Sarah Mathew vs Inst., Cardio Vascular Diseases & Ors on 26 November, 2013

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Author: Chief Justice

Bench: S.A. Bobde, Ranjan Gogoi, Ranjana Prakash Desai, B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.829 OF 2005

Mrs. Sarah Mathew … Appellant

Versus

The Institute of Cardio Vascular
Diseases by its Director
– Dr. K.M. Cherian & Ors. … Respondents

WITH

Special Leave Petition (Crl.) Nos.5687-5688 of 2013

M/s. HT Media Ltd. & Ors. … Petitioners

Versus

State (Govt. of NCT of Delhi) … Respondent

WITH

Special Leave Petition (Crl.) No.5764 of 2013

M/s. Hindustan Media Venture Ltd. & Ors. … Petitioners

Versus

State (Govt. of NCT of Delhi) … Respondent

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. While dealing with Criminal Appeal No. 829 of 2005 a two-Judge Bench of this Court noticed a conflict between a two-Judge Bench decision of this Court in Bharat Damodar Kale & Anr. v. State of Andhra Pradesh[1] which is followed in another two-Judge Bench decision in Japani Sahoo v. Chandra Sekhar Mohanty[2] and a three-Judge Bench decision of this Court in Krishna Pillai v. T.A. Rajendran & Anr.[3] . In Bharat Kale it was held that for the purpose of computing the period of limitation, the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of a process by court. In Krishna Pillai this Court was concerned with Section 9 of the Child Marriage Restraint Act, 1929 which stated that no court shall take cognizance of any offence under the Child Marriage Restraint Act, 1929 after the expiry of one year from the date on which the offence is alleged to have been committed. The three-Judge Bench held that since magisterial action in the case before it was beyond the period of one year from the date of commission of the offence, the Magistrate was not competent to take cognizance when he did in view of bar under Section 9 of the Child Marriage Restraint Act, 1929. Thus, there was apparent conflict on the question whether for the purpose of computing the period of limitation under Section 468 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') in respect of a criminal complaint the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance. The two-Judge Bench, therefore, directed that this case may be put up before a three-Judge Bench for an authoritative pronouncement. When the matter was placed before the three-Judge Bench, the three-Judge Bench doubted the correctness of Krishna Pillai and observed that as a co-ordinate Bench, it cannot declare that Krishna Pillai does not lay down the correct law and, therefore, the matter needs to be referred to a five-Judge Bench to examine the correctness of the view taken in Krishna Pillai. Accordingly, this appeal along with other matters where similar issue is involved is placed before this Constitution Bench.

2. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

A. Whether for the purposes of computing the period of limitation under Section 468 of the Cr.P.C the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

B. Which of the two cases i.e. Krishna Pillai or Bharat Kale (which is followed in Japani Sahoo) lays down the correct law.

3. We have heard learned counsel for the parties at great length and carefully read their written submissions. We may give gist of their submissions and then proceed to answer the questions which fall for our consideration.

4. Gist of submissions of Mr. Krishnamurthi Swami, learned counsel for the appellant in Criminal Appeal No. 829 of 2005.

a. Krishna Pillai was rendered in the context of Section 9 of the Child Marriage Restraint Act, 1929. There is no reference to either Section 468 or Section 473 of the Cr.P.C. in this judgment. This judgment merely focuses on the meaning of the term 'taking cognizance' and has accordingly interpreted Section 9 without reference to any provisions of the Cr.P.C. Hence, this judgment cannot be considered authority for the purposes of interpretation of provisions of Chapter XXXVI. On the other hand Bharat Kale considers various provisions of Chapter XXXVI. All the provisions have been cumulatively read to conclude 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 within the period of the limitation prescribed under the Cr.P.C. This judgment lays down the correct law.

b. Section 468 of the Cr.P.C. has to be read keeping in view other provisions particularly Section 473 of the Cr.P.C. A person filing a complaint within time cannot be penalized because the Magistrate did not take cognizance. A person filing a complaint after the period of limitation can file an application for condonation of delay and the Magistrate could condone delay if the explanation is reasonable. If Section 468 is interpreted to mean that a Magistrate cannot take cognizance of an offence after the period of limitation without any reference to the date of filing of the complaint or the institution of the prosecution it would be rendered unconstitutional. A court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than accepting an interpretation which may make such provision unsustainable and ultra vires the Constitution. [U.P. Power Corpon. Ltd. v. Ayodhya Prasad Mishra & Anr[4]].

c. Chapter XXXVI requires to be harmoniously interpreted keeping the interests of both the complainant as well as the accused in mind.

d. The law of limitation should be interpreted from the standpoint of the person who exercises the right and whose remedy would be barred. The laws of limitation do not extinguish the right but only bar the remedy. [Mela Ram v. The Commissioner of Income Tax Punjab[5]].

e. If delay in filing a complaint can be condoned in terms of Section 473 of the Cr.P.C. then, Section 468 of the Cr.P.C cannot be interpreted to mean that a complaint or prosecution instituted within time cannot be proceeded with, merely because the Magistrate took cognizance after the period of limitation.

f. The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision. However, the same may not by itself be a ground for dismissing the complaint at the threshold. [Udai Shankar Awasthi v. State of U.P. & Anr.[6]]. In certain exceptional circumstances delay may have to be condoned considering the gravity of the charge.

g. The contention that Section 468 should be interpreted to mean that where the Magistrate does not take cognizance within the period of limitation it must be treated as having the object of giving quietus to petty offences in the Indian Penal Code is untenable. Some offences which fall within the periods of limitation specified in Section 468 of the Cr.P.C are serious. It could never have been the intention of the legislature to accord quietus to such offences.

