Supreme Court of India
Srinivasa Gopal vs Union Territory Of Arunachal ... on 18 July, 1988
Equivalent citations: 1988 AIR 1729, 1988 SCR Supl. (1) 477
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
SRINIVASA GOPAL

Vs.

RESPONDENT:
UNION TERRITORY OF ARUNACHAL PRADESH (NOW STATE)

DATE OF JUDGMENT18/07/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1729 1988 SCR Supl. (1) 477
1988 SCC (4) 36 JT 1988 (3) 342
1988 SCALE (2)113
CITATOR INFO :
RF 1992 SC1701 (37)

ACT:
Constitution of India, 1950-Art. 21-inordinate delay of 9-1/2 years in proceeding with criminal prosecution for rash and negligent driving-Proceedings quashed-Quick justice is a sine qua non of Art.
Cr.P.C. 1973-Sections 468 and 473-Taking cognizance after expiry of the period of limitation-When permissible?
Assam Frontier (Administration of Justice) Regulation 1945-Section 32-Applicability of Cr. P. C. 1973 to Arunachal Pradesh.

HEADNOTE:
The appellant was driving a jeep which met with an accident and one of the occupants died and another sustained grievous injuries. According to the Police, the accident was attributable to rash and negligent driving of the appellant. He was charge-sheeted under section 279 IPC read with sections 304-A/338 IPC and a report was submitted to the Deputy Commissioner on 22nd November 1976. The Magistrate held that cognizance was taken on 22nd November, 1976 itself. The appellant moved the High Court under section 482

Cr.P.C. read with Art. 227 of the Constitution.

The High Court held that the investigations started on 22nd November, 1976 on the registration of the case and were completed on 8th September, 1977, and cognizance was taken on 31st March, 1986 when the Deputy Commissioner passed an order for issuing summons to the appellant. The High Court quashed the charges against the appellant and remitted the case to the Magistrate for considering it afresh.

This appeal by special leave is against the High Court Judgment. It was contended before this Court that since cognizance was taken in 1986, it was barred by section 468 Cr.P.C. On behalf of the Respondent it was contended that the provisions of Cr.P.C. do not apply to the State of Arunachal Pradesh.

478

Allowing the appeal, this Court,

^

HELD: 1.1 Section 473 Cr.P.C. provides that 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 to do so in the interest of justice. Taking cognizance means judicial application of mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. [484E-H]

Tula Ram and others v. Kishore Singh, [1977] 4 SCC 459, referred to.

1.2 As regards the contention that Cr.P.C. is not applicable to the State of Arunachal Pradesh, the High Court rightly held that s. 32 of the Assam Frontier (Administration of Justice) Regulations, 1945, on which reliance was placed, should be guided by the spirit of the Code and it will be proper to throw out a complaint if there was inordinate or undue delay, which was not explained. [483D-E]

State of Punjab v. Sarwan Singh, [1981] 3 SCR 349, referred to.

1.3 Statutes of limitation have legislative policy behind them. They shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecution. A bar has been prescribed under section 468 Cr.P.C. and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case. [484A-C]

Surinder Mohan Vikal v. Ascharaj Lal Chopra, [1978] 2 SCC 403, relied on.

Kathamuthu v. Balammal, [1987] Crl. L.J. 360; Ghansham Dass v. Sham Sunder Lal, [1982] Crl. L.J. 1717 and Vijay Kumar Agarwalla v. State of Assam, [1986] 1 GLR 421, referred to.

2. In the instant case, the broad facts that emerge are that the alleged offence took place in November, 1976, and until the High Court's order in August, 1987 no investigation had taken place. The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such,
479
though all criminal offences are crimes against society. It is not necessary in the facts and circumstances of the case to decide, whether cognizance was properly taken, whether the extension of period of limitation under section 473 must precede taking of the cognizance of the offence, and whether cognizance in this case was taken on 8th September, 1977 as held by the learned Magistrate or on 31st March, 1986 as held by the High Court. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the respondent 91/2 years for a trial for rash and negligent driving is too long a time. Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 91/2 years without any case at all cannot be with the spirit of the procedure established by law. [484D-G] C

[This Court set aside the order of the High Court and quashed the proceedings against the appellant.] [485A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 385 of 1988. D From the Judgment and order dated 14.8.1987 of the Guwahati High Court in Criminal Revision No. 303 of 1986.

