts on record on the basis of which the learned Special Judge convicted the two respondents of the offence under Sections 417 and 465 of the Indian Penal Code. It is also apparent from the very Judgment itself when the learned Judge indicated that it is not necessary to set out in detail the material facts giving rise to the appeal as the same are not required to be repeated since the appeal is being disposed of on a pure question of law. In this view of the matter we set aside the impugned Judgment of the High Court and direct that the appeal in question be disposed of by the High Court on merits.

This appeal is accordingly allowed.