h. Procedure is meant to sub-serve and not rule the cause of justice. Procedural laws must be liberally construed to really serve as handmaid. Technical objections which tend to defeat and deny substantial justice should be strictly discouraged. [Sushil Kumar Jain v. State of Bihar[7], Sardar Amarjeet Singh Kalra (dead) by LRs. & Ors. v. Promod Gupta (dead) by LRs. & Ors.[8], Kailash v. Nanhku & Ors.[9]]

5. Gist of submissions of Mr. S. Guru Krishnakumar, learned senior counsel and Mrs. V. Mohana, learned counsel for respondent 1 in Criminal Appeal No. 829 of 2005.

a. Bharat Kale and Japani Sahoo do not represent the correct position in law. Krishna Pillai rightly holds that the relevant date for considering period of limitation is the date of taking cognizance.

b. The settled principles of statutory construction require that the expression 'cognizance' occurring in Chapter XXXVI of the Cr.P.C. has to be given its legal sense, since it has acquired a special connotation in criminal law. It is a settled position in law that taking cognizance is judicial application of mind to the contents of a complaint/police report for the first time. [R.R. Chari v. The State of Uttar Pradesh[10], Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.[11]]. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal meaning and no other. [State of Madras v. Gannon Dukerley & Co. (Madras) Ltd.[12]].

c. The heading of Chapter XXXVI providing for limitation for taking cognizance of certain offences is clearly reflective of the legislative intent to treat the date of taking cognizance as the relevant date in computing limitation. Pertinently, Section 467 defines the expression 'period of limitation' as the period specified in Section 468 for taking cognizance of an offence. The express language of Section 468 makes it clear that the legislature considers the relevant date for computing the date of limitation to be the date of taking cognizance and not the date of filing of a complaint. Further, the

situations in Section 470 of the Cr.P.C. providing for exclusion in computing the period of limitation are again relatable to taking cognizance and institution of prosecution. So also, exclusion under Section 471 of the Cr.P.C. relates only to taking cognizance and Section 473 of the Cr.P.C. also provides for extension of period of limitation in taking cognizance.

d. The scheme of the Cr.P.C. envisages cognizance to be the point of initiation of proceedings. Chapter XIV of the Cr.P.C. which contains provisions of taking cognizance is titled "Conditions requisite for initiation of proceedings". All provisions contained therein use the expression 'cognizance'. They do not refer to filing of complaint at all.

e. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Even if the literal interpretation results in hardship or inconvenience it has to be followed (Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.)[13]. On a plain and literal interpretation of Section 468 of the Cr.P.C. read in the background of object of Chapter XXXVI the intention of the legislature is clearly evident that bar of limitation is only for taking cognizance of an offence after the expiry of the period specified therein.

f. Chapter XV of the Cr.P.C. sets out procedure to be followed in respect of complaints filed directly to a Magistrate. It reflects a well laid out scheme which envisages judicial application of mind to be a pre-requisite for initiation of proceedings. The definition of the term 'complaint' contained in Section 2(d) also makes this evident. Thus, initiation of proceedings in criminal law can only be upon taking cognizance. It is clear, therefore, that under Section 468 of the Cr.P.C. legislature has barred taking of cognizance as envisaged by Chapters XIV and XV after expiry of period of limitation. Hence, the date for purpose of limitation would be the date of taking cognizance. Mere filing of a complaint does not result in cognizance being taken, for the law requires the court to apply its mind judicially even before deciding to issue process.

g. There was no period of limitation under the old Cr.P.C. A long delay led to serious negligence on the part of the prosecuting agencies, forgetfulness on the part of the prosecution and defence witness and mental anguish to the accused. Infliction of punishment long after the commission of offence impairs its utility as social retribution to the offender. To obviate these lacunae Chapter XXXVI was introduced in the Cr.P.C.

h. Bharat Kale and Japani Sahoo have missed the object of introduction of Chapter XXXVI in the Cr.P.C. namely to serve larger interest of administration of criminal justice keeping in view the interest of the accused and the interest of prosecuting agencies. These judgments fail to advert to the prejudice that will be caused to the accused if benefit of delay in taking cognizance is not given to them. The likelihood of prejudice being caused to the complainant which weighed with this court in the above two decisions can be taken care of by Section 473 which provides for condonation of delay. [State of Punjab v. Sarwan Singh[14], Vanka Radhamanohari (Smt.) v. Vanka Venkata Reddy and others[15] and State of H.P. v. Tara Dutt & Anr.[16]] i. Object of Section 473 of the Cr.P.C. has not been considered in Bharat Kale and Japani Sahoo. They are sub-silentio in this regard. (Municipal Corporation of Delhi V. Gurnam Kaur[17]). They have also not taken note of difference of language in Sections 468 and 469 of the Cr.P.C.

j. There are seven exceptions in the Cr.P.C. to Section 468 namely Sections 84(1), 96(1), 198(6), 199(5), 378(5), 457(2) and the proviso to Section 125(3). In all these provisions period of limitation has been expressly provided by the legislature. The language of each of these provisions is different from language of Section 468. A perusal of these seven exceptions show that what is intended in Section 468 of the Cr.P.C. is limitation for taking cognizance and not for filing complaints.

6. Gist of submissions of Mr. Padmanabhan, learned counsel for respondent 2 in Criminal Appeal No. 829 of 2005.

a. The legislature has been very specific wherever time limit has to be fixed for initiation of prosecution. In certain special legislations like the Negotiable Instruments Act bar of limitation is not co-related to taking cognizance of an offence by a court, but it is co-related to filing of a complaint within a specific period. It is apparent that the bar under Chapter XXXVI of the Cr.P.C. must be co-related to taking cognizance of an offence by the court in view of specific language used by the relevant sections contained therein.

b. Chapter XXXVI of the Cr.P.C. is captioned as 'Limitation for Taking Cognizance of Certain Offences'. Therefore, this Chapter has to be understood as a Chapter placing limitation upon the court for the purposes of taking cognizance within the timeframe prescribed and not for filing of a complaint. In this Chapter the word 'complaint' or 'complainant' are conspicuously absent. Emphasis is on 'offences'.

c. Section 473 of the Cr.P.C enjoins a duty on the court to examine not only whether the delay has been explained or not but whether it is necessary to do so in the interest of justice.

d. If the charge-sheet is hit by Section 468, the Court may then resort to Section 473 in exceptional cases in the interest of justice. The same consideration may not arise if a private complaint is filed. Section 473 is designed to cater to situations when for genuine reasons investigation is delayed. It is not intended to give long rope to litigants who take long time to approach the court.

e. Marginal Heading or Note can be usefully referred to, to determine the sense of any doubtful expression in a section ranged under that heading though it cannot be referred to for giving a different effect to clear words in the section.

