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**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL WRIT PETITION NO. 54 OF 2024**

Mr. Evaristo D'Silva, son of Sebastiao D'Silva, Aged 49 years, Indian National, resident of S/4, 2<sup>nd</sup> floor, Danika Chambers, Building A, Madel Pequeno, Margao, Salcete, Goa.

... Petitioner

Versus

1. State, Through the Public Prosecutor, High Court of Bombay at Goa, Porvorim.

2. Miss Vaisa Dias, daughter of Anthony Dias, Aged 32 years, Indian National, Resident of House No. 522/1, Malim, Penha de Franca, Bardez, Goa.

... Respondents

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Mr. Shane Gomes Pereira, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for Respondent No. 1.

Mr. Franco Coburn with Mr. Mark Valadares, Advocates for Respondent No. 2.

**CORAM: BHARAT P. DESHPANDE, J.**

**DATED: 19<sup>th</sup> NOVEMBER 2024**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith.

2. Heard the learned Counsel for the parties finally at the admission stage.

3. The short question which is raised in the present Petition is whether the cognizance taken by the Magistrate prior to the condonation of delay in filing the chargesheet, would be bad in law.

4. Mr. Shane Gomes Pereira appearing for the Petitioner would submit that the Petitioner is an Accused in the chargesheet filed before the Magistrate in connection with the offence punishable under Sections 279 and 337 of IPC. He submits that a vehicular accident took place on 02.11.2018 whereas the FIR was registered on 10.11.2018 and the chargesheet was filed on 12.12.2019 i.e. beyond the limitation period.

5. Mr. Pereira would submit that the learned Magistrate, without considering that the chargesheet is filed beyond the period of limitation, took cognizance and issued process against the Accused, who appeared and furnished the bail bonds. The Petitioner filed an Application under Section 258 of Cr.P.C. for dropping the proceedings on the ground that the chargesheet is filed beyond the period of limitation. Though the prosecution filed a reply, an Application came to be filed under Section 473 of Cr.P.C. praying for condonation of delay. Mr. Pereira would submit that the Petitioner though opposed the Application for

condonation of delay, however, the learned Magistrate vide its order dated 11.07.2023 condoned the delay. The Petitioner then filed a Revision before the Sessions Court, which came to be rejected by order dated 23.05.2024.

6. Mr. Pereira would submit that the observations of the first Appellate Court that a complaint was filed within time, is incorrect and perverse. He would submit that the condonation of delay by retrospective effect i.e. after taking cognizance, is bad in law.

7. Per contra, Mr. Bhobe appearing for the State and learned Counsel appearing for the Victim/Respondent No. 2, would submit that there is provision for condoning the delay and once the delay is condoned, the chargesheet is considered to be filed within time and accordingly, the order of taking cognizance becomes valid.

8. Mr. Pereira for the Applicant placed reliance on the decision of the Apex Court in the case of **Japani Sahoo Vs. Chandra Sekhar Mohanty, (2007) 7 SCC 394** whereas Mr. Coburn for Respondent No. 2 placed reliance on the decision in the case of **Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director & Others, (2014) 2 SCC 62.**

**9.** The rival contentions fall for determination.

**10.** According to the record, the accident took place on 02.11.2018, however, the complaint/FIR was lodged only on 10.11.2018 against the Petitioner. Thus, as per the provisions of Section 469 of Cr.P.C., the computation along with the period of limitation would start on the date when the commission of the offence comes to the knowledge of the person or to the knowledge of the Police Officer. In the present matter, though the vehicular accident took place on 02.11.2018, the inquiry was conducted by the Investigating Officer and only on 10.11.2018 i.e. when it came to his knowledge that there is offence committed under Sections 279 and 337 of IPC by the Petitioner, which resulted in filing the FIR. Thus, the date for computing the limitation period has to be the date of filing of the FIR i.e. 10.11.2018.

