Supreme Court of India
Vanka Radhamanohari (Smt) vs Vanka Venkata Reddy And Ors. on 20 April, 1993
Equivalent citations: 1993 (2) BLJR 875, 1993 (2) Crimes 275 SC, I (1994) DMC 172 SC, JT 1993 (4) SC 17, 1993 (2) SCALE 570, (1993) 3 SCC 4
Author: N Singh
Bench: K Singh, N Singh
JUDGMENT N.P. Singh J.

1. Leave granted.

2. The validity of an order passed by the High Court, in exercise of the power under Section 492 of the CrPC (hereinafter referred to as "the Code"), quashing the criminal proceeding which has been initiated against the accused-respondents, has been questioned in this appeal.

3. The appellant filed a petition of complaint against her husband, accused-respondent No. 1 (hereinafter referred to as "the respondent"), alleging that she was married to the said respondent and an amount of Rs. 5,000/- along with gold ring and wrist watch, was given to him on the eve of the marriage. Later at the instance of her mother-in-law, who was also made an accused, she was being maltreated and even abused by the accused persons including her husband. She further alleged that her husband often used to beat her and had been insisting that she should get another sum of Rs. 10,000/- from her parents for his business. Ultimately, the respondent married again and has got a second wife. The other accused persons have actively associated themselves with the second marriage. It was stated that earlier she had lodged a First Information Report, but when no action was taken by the police, the complaint aforesaid was being filed in the year 1990. The learned Magistrate took cognizance of the offence under Sections 498A and 494 of the Penal Code against the accused persons.

4. The High Court on an application filed on behalf of the accused-respondents under Section 482 of the Code, quashed the said criminal proceeding saying that after expiry of the period of three years, no cognizance for an offence under Section 498A of the Penal Code could have been taken. The High Court has pointed out that according to the statement made by the complainant, she had left the matrimonial house in the year 1985 and, as such, she must have been subjected to cruelty during the period prior to 1985. As such, in view of Section 468 of the Code, no cognizance for an offence under Section 498A could have been taken in the year 1990. The High Court has also pointed out that there was discrepancy in respect of the date of second marriage of respondent, inasmuch as the petition of complaint 4.5.1990 has been mentioned as the date of the second marriage whereas in the statement recorded on solemn affirmation the appellant has stated that he had married in the year 1986. According to the learned Judge, as Section 498A prescribes the punishment up to three years imprisonment only, the petition of complaint should have been filed within three years from the year 1985 in view of Section 468 of the Code. Nothing has been said in the order of the High Court, so far the offence under Section 494 is concerned, for which the period of imprisonment prescribed is up to seven years. There cannot be any dispute that in view of the allegation regarding the second marriage by the respondent during the continuance of the first marriage, prima facie an offence under Section 494 of the Penal Code, was disclosed in the complaint and there was no

question of Section 468 of the Code being applicable to an offence under Section 494 of the penal code.

5. Earlier there was no period of limitation for launching a prosecution against the accused. But delay initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the prosecution story. But, then a Court could not throw out of complaint or a police report solely on the ground of delay. The code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony of witnesses become weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired, if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the Code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The farmers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed at par with the provisions in respect of civil disputes. So far cause of action accruing in connection with civil dispute is concerned, under Section 3 of the Limitation Act, it has been specifically said that subject to the provisions contained in Sections 4 to 24, every suit instituted, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 5 of that Act enables any Court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the Court that he had "sufficient cause for not preferring the appeal or making the application within such" period". So far Section 473 of the Code is concerned, the scope of that Section is different. Section 473 of the Code provides:-

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 interest of justice.

In view of Section 437 a Court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the Court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non obstante clause which means that said section has an overriding effect on Section 468, if the Court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the Court that there was sufficient cause for condonation of delay under Section 5 of the Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the Court that there was sufficient cause for condonation

of the 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 the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the Court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim : vigilantibus, et non- dormientibus, jura subtenunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women.

7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was though proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh . But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a Court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, Courts while considering the question of limitation for an offence under Section 498A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interest of justice".

8. In the case of Bhagirath Kanoria v. State of M.P. , this Court even after having held that non-payment of the employer's contribution to the Provident Fund before the due date, was a continuing offence, and such the period of limitation prescribed by Section 468 was not applicable, still referred to Section 473 of the Code. In respect of Section 473 it was said:

That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are

confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight an consideration to the provisions contained in Section 473 of the Code.

9. Coming to the facts of the present case, the appellant is admittedly the wife of the respondent. She filed the petition of complaint in the year 1990, alleging that she was married to the respondent, who subjected her to cruelty, details whereof were mentioned in the complaint aforesaid. She further stated that on 4.5.1990 he has married again, deserting the appellant. In view of the allegation regarding second marriage, an offence under Section 494 of the Penal Code was also disclosed which is punishable by imprisonment for a term which may extend to seven years. The High Court taking into consideration Section 468, has come to the conclusion that the complaint in respect of the offence under Section 498A which prescribes imprisonment for a term up to three years, was barred by time. Nothing has been said by the High Court in respect of the offence under Section 494 of the Penal Code, to which Section 468 of the Code is not applicable the punishment being for a term extending up to seven years. Even in respect of allegation regarding an offence under Section 489A of the Penal code, it appears that the attention of the High Court was not drawn to Section 473 of the Code. In view of the allegation that the complainant was being subjected to cruelty by the respondent, the High Court should have held that it was in the interest of justice to take cognizance even of the offence under Section 498A ignoring the bar of Section 468.

10. In the result the appeal is allowed. The order passed by the High Court is set aside. The learned Magistrate is directed to proceed with the case in accordance with law as expeditiously as possible.