7. Gist of submissions of Mr. Amrendra Sharan, learned senior counsel appearing for the petitioner in SLP (Crl.) Nos. 5687-5688 of 2013 and SLP (Crl.) No. 5764 of 2013.

a. Chapter XXXVI of the Cr.P.C. is a complete code in itself which deals with issue of bar of limitation for taking cognizance of an offence.

b. A bare reading of Section 468 of the Cr.P.C leaves no manner of doubt that the bar of limitation applies as on the date of cognizance. It specifically targets cognizance and it debars taking cognizance of an offence after expiration of the statutory period of limitation. One cannot make fundamental alteration in the words of the statute. Taking cognizance cannot be altered to filing

complaint within statutory period.

c. Taking cognizance is distinct from filing complaint. The term cognizance has been defined by this Court in R.R. Chari and Darshan Singh Ram Kishan v. State of Maharashtra[18]. Cognizance takes place when a Magistrate first takes judicial notice of an offence on a complaint, or on a police report or upon information of a person other than a police officer.

d. Operation of legal maxims can be excluded by statutes but operation of statutes cannot be excluded by legal maxims. Reliance on a maxim by this Court in Japani Sahoo for carving out an exception and supplying words to the complete Code of limitation is erroneous.

e. Penal statutes have to be interpreted strictly. [Tolaram Relumal & Anr. v. The State of Bombay][19]. It is the cardinal rule of interpretation that where a statute provides a particular thing should be done, it should be done in the manner prescribed and not in any other way. (State of Jharkhand & Anr. v. Ambay Cements & Anr.[20]) f. The rule of Casus Omissus stipulates that a matter which should have been, but has not been provided for in the statute cannot be supplied by the courts as, to do so, will be legislation by court and not construction. The legislative casus omissus cannot be supplied by judicial interpretative process. There is no scope for supplying/ supplanting any word, phrase or sentence or creating any exception in Chapter XXXVI which is a complete Code in itself. [Shiv Shakti Co-operative Housing Society, Nagpur v. Swaraj Developers & Ors[21]., Bharat Aluminum Co. etc. v. Kaiser Aluminum Technical Services etc.[22], Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd. & Anr.[23]].

g. Japani Sahoo does not lay down the correct law because by stipulating that the date of limitation is to be calculated from the date of filing of complaint rather than from the date on which the cognizance is taken, it has created a casus omissus, where the language of the statute was plain and no casus omissus existed.

h. The Golden Rule of Interpretation provides that a statute has to be interpreted by grammatical or literal meaning unmindful of the consequences if the language of the statute is plain and simple. [Maulavi Hussein Haji Abraham Umarji v. State of Gujarat & Anr[24]].

i. The Law Commission's 42nd Report demonstrates the rational for introduction of limitation in Cr.P.C. The legislature wanted to ensure that prosecution should not result in persecution especially in cases of minor offences which could be tried and disposed of speedily.

j. The accused has a fundamental right to speedy trial which is a facet of Article 21. [A.R. Antulay v. R.S. Nayak[25] ("Antulay '1992' Case")] Therefore, it is the duty of the courts to take cognizance within a prescribed timeframe. If the court fails to do so, it is not open to it to take cognizance of such offence as it might prejudice the right of the accused. Therefore, no cognizance can be taken after the period of limitation. [Raj Deo Sharma (II) v. State of Bihar[26] and Sarwan Singh.] k. The accused has a right to be heard at the time of condonation of delay in taking cognizance by the courts. Delay cannot be condoned without notice to the accused. [State of Maharashtra v. Sharadchandra Vinayak Dongre & Ors.[27], P.K. Choudhary v. Commander, 48 BRTF, (GREF)[28],

Krishna Sanghai v. State of M.P.[29]] l. The accused have to be heard when an application under Section 473 of the Cr.P.C. is moved by the prosecution before cognizance is taken. Section 468 of the Cr.P.C. is clear and unambiguous and it bars taking cognizance of an offence, if on the date of taking cognizance the period prescribed under Section 468(2) of the Cr.P.C. has expired. Japani Sahoo, therefore, does not lay down the correct law.

8. Gist of submissions of Mr. Sidharth Luthra, learned Additional Solicitor General, appearing for the respondent–State (NCT of Delhi) in SLP (Crl.) Nos. 5687-5688 of 2013 and SLP (Crl.) No. 5764 of 2013.

a. Bharat Kale lays down the correct law and not Krishna Pillai.

b. Legislative history of Chapter XXXVI indicates its object.

c. Stage of process is not to be mistaken for cognizance.