**11.** The period of limitation for filing of the chargesheet, in such offences is one year. Accordingly, the Investigating Officer was supposed to file the chargesheet on or before 10.11.2019.

**12.** It is a matter of record that the chargesheet was presented before the Court of Magistrate on 12.12.2019 i.e. with a delay of 32 days.

13. Though the learned Magistrate took cognizance and issued process against the Petitioner/Accused, on noticing that there was delay, the Investigating Officer filed an Application under Section 473 of Cr.P.C. for extension of period of limitation. Such Application was filed along with the affidavit disclosing the reasons for such extension. The Petitioner objected to such Application by filing a reply. After hearing the parties, the learned Magistrate accepted the Application filed by the investigating agency and extended the period. The order was passed on 11.07.2023. Thus, once the period for filing of the chargesheet is extended as provided under Section 473 of Cr.P.C., it is considered that the chargesheet is filed within limitation. The effect of such order would also show that the cognizance of the offence was also taken within the limitation as provided.

14. The contention of Mr. Pereira that the delay could not have been condoned retrospectively and that too after taking cognizance, is of no substance, for the reason that once the delay is condoned, having the effect of retrospective nature, it allows the parties to proceed with the matter as if such proceedings are filed within the period of limitation.

15. In the case of **Japani Sahoo** (supra), the issue before the Apex Court was in a different context. The issue raised therein is

whether the Magistrate taking cognizance on a complaint beyond the period of limitation, could be considered as valid. While dealing with this aspect, the Apex Court observed that the complainant as soon as he files a complaint in a competent Court of law, he has done everything, which is required to be done by him at that stage and thereafter, it is for the Magistrate to consider the matter and apply his mind and take appropriate decision about taking cognizance and issuance of process or any other action which the law requires. The complainant had no control over such proceedings.

16. In case of **Sarah Mathew** (supra), the Constitutional Bench observed that for the purpose of computing the period of limitation under Section 468 of Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of the prosecution and not the date on which the Magistrate takes cognizance. Both these decisions are not applicable to the present matter since the investigating agency clearly admitted that there is a delay in filing the chargesheet and once such delay is condoned or the limitation is extended as provided under Section 473 of Cr.P.C., even the order of taking cognizance is considered to be within limitation.

**17.** The second contention of Mr. Pereira is that there are no sufficient reasons for extending or condoning the delay and the reasons which have been given by the investigating agency are not considered to be a reasonable cause.

**18.** The Application which is filed under Section 473 of Cr.P.C. is for allowing extension of the limitation period by 32 days. The provisions would clearly go to show that the Court is empowered to take cognizance of the offence even after expiry of the period of limitation, if it is satisfied on facts and circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Thus, it is not only the satisfaction on the part of the Court/Magistrate that the delay is properly explained, but it is also the duty of the Magistrate to consider whether cognizance is required to be taken in the interest of justice, even if the chargesheet is filed beyond limitation.

**19.** The learned Magistrate while considering such Application observed in its order dated 11.07.2023 that there is no bar to consider the delay and extend the period of limitation. There is an observation that delay has been satisfactorily explained. Further, it is observed that the Court has to adopt liberal approach since it

is the case of vehicular accident wherein the Victim suffered injuries.

**20.** These observations were challenged before the Revisional Court under Section 397 of Cr.P.C. The learned Sessions Court rejected the Revision, however, as rightly pointed out by Mr. Pereira, the findings in paragraph 11 are clearly perverse. Even it is not the case of the prosecution/investigating agency that the chargesheet was filed within the limitation period, however, considering the overall facts and circumstances and the order passed by the Magistrate, no interference is required within the supervisory powers of this Court under Article 227 of the Constitution of India as there is no jurisdictional error or illegality in the impugned order.

**21.** For all the above reasons, the Petition deserves to be rejected and accordingly, stands rejected.

**22.** Rule stands discharged in the above terms.

**BHARAT P. DESHPANDE, J.**