R. Ramachandran for the Appellant.

B. Datta, Additional Solicitor General, Kitty Kumar Marylar and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Special leave granted. The appeal is disposed of by the order passed herein.

On 20th of November, 1976, the appellant was posted in the State of Arunachal Pradesh as an Executive Engineer (Elect). An accident took place in the jeep which was alleged to have been driven by the appellant. The accident took place within the Bomdila Police Station in Arunachal Pradesh. In the said accident one of the occupants, J.K. Jain, Assistant Engineer (Elect) died and another S. Karim, driver sustained grievous injuries. According to the police the accident is attributable to rash and negligent driving of the appellant. As per the case file, Shri R.B. Singh, Sub-Inspector submitted a report to the Deputy Commissioner, Bomdila on 22nd November, 1976, who H according to the learned Magistrate took cognizance of the offence under section 32(c) of Regulation I of 1945 and

the police registered the case. The learned Magistrate held that cognizance was taken on 22nd November, 1976. This finding, however, was not sustained by the High Court. The police is alleged to have registered the case and took up investigations and submitted the chargesheet in September, 1977 which, however, appears to have been placed before the Deputy Commissioner on 31st March, 1986, and it was on that date that the cognizance of the offence was taken, according to the High Court. The learned Magistrate in his order stated that the reason why report could not be placed before the Court promptly merited detailed probing, which showed that cognizance was taken on 22nd November, 1976 by the competent authority but the court proceedings thereof commenced on 31st March, 1986. The appellant was chargesheeted under section 279 read with section 304A/338 of the Indian Penal Code. According to the appellant cognizance was only taken on 31st March, 1986. The first question, therefore, in this case is: when was the cognizance taken. By the order of the learned Magistrate, the appellant was directed to appear on the next date of hearing, that is on 8th September, 1986. The order was passed on 14th July, 1986.

Challenging the said order, the appellant moved the High Court of Gauhati under section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution for quashing the charges framed by the Magistrate 1st Class, Bomdila. The High Court in its judgment and order dated 14th August, 1987 held that the investigation started on 22nd November, 1976 on the registration of the case under sections 279, 304A and 338 of the I.P.C. and the investigation was completed on 8th September, 1977 and cognizance was taken on 31st March, 1986 when the Deputy Commissioner passed the following order: "Records perused. Issue summons to the accused to appear at Kameng on 9th May, 1986." Therefore, the first question that arises is, when was the cognizance taken, on 22nd November, 1976 or 31st March, 1986. The High Court held that cognizance was taken on 31st March, 1986. The offence under section 279 is punishable with imprisonment for a term not exceeding 6 months, or with fine, or with both. Offence under section 304A is punishable with imprisonment for a term not exceeding 2 years, or with fine, or with both. Offence under section 338 is punishable with imprisonment for a term not exceeding 2 years. Or with fine or with both. In the aforesaid view of the matter, the period of limitation for taking cognizance of the offences would be three years. Section 468 of the Code of Criminal Procedure provides as follows:

> "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 offences 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."

There is, however, a provision for extension of the period of limitation in certain cases where on the facts and circumstances of the case, the delay has been properly explained or it is necessary in the interest of justice to do so. This is provided in section 473 of the Criminal Procedure Code in the following terms:

> "473 Extention 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 interest of justice."

It was contended before us that the first question that arises in this appeal is: when the cognizance of the offence was taken in this case. This Court in Tula Ram and others v. Kishore Singh, [1977] 4 S.C.C, 459 explained the meaning of the words "taking cognizance" and held that it means judicial application of mind of the magistrate to the facts mentioned in the complaint with a view to taking further action. In this connection reference may also be made to the observations of this Court in Bhagwant Singh v. Commissioner of Police and another, [1985] 3 S.C.R. 942. It was held by this Court as follows:

> "Now, when the report forwarded by the officer-in- charge of a police station to the Magistrate under sub-section (2)(i) of s. 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things:(1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of s. 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses; (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of section l56. ... . But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part.
>
> . . . . There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of s. 173, the Magistrate is not inclined to take cognizance of the

> offence and issue process, the informant must by given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process."