Cognizance indicates the point when a court takes judicial notice of an offence with a view to initiating process in respect of the offence [S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors.[30]]. Cognizance is entirely a different thing from initiation of proceedings, rather it is the condition precedent to the initiation of proceedings by the court. Cognizance is taken of the case and not of persons. Under Section 190 of the Cr.P.C. it is the application of mind to the averments in the complaint that constitutes cognizance (Bhushan Kumar). Stage of process is not relevant for the purpose of computing limitation under Section 468 of the Cr.P.C.

d. Chapter XXXVI has to be read as a whole. To understand the scheme of this Chapter reference may be made to Vanka Radhamanohari.

e. On interpretation of Section 473 of the Cr.P.C particularly the disjunctive ‘or’ used therein reference may be made to Municipal Corporation of Delhi v. Tek Chand Bhatia[31]. Once the complainant has acted with due diligence and there are delays on the part of the Court, it would be in the interest of justice to condone such delay and not call for explanation from the complainant which in any case he cannot possibly give. On condonation of delay reference may be made to Sharadchandra Dongre.

f. Taking cognizance is not dictated by the prosecution of the complaint or police report but is predicated upon application of judicial mind by the Magistrate which is not in the control of the individual instituting the prosecution. If date of taking cognizance is considered to be relevant in computing limitation, the act of the court can prejudice the complainant which will be against the maxim ‘the acts of courts should not prejudice anyone’. [Rodger v. Comptoir D’Escompte De Paris[32]].

g. Krishna Pillai relates to Section 9 of the Child Marriage Restraint Act, 1929 which is a special law and which provides for a limitation for taking cognizance and could exclude the application of

Chapter XXXVI and, hence, Section 473 of the Cr.P.C. and perhaps in such facts there was no reference to Section 473 of the Cr.P.C. Similar is the view in P.P. Unnikrishnan & Anr. v. Puttiyottil Alikutty & Anr.[33].

h. It is settled law that Sections 4 and 5 of the Cr.P.C. create an exception for special laws with special procedures. Krishna Pillai was in the context of specific limitation period where Section 473 of the Cr.P.C. had no application. Thus, it cannot be considered or applied to interpret Sections 468 and 473 of the Cr.P.C. as they stand. On the contrary, view taken in Bharat Kale and Japani Sahoo relying upon Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada,[34] reach the same conclusion as contended herein i.e. the acts of the court should not prejudice anyone.

9. Having given the gist of the submissions, we shall now advert to Krishna Pillai, Bharat Kale and Japani Sahoo which have led to this reference. In Krishna Pillai this Court was concerned with Section 9 of the Child Marriage Restraint Act, 1929 which reads as under:

> "No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed." It was not disputed that cognizance of the offence had been taken by the court more than a year after the offence was committed. The appellant challenged the continuance of prosecution by filing an application under Section 482 of the Cr.P.C. before the High Court contending that the cognizance was barred under Section 9 of the Child Marriage Restraint Act, 1929. It was contended by the respondent that since the complaint had been filed within a year from the commission of the offence it must be taken that the court has taken cognizance on the date when the complaint was filed. Therefore, the complaint cannot be said to be barred by limitation. This Court quoted the following observations of the judgment of the Constitution Bench in A.R. Antulay v. Ramdas Sriniwas Nayak ("Antulay '1984' Case"[35]:
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> "When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court." This Court observed that cognizance has assumed a special meaning in our criminal jurisprudence and the above extract from Antulay '1984' Case indicates that filing of a complaint is not taking cognizance and what exactly constitutes taking cognizance is different from filing a complaint. This Court observed that since the magisterial action in the case before it was beyond the period of one year from the date of commission of the offence, the Magistrate was not competent to take cognizance when he did in view of the bar under Section 9 of the Child Marriage Restraint Act, 1929.

10. Before discussing Bharat Kale, it is necessary to go to Rashmi Kumar (Smt.) on which reliance is placed in Bharat Kale. In that case, the question was whether the complaint filed by the complainant-wife against the husband under Section 406 of the IPC in September, 1990 was time barred. The offence under Section 406 of the IPC is punishable with imprisonment which could extend to three years or with fine or with both. Therefore, under Section 468(3) of the Cr.P.C., the limitation period for the said offence is three years. It was urged by the counsel for the husband that the evidence of the complainant-wife recorded under Section 200 of the Cr.P.C. establishes that in October, 1986 the complainant-wife demanded return of jewelry and the husband refused to return the jewelry. Therefore, the period of limitation began to run from October, 1986 and the complaint filed in September, 1990 was time barred, it having been filed beyond the period of three years. A three-Judge Bench of this Court negatived this contention and held that it was clearly averred in the complaint that on 5/12/1987, the complainant-wife had demanded jewelry from the husband and the husband had refused to do so and, therefore, the complaint filed on 10/9/1990 was within three years from the date of demand of jewelry and refusal to return it by the husband. Thus, for the purpose of computation of period of limitation, the date of filing of the complaint was held to be relevant.

11. In Bharat Kale, the offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was detected on 5/3/1999. The complaint was filed on 3/3/2000 which was within the period of limitation of one year. However, the Magistrate took cognizance on 25/3/2000 i.e. beyond the period of one year. It was argued that since cognizance was taken beyond the period of one year, the bar of limitation applies. After considering the provisions of Chapter XXXVI of the Cr.P.C. this Court observed that they indicate 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 Court further observed that taking cognizance is an act of the court over which the prosecuting agency or the complainant has no control. A complaint filed within the period of limitation cannot be made infructuous by an act of the court which will cause prejudice to the complainant. Such a construction will be against the maxim 'actus curiae neminem gravabit', which means the act of court shall prejudice no man. It was also observed relying on Rashmi Kumar (Smt.) that the legislature could not have intended to put a period of limitation on the act of the court for taking cognizance of an offence so as to defeat the case of the complainant.

12. In Japani Sahoo, the complainant therein filed a complaint in the court of the concerned Magistrate alleging commission of offences punishable under Sections 161, 294, 323 and 506 of the IPC. On 8/8/1997 learned Magistrate on the basis of statements of witnesses issued summons for appearance of the accused. The accused surrendered on 23/11/1998 and thereafter filed a petition under Section 482 of the Cr.P.C. in the High Court for quashing criminal proceedings contending inter alia that no cognizance could have been taken by the court after the period of one year of limitation prescribed for the offences punishable under Sections 294 and 323 of the IPC. The High Court held that the relevant date for deciding the bar of limitation was the date of taking cognizance by the court and since cognizance was taken after the period of one year and the delay was not condoned by the court by exercising power under Section 473 of the Code, the complaint is liable to

be dismissed. On appeal, this Court referred to another well known maxim 'nullum tempus aut locus occurrit regi' which means that a crime never dies. This Court elaborately discussed the scheme of Chapter XXXVI of the Cr.P.C. and after following Bharat Kale held that it is the date of filing of complaint or the date on which criminal proceedings are initiated which is material.

