Amritlal vs Shantilal Soni on 28 February, 2022

Author: Dinesh Maheshwari

Bench: Vikram Nath, Dinesh Maheshwari

1

REPORT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 301 OF 2022
(Arising out of SLP (Crl. No.) 5122 of 2019)

AMRITLAL ……. APPELLANT(S

VERSUS

SHANTILAL SONI & ORS. …. RESPONDENT(S

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

The order under challenge in the present appeal is dated 06.03.2019, as passed by the High Court of Madhya Pradesh, Bench at Indore in Miscellaneous Criminal Case No. 26287 of 2018.

By the order impugned, the High Court has, in exercise of its powers under Sections 482 of the Criminal Procedure Code, 19731, set aside the order dated 20.02.2018 passed by the Court of Additional Sessions Judge, Khachrod, District Ujjain in Criminal Revision No. 181 of 2017 as also the order dated 17.08.2017 passed by the Judicial Magistrate Reason: First Class, Khachrod, District Ujjain in Criminal Case No. 619 of 2012; and has quashed the proceedings in the 1 'CrPC' for short.

said Criminal Case No. 619 of 2012 for the offences punishable under Section 406 read with Section 34 and Section 120-B of the Indian Penal Code, 18602. Shorn of unnecessary details, the relevant background aspects of the matter are that on 10.07.2012, the present appellant filed a written complaint to the Superintendent of Police, Khachrod while claiming that he had entrusted 33.139 Kg of silver to the respondent; and on 04.10.2009, on the demand being made, the respondent refused to return the same. On the complaint so filed by the appellant, FIR bearing No. 289 of 2012 came to be registered and, after investigation, the police filed charge-sheet dated 13.11.2012 for the offences

aforesaid against the accused persons, respondent Nos. 1 and 2 herein. Thereupon, the Judicial Magistrate, First Class, Khachrod took cognizance on 04.12.2012.

On 12.09.2013, the Magistrate passed the order framing charges. This order was challenged by the accused- respondents in a revision petition (No. 288 of 2013) under Section 397 CrPC, inter alia, on the ground that taking cognizance in this matter was barred by limitation. The Additional Sessions Judge, Khachrod dismissed the revision petition so filed by the accused-respondents on 27.07.2015 while holding, inter alia, that the bar of limitation was 2 'IPC' for short.

not applicable in the matter. Thereafter, the accused- respondents filed an application under Section 468 CrPC before the Trial Court, again raising the question of limitation. This application was rejected by the Trial Court on 17.08.2017. The order so passed by the Trial Court was affirmed by the Additional Sessions Judge, Khachrod in revision petition (No. 181 of 2017) on 20.02.2018. However, on such orders being challenged, the High Court has, in the impugned order dated 06.03.2019, formed the opinion that taking cognizance of this matter on 04.12.2012 was barred by limitation. The High Court has, thus, in exercise of its powers under Section 482 CrPC, quashed the proceedings. The sum and substance of the reasoning of the High Court could be noticed in the following: -

> "19. On cumulative consideration of the aforesaid discussion, this Court is of the view that the date of offence is very well known to the complainant i.e. 04.10.2009 and he lodged FIR on 19.07.2012 i.e. after 2 years 9½ months of the alleged incident and the Police has filed charge sheet on 04.12.2012 after a period of three years of the alleged incident, on which basis, the Magistrate has taken cognizance of the offence against the petitioners on 04.12.2012 which was barred by limitation, therefore, the trial Court as well as Revisional Court have committed error of law in rejecting the plea taken by the petitioners regarding maintainability of the prosecution on the ground of limitation." In challenge to the order aforesaid, it has been argued that the proposition of the High Court, in proceeding on the basis of date of taking cognizance for the purpose of limitation, is not in conformity with law and runs directly contrary to the principles laid down by the Constitution Bench of this Court in the case of Sarah Mathew v. Institute of Cardio Vascular Diseases by its director Dr. K.M. Cherian & Ors.: (2014) 2 SCC 62. In counter, it has been argued on behalf of the respondent that the High Court has rightly held that the prosecution was not maintainable when the Magistrate took cognizance of the alleged incident on 04.12.2012 inasmuch as the date of offence was alleged by the complainant to be 04.10.2009. A decision of this Court in the case of State of Punjab v. Sarwan Singh: (1981) 3 SCC 34 is relied upon.

It has also been attempted to be argued that the decision in the case of Sarah Mathew (supra) requires reconsideration because several aspects relating to the purpose of Chapter XXXVI CrPC have not been taken into consideration and this Court has not comprehensively dealt with the provisions relating to the bar of limitation.

Having heard learned counsel for the parties and having perused the material placed on record, we have not an iota of doubt that the impugned order of the High Court deserves to be set aside, for it proceeds squarely contrary to the law declared by the Constitution Bench of this Court in Sarah Mathew's case (supra). In Sarah Mathew, the Constitution Bench of this Court examined two questions thus: -

> 3. No specific questions have been referred to us.

But, in our opinion, the following questions arise for our consideration:

> 3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence? 3.2. (ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121] or Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] (which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]), lays down the correct law?

The Constitution Bench answered the aforesaid questions as follows: -

> 51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC 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. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

(emphasis supplied) 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 CrPC, 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 has 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.

In rather over-zealous, if not over-adventurous, attempt to support the order of the High Court, learned counsel for the contesting respondents has attempted to submit that Sarah Mathew's case requires reconsideration on the ground that some of the factors related with Chapter XXXVI CrPC

have not been considered by this Court. Such an attempt has only been noted to be rejected.

A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration. It remains trite that the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein3. This is apart from the fact that a bare reading of the decision in Sarah Mathew (supra) would make it clear that every relevant aspect concerning Chapter XXXVI CrPC has been dilated upon by the Constitution Bench in necessary details. As a necessary corollary, the submissions made with reference to other decision of this Court, which proceeded on its own facts, are of no avail to the respondents. Thus, the submissions made on behalf of the contesting respondents stand rejected in absolute terms.

For what has been observed and discussed hereinabove, this appeal is allowed. The impugned order dated 06.03.2019 is set aside and the petition filed before the High Court, being Miscellaneous Criminal Case No. 26287 of 2018, is dismissed.

The Trial Magistrate shall now proceed with the trial expeditiously and for that matter, it is also provided that if any other attempt is made on part of the accused- respondents to delay or obstruct the trial, the Magistrate would be free to adopt such coercive proceedings as may be necessary, including cancellation of bail granted to the accused-respondents or putting monetary conditions on them, equivalent to the present value of the property involved in the matter.

3 Vide Somawanti & Ors. v. The State of Punjab & Ors.: AIR 1963 SC 151 (para 22). The parties through their respective counsel shall stand at notice to appear before the Judicial Magistrate, First Class, Khachrod, District Ujjain on 01.04.2022.

.....J (DINESH MAHESHWARI) .....J (VIKRAM NATH) NEW DELHI, FEBRUARY 28,2022.