The High Court was of the view that really cognizance in this case was taken on 31st March, 1986. The High Court has set out the facts on which it is relied. The said finding of the High Court has not been challenged. The appellant in this case before this Court has proceeded on that basis. Shri B. Datta, Additional Solicitor General contended that cognizance was taken as early as in September, 1977. It was contended before us on behalf of the appellant as it was said before the High Court that if the cognizance was taken in 1986, then it was clearly beyond the time. If the principles of the Code of Criminal Procedure applied, the laking of cognizance of the offence was barred by section 468 of the Code of Criminal Procedure.

It was submitted before the High Court of Gauhati and reiterated before us that the provisions of the Code of Criminal Procedure do not apply to the State of Arunachal Pradesh. In this connection reliance was placed on section 32 of the Assam Frontier (Administration of Justice) Regulation, 1945. Section 32 of the Regulation provides that the High Court, the Deputy Commissioner and the Assistant Commissioner shall be guided in regard to procedure by the principles of the Code of Criminal Procedure so far as these are applicable to the circumstances of the District and consistent with the provisions of the Regultion. There are exceptions to section 32. Those exceptions are irrelevant for the present purpose. The High Court held, and in our opinion rightly, that section 32 of the said Regulation should be guided by the spirit of the Code and it will be proper to throw out a complaint if there was inordinate or undue delay, which was not explained. Indeed, this Court in State of Punjab v. Sarwan Singh, [1981] 3 S.C.R. 349 observed at page 351 of the report that 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. This Court reiterated that the object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. Shri Raju Ramachandran submitted that the exercise of the power under section 473 of the Criminal Procedure Code extending the period of limitation by condoning the delay in launching the prosecution, should precede the taking of cognizance of the offence. Reliance was placed on the Bench decision of the Madras High Court in Kathamuthu v. Balammal, [1987] Crl. L.J. 360. It was held by the Punjab and Haryana High Court in the case of Ghansham Dass v. Sham Sundar Lal, [1982] Crl. L.J. 1717 that cognizance taken by the Magistrate without deciding the point in limitation was beyond his jurisdiction. In this connection, reliance may be placed to the decision of this Court in Surinder Mohan Vikal v. Ascharaj Lal Chopra, [1978] 2 S.C.C. 403 where at page 407 of the report, while dealing with the provisions of section 468 of the Code of Criminal Procedure, this Court observed that it is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under section 468 of the Code of Criminal Procedure and there is no reason why the appellant should not

be entitled to it in the facts and circumstances of this case. Our attention was also drawn to the case of Vijay Kumar Agarwalla v. State of Assam, [1986] 1 GLR 421, where the Court held that taking of cognizance without condoning delay was bad and without jurisdiction.

The High Court in the instant judgment under appeal held that this aspect of the matter was not considered by the Magistrate and the High Court quashed the charges against the appellant and remitted the case to the Magistrate for considering the case afresh. In the instant case, the broad facts that emerge are that the alleged offence took place in November, 1976, and until the High Court's order in August, 1987 no investigation had taken place. The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society.

It is not necessary in the facts and circumstances of the case to decide, whether cognizance was properly taken. It is also not necessary to decide whether the extension of period of limitation under section 473 must precede or taking of the cognizance of the offence. It 1:: is also not necessary to decide whether cognizance in this case was taken on 8th September, 1977 as held by the learned Magistrate or on 31st March, 1986 as held by the High Court. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the respondent-91/2 years for a trial for rash and negligent driving, is too long a time. Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 91/2 years without any cause at all- and none was indicated before the learned Magistrate or before the High Court or before us, cannot be with the spirit of the procedure established by law. In that view of the matter, it is just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. We do so accordingly.

In the aforesaid view of the matter, we are of the opinion that the A proceedings cannot be proceeded any further. We allow the appeal, set aside the order of the High Court of Gauhati. dated 14th August, 1987 and quash the proceedings against the appellant. The proceedings against the appellant are hereby quashed.

G.N. Appeal allowed.