13. At the outset, we must deal with the criticism leveled against Bharat Kale and Japani Sahoo that they place undue reliance on legal maxims. It was argued that legal maxims can neither expand nor delete any part of an express statutory provision, nor can they give an interpretation which is directly contrary to what the provision stipulated. Their operation can be excluded by statutes but operation of statutes cannot be excluded by legal maxims.

14. It is true that in Bharat Kale and Japani Sahoo this Court has referred to two important legal maxims. We may add that in Vanka Radhamanohari, to which our attention has been drawn by the counsel, it is stated that the general rule of limitation is based on Latin maxim 'vigilantibus et non dormientibus, jura subveniunt', which means the vigilant and not the sleepy, are assisted by laws. We are, however, unable to accept the submission that reliance placed on legal maxims was improper.

We are mindful of the fact that legal maxims are not mandatory rules but their importance as guiding principles can hardly be underestimated. Herbert Broom in the preface to the First Edition of his classical work "Legal Maxims" (as seen in Broom's Legal Maxims, Tenth Edition, 1939) stated:

> "In the Legal Science, perhaps more frequently than in any other, reference must be made to the first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such maxims, many of which obtained in the Roman law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reason and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves.
>
> In our opinion, therefore, use of legal maxims as guiding principles in Bharat Kale and Japani Sahoo is perfectly justified.

15. To address the questions which arise in this reference, it is necessary to have a look at the legislative history of Chapter XXXVI of the Cr.P.C. The Criminal Procedure Code, 1898 contained no general provision for limitation. Though under certain special laws like the Negotiable Instruments Act, 1881, Trade and Merchandise Marks Act, 1958, the Police Act, 1861, The Factories Act, 1948 and the Army Act, 1950, there are provisions prescribing period of limitation for prosecution of offences, there was no general law of limitation for prosecution of other offences. The approach of this Court while dealing with the argument that there was delay in launching prosecution, when in the Criminal Procedure Code (1898), there was no general provision prescribing limitation, could be ascertained from its judgment in The Assistant Collector of Customs , Bombay & Anr. v. L.R. Melwani & Anr.[36]. It was urged before the High Court in that case that there was delay in launching prosecution. The High Court held that the delay was satisfactorily explained. While dealing with this question, this Court held that in any case prosecution could not have been quashed on the ground of delay because it was not the case of the accused that any period of limitation was prescribed for filing the complaint. Hence the complaint could not have been thrown out on the sole ground that there was delay in filing the same. This Court further observed that the question of delay in filing complaint may be a circumstance to be taken into consideration in arriving at the final verdict and by itself it affords no ground for dismissing the complaint. This position underwent a change to some extent when Chapter XXXVI was introduced in the Cr.P.C. as we shall soon see.

16. It is pertinent to note that the Limitation Act, 1963 does not apply to criminal proceedings except for appeals or revisions for which express provision is made in Articles 114, 115, 131 and 132 thereof. After conducting extensive study of criminal laws of various countries, the Law Commission of India appears to have realized that providing provision of limitation for prosecution of criminal offences of certain type in general law would, in fact, be good for the criminal justice system. The Law Commission noted that the reasons to justify introduction of provisions prescribing limitation in general law for criminal cases are similar to those which justify such provisions in civil law such as likelihood of evidence being curtailed, failing memories of witnesses and disappearance of witnesses. Such a provision, in the opinion of the Law Commission, will quicken diligence, prevent oppression and in the general public interest would bring an end to litigation. The Law Commission also felt that the court would be relieved of the burden of adjudicating inconsequential claims. Paragraph 24.3 is material. It reads thus:

> "24.3 – In civil cases, the law of limitation in almost all countries where the rule of law prevails, Jurists have given several convincing reasons to justify the provision of such a law; some of those which are equally applicable to criminal prosecutions may be referred to here:-
>
> (1) The defendant ought not to be called on to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared." (2) The law of limitation is also a means of suppressing fraud, and perjury, and quickening diligence and preventing oppression.
>
> (3) It is in the general public interest that there should be an end to litigation. The statute of limitation is a statute of repose.

(4) A party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the state in enforcing it.

(5) The court should be relieved of the burden of adjudicating inconsequential or tenuous claims." The Law Commission stated its case for extending limitation to original prosecutions as under:

"24.11 - It seems to us that there is a strong case for having a period of limitation for offences which are not very serious. For such offences, considerations of fairness to the accused and the need for ensuring freedom from prosecution after a lapse of time should outweigh other considerations. Moreover, after the expiry of a certain period the sense of social retribution loses its edge and the punishment does not serve the purpose of social retribution. The deterrent effect of punishment which is one of the most important objectives of penal law is very much impaired if the punishment is not inflicted promptly and if it is inflicted at a time when it has been wiped off the memory of the offender and of other persons who had knowledge of the crime.

Paragraphs 24.13, 24.14, 24.20, 24.22, 24.23, 24.24, 24.25, and 24.26 could also be advantageously quoted.

"24.13 – At present no court can throw out a complaint solely on the ground of delay, because, as pointed out by the Supreme Court, "the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint". It is true that unconscionable delay is a good ground for entertaining grave doubts about the truth of the complainant's story unless he can explain it to the satisfaction of the court. But it would be illegal for a court to dismiss a complaint merely because there was inordinate delay.

24.14. - We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment upto three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

24.20. - The question whether prosecution commences on the date on which the court takes cognizance of the offence or only on the date on which process is issued against the accused, has been settled by the Supreme Court with reference to Section 15 of the Merchandise Marks Act, 1889. Where the complaint was filed within one year of the discovery of offence, it cannot be thrown out merely because process was not issued within one year of such discovery. The complainant is required by section 15 of the Act to "commence prosecution" within this period, which means that if the complaint is presented within one year of such discovery, the requirements of section

15 are satisfied.

The period of limitation is intended to operate against complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. It will defeat the object to the enactment deprive traders of the protection which the law intended to give them, to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out.

24.22 - Secondly, as in civil cases, in computing the period of limitation for taking cognizance of offence, the time during which any person has been prosecuting with the due diligence another prosecution whether in a court of first instance or in a court of appeal or revision, against the offender, should be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

24.23 - Thirdly, in the case of a continuing offence, a fresh period of limitation should begin to run at every moment of the time during which the offence continues; and we recommend the insertion of a provision to that effect.

24.24 - Impediments to the institution of a prosecution have also to be provided for. Such impediments could be (a) legal, or (b) due to conduct of the accused, or (c) due to the court being closed on the last day.

As regards legal impediments, two aspects may be considered, first, the time for which institution of prosecution is stayed under a legal provision, and secondly, prosecutions for which previous sanction is required, or notice has to be given, under legal provision. Both are appropriate cases for a special provision for extending the period of limitation. We recommend that, where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, than, in computing the period of limitation for taking cognizance of that offence, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

24.25 - We also recommend that where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

24.26 - As illustrations of impediments caused by the conduct of the accused, we may refer to his being out of India, and his absconding or concealing himself. Running of the period of limitation should be excluded in both cases."

17. The Joint Parliament Committee ("the JPC") accepted the recommendations of the Law Commission for prescribing period of limitation for certain offences. The relevant paragraphs of its

report dated 30/11/1972 read as under:

> "Clauses 467 to 473 (new clauses) – These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission.
>
> Among the grounds in favour of prescribing the limitation may be mentioned the following:
>
> 1. As time passes the testimony of witnesses become weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.
>
> 2. For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at some time or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.
>
> 3. The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the persons concerned.
>
> 4. The sense of social retribution which is one of the purposes of criminal law looses its edge after the expiry of a long period.
>
> 5. The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The actual periods of limitation provided for in the new clauses would, in the Committee's opinion be appropriate having regard to the gravity of the offences and other relevant factors.

As regards the date from which the period is to be counted the Committee considered has fixed the date as the date of the offence. As, however this may create practical difficulties and may also facilitate an accused person to escape punishment by simply absconding himself for the prescribed period, the Committee has also provided that when the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the period of limitation would commence from the day on which the participation of the offender in the offence first comes to the

knowledge of a person aggrieved by the offence or of any police officer, whichever is earlier. Further, when it is not known by whom the offence has committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence.

The Committee has considered it necessary to make a specific provision for extension of time whenever the court is satisfied on the materials that the delay has been properly explained or that the accused had absconded. This provision would be particularly useful because limitation for criminal prosecution is being prescribed for the first time in this country".

18. Read in the background of the Law Commission's Report and the Report of the JPC, it is clear that the object of Chapter XXXVI inserted in the Cr.P.C. was to quicken the prosecutions of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system more orderly, efficient and just by providing period of limitation for certain offences. In Sarwan Singh, this Court stated the object of Cr.P.C in putting a bar of limitation as follows:

> "The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to sub-serve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

19. It is equally clear however that the law makers did not want cause of justice to suffer in genuine cases. Law Commission recommended provisions for exclusion of time and those provisions were made part of Chapter XXXVI. We, therefore, find in Chapter XXXVI provisions for exclusion of time in certain cases (Section 470), for exclusion of date on which the Court is closed (Section 471), for continuing offences (Section 472) and for extension of period of limitation in certain cases (Section 473). Section 473 is crucial. It empowers the court to take cognizance of an offence 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 or that it is necessary to do so in the interest of justice. Therefore, Chapter XXXVI is not loaded against the complainant. It is true that the accused has a right to have a speedy trial and this right is a facet of Article 21 of the Constitution. Chapter XXXVI of the Cr.P.C. does not undermine this right of the accused. While it encourages diligence by providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It must be mentioned here that where the legislature wanted to treat certain offences differently, it provided for limitation in the section itself, for instance, Section 198(6) and 199(5) of the Cr.P.C. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter XXXVI of the Cr.P.C.

20. To understand the scheme of Chapter XXXVI it would be advantageous to quote Sections 467, 468, 469 and 473 of the Cr.P.C. Section 467 reads as under:

> "467. Definitions. – For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence" Section 468 reads 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." Section 469 reads as under:
>
> "469. Commencement of the period of limitation. - (1) The period of limitation, in relation to an offender, 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 he 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
>
> (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
>
> (2) In computing the said period, the day from which such period is to be computed shall be excluded." Section 473 reads as under:

> "473. Extension of period of limitation in certain cases. – Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence 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 or that it is necessary so to do in the interests of justice."

21. Gist of these provisions could now be stated. Section 467 defines the phrase 'period of limitation' to mean the period specified in Section 468 for taking cognizance of certain offences. Section 468 stipulates the bar of limitation. Sub-section (1) of Section 468 makes it clear that a fetter is put on the court's power to take cognizance of an offence of the category mentioned in sub-section (2) after the expiry of period of limitation. Sub-section (2) lays down the period of limitation for certain offences. Section 469 states when the period of limitation commences. It is dexterously drafted so as to prevent advantage of bar of limitation being taken by the accused. It states that period of limitation in relation to an offence shall commence either from the date of offence or from the date when the offence is detected. Section 470 provides for exclusion of time in certain cases. It inter alia states that while computing the period of limitation in relation to an offence, 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 explanation to this section states that in computing limitation, the time required for obtaining the consent or sanction of the government or any other authority should be excluded. Similarly time during which the accused is absconding or is absent from India shall also be excluded. Section 471 provides for exclusion of date on which court is closed and Section 472 provides for continuing offence. Section 473 is an overriding provision which enables courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation. Analysis of these provisions indicates that Chapter XXXVI is a Code by itself so far as limitation is concerned. All the provisions of this Chapter will have to be read cumulatively. Sections 468 and 469 will have to be read with Section 473.

22. It is now necessary to see what the words 'taking cognizance' mean. Cognizance is an act of the court. The term 'cognizance' has not been defined in the Cr.P.C. To understand what this term means we will have to have a look at certain provisions of the Cr.P.C. Chapter XIV of the Code deals with 'Conditions requisite for initiation of proceedings'. Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to 'Complaints to Magistrates'. Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the

accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

23. In Jamuna Singh & Ors. v. Bhadai Shah[37], relying on R.R. Chari and Gopal Das Sindhi & Ors. v. State of Assam & Anr.[38], this Court held that it is well settled that when on a petition or complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C., he must be held to have taken cognizance of the offences mentioned in the complaint.

24. After referring to the provisions of the Cr.P.C. quoted by us hereinabove, in S.K. Sinha, Chief Enforcement Officer, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

> "19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
>
> 20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial.

Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance." In several judgments, this view has been reiterated. It is not necessary to refer to all of them.

25. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

26. In this connection, our attention is drawn to the judgment of this Court in Sharadchandra Dongre. It is urged on the basis of this judgment that by condoning the delay, the Court takes away a valuable right which accrues to the accused. Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 of the Cr.P.C. is presented before the Court. Keeping this argument in mind, let us examine both the view points i.e. whether the date of taking

cognizance or the date of filing complaint is material for computing limitation. If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 of the Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the Court takes cognizance within the period of limitation, there is no question of the complaint being time barred. If the Court takes cognizance after the period of limitation then, the question is how will Section 473 of the Cr.P.C. work. The complainant will be interested in having the delay condoned. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr. Luthra, learned A.S.G. submitted that use of disjunctive 'or' in Section 473 of the Cr.P.C. suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the later part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 of the Cr.P.C. has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the Court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass order condoning or not condoning the delay. Law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 of the Cr.P.C. is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.

27. The role of the court acting under Section 473 was aptly described by this Court in Vanka Radhamanohari (Smt.) where this Court expressed that this Section has a non-obstante clause, which means that it has an overriding effect on Section 468. This Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473 of the Cr.P.C. For exercise of power under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the court that there was sufficient cause for condonation of delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay. These observations indicate the scope of Section 473 of the Cr.P.C. Examined in light of legislative intent and meaning ascribed to the term 'cognizance' by this Court, it is clear that Section 473 of the Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material.

28. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element

comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 of the Cr.P.C. would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corporation Ltd. v. Ayodhaya Prasad Mishra).

29. The conclusion reached by us is reinforced by the fact that the Law Commission in clause 24.20 of its Report, which we have quoted hereinabove, referred to Dau Dayal[39] where the three-Judge Bench of this Court was dealing with a Special Act i.e. the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26/4/1954 when he was arrested, and that, in consequence, the issue of process on 22/7/1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three-Judge Bench of this Court observed as under:

> "6. It will be noticed that the complainant is required to resort to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court." Though, this Court was not concerned with the meaning of the term 'taking cognizance', it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate's act of issuing process after one year.

> 30. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale, Japani Sahoo and Vanka Radhamanohari (Smt.). The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim 'nullum tempus aut locus occurrit regi', which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim 'vigilantibus et non dormientibus, jura subveniunt'. Chapter XXXVI of the Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the IPC, which have lesser punishment may have serious social consequences.

Provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim 'actus curiae neminem gravabit' which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. Provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.

31. It is submitted that the settled principles of statutory construction require that the expression 'cognizance' occurring in Chapter XXXVI should be given its legal sense. It is further submitted that if an expression acquires a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Reliance is also placed on the heading of Chapter XXXVI providing for "Limitation for taking cognizance of certain offences". Reliance is placed on observations of the three-Judge Bench of this Court in Sarwan Singh, where in the context of limitation on prosecution it is observed that it is of utmost importance that any prosecution, whether by the State or by the private complainant, must abide by the letter of law. Relying on Raghunath Rai Bareja, it is urged that the first principle of interpretation of the statute in every system is the literal rule of interpretation. Purposive interpretation can only be resorted to when the plain words of statute are ambiguous. It is submitted that there is no ambiguity here and, therefore, literal interpretation must be resorted to.

32. There can be no dispute about the rules of interpretation cited by the counsel. It is true that there is no ambiguity in the relevant provisions. But, it must be borne in mind that the word 'cognizance' has not been defined in the Cr.P.C. This Court had to therefore interpret this word. We have adverted to that interpretation. In fact, we have proceeded to answer this reference on the basis of that interpretation and keeping in mind that special connotation acquired by the word 'cognizance'. Once that interpretation is accepted, Chapter XXXVI along with the heading has to be understood in that light. The rule of purposive construction can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance

with the legislative purpose (See: Francis Bennion on Statutory Interpretation). After noticing this definition given by Francis Bennion in National Insurance Co. Ltd. v. Laxmi Narain Dhut[40], this Court noted that more often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. In light of this observation, we are of the opinion that if in the instant case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted.

33. In New India Assurance Company Ltd. v. Nusli Neville Wadia and another etc.[41] while dealing with eviction proceedings initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 this Court was concerned with interpretation of Sections 4 and 5 thereof. This Court was of the view that literal meaning thereof would place undue burden on the noticee and would lead to conclusion that the landlord i.e. the State would not be required to adduce any evidence at all. This Court observed that such a construction would lead to an anomalous situation. In the context of fairness in State action this Court observed that with a view to reading the provisions of the said Act, in a proper and effective manner, literal interpretation which may give rise to an anomaly or absurdity will have to be avoided. This Court further observed that so as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator. So done, the rules of purposive construction will have to be resorted to which would require the construction of the statute in such a manner so as to see that it's object is fulfilled.

34. In this connection, we may also usefully refer to the following paragraph from Justice G.P. Singh's 'Principles of Statutory Interpretation' [13th edition – 2012].

"With the widening of the idea of context and importance being given to the rule that the statute has to be read as a whole in its context it is nowadays misleading to draw a rigid distinction between literal and purposive approaches. The difference between purposive and literal constructions is in truth one of degree only. The real distinction lies in the balance to be struck in the particular case between literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. When there is a potential clash, the conventional English approach has been to give decisive weight to the literal meaning but this tradition is now weakening in favour of the purposive approach for the pendulum has swung towards purposive methods of constructions."

35. We must also bear in mind that we are construing rules of limitation. Our approach should, therefore, be in consonance with this Court's observation in Mela Ram that "it is well established that rules of limitation pertain to domain of adjectival law and that they operate only to bar the remedy but not to extinguish the right".

36. It is argued that legislative Casus Omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 of the Cr.P.C. to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the Court to

fill it on some presumed intention of the legislature. Reliance is placed on Shiv Shakti Co- operative Housing Society, Bharat Aluminum, and several other judgments of this Court where doctrine of Casus Omissus is discussed. In our opinion, there is no scope for application of doctrine of Casus Omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the 42nd Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Cr.P.C. to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of Casus Omissus are, therefore, not relevant for the present case.

37. We also concur with the observations in Japani Sahoo, where this Court has examined this issue in the context of Article 14 of the Constitution and opted for reasonable construction rather than literal construction. The relevant paragraph reads thus:

> "The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalised because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution."

38. So far 'heading' of the chapter is concerned, it is well settled that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. In M/s. Frick India Ltd. v. Union of India & Ors.[42], this Court has observed as under:

> "It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provisions; they cannot also be referred to for the purpose of

> construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision." Therefore, the submission that heading of Chapter XXXVI is an indicator that the date of taking cognizance is material must be rejected.

39. It is true that the penal statutes must be strictly construed. There are, however, cases where this Court has having regard to the nature of the crimes involved, refused to adopt any narrow and pedantic, literal and lexical construction of penal statutes. [See Muralidhar Meghraj Loya & Anr. v. State of Maharashtra & Ors.[43] and Kisan Trimbak Kothula & Ors. v. State of Maharashtra[44]]. In this case, looking to the legislative intent, we have harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, we must bear in mind that Chapter XXXVI is part of the Cr.P.C., which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. [See Sardar Amarjeet Singh Kalra, N. Balaji v. Virendra Singh & Ors.[45] and Kailash].

40. Having considered the questions which arise in this reference in light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai 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 of the Cr.P.C., primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 of the Cr.P.C. in that judgment. It does not refer to Sections 4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' Case, in our opinion, was not apt. In Antulay '1984' Case, this Court was dealing inter alia with the contention that a private complaint is not maintainable in the court of Special Judge set-up under Section 6 of the Criminal Law Amendment Act, 1952 ('the 1952 Act'). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 of the Cr.P.C. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 of the

Cr.P.C. or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay '1984' Case: Since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 of the Cr.P.C. at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai while construing provisions of Chapter XXXVI of the Cr.P.C. For all these, we are unable to endorse the view taken in Krishna Pillai.

41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the 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. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai 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 of the Cr.P.C.

42. The Reference is answered accordingly. The Registry may list the matters before the appropriate courts for disposal.

……CJI (P. SATHASIVAM) ……J. (B.S. CHAUHAN) ……..J. (RANJANA PRAKASH DESAI) ……J. (RANJAN GOGOI) ……J. (S.A. BOBDE) NEW DELHI, NOVEMBER 26, 2013.

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[1] (2003) 8 SCC 559
[2] (2007) 7 SCC 394
[3] (1990) supp. SCC 121
[4] (2008) 10 SCC 139
[5] 1956 SCR 166
[6] (2013) 2 SCC 435
[7] 1975 (3) SCR 944
[8] (2003) 3 SCC 272
[9] (2005) 4 SCC 480]

[10] AIR 1951 SC 207
[11] (2012) 5 SCC 424
[12] 1959 SCR 379
[13] (2007) 2 SCC 230
[14] AIR 1981 SC 1054
[15] (1993) 3 SCC 4
[16] (2000) 1 SCC 230
[17] (1989) 1 SCC 101
[18] (1971) 2 SCC 654
[19] AIR 1954 SC 496
[20] (2005) 1 SCC 368
[21] (2003) 6 SCC 659
[22] (2012) 9 SCC 552

[23] (2003) 11 SCC 405
[24] (2004) 6 SCC 672
[25] (1992) 1 SCC 225
[26] (1999) 7 SCC 604
[27] (1995) 1 SCC 42
[28] (2008) 13 SCC 229
[29] 1997 Cr.L.J 90 (MP)
[30] (2008) 2 SCC 492
[31] (1980) 1 SCC 158
[32] (1870-71) VII Moore N.S. 314
[33] (2000) 8 SCC 131
[34] (1997) 2 SCC 397
[35] (1984) 2 SCC 500
[36] AIR 1970 SC 962
[37] AIR 1964 SC 1541
[38] AIR 1961 SC 986
[39] AIR 1959 SC 433
[40] (2007) 3 SCC 700
[41] (2008) 3 SCC 279
[42] (1990) 1 SCC 400
[43] (1976) 3 SCC 684
[44] (1977) 1 SCC 300
[45] (2004) 8 SCC 312
