



F.R.(For report)

IN THE HIGH COURT OF SIKKIM

Criminal Revision Petition No.8 of 2003

M. Chandran
R/O T.N.A. Campus,
Gangtok. ***Petitioner.***

Versus

F. Fanthome
R/O H/No.186-A.
'E' – Block
Grater Kailash Part – II,
New Delhi. ***Respondent.***

Coram :

The Hon'ble Mr. Justice N. Surjamani Singh, Judge.

Present : Petitioner, Mr. M. Chandran in person.

***Mr. Ashutosh Moulik assisted by Mr. N. Rai, Counsel for
the respondent.***

Date of Decision : 6th March, 2003.

JUDGMENT (ORAL)

Surjamani Singh,J.

Heard Mr. M. Chandran, the petitioner herein.

Upon hearing the petitioner in person and also on perusal of the available materials on record, I am of the view that this matter can be disposed of finally on its own merit, at this stage, and accordingly, this revision petition is hereby disposed of with the following short order :-

Order dated 24.12.2002 passed by the learned Sessions Judge (East & North) Sikkim at Gangtok in Criminal Case No.2 of 2002 is the subject matter under challenge in this revision petition.

The facts of the case in a short compass are as follows: -

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The petitioner filed a complaint petition under Section 500 Indian Penal Code read with Section 499 Indian Penal Code against the present respondent by contending inter alia, that the respondent had published defamatory remarks made by one Shri K. N. P. Nair in four letters against the petitioner/complainant including the related "Explanatory Note" containing the defamatory remarks against the petitioner. Some of them are: - (i) that the complainant being a divorcee (then) was a serious blot and stigma, and (ii) that the complainant had allegedly volunteered to type out his appointment order and changed his designation from 'Vice-Principal (Administration)' to 'Vice Principal', and there is also an allusion that the complainant's resignation from the I.T. Department deserved investigation as to the cause. On the basis of the said complaint-petition, the learned Chief Judicial Magistrate (East and North) Gangtok took up the matter and thereafter, under her related order passed in Criminal Case No.27 of 2000 dismissed the complaint petition on 9.5.2001 and, being aggrieved by the said dismissal-order, the petitioner-complainant filed a revision petition which was finally disposed of by the learned Sessions Judge, East Sikkim on 20.02.2002 in the connected Criminal Revision Case No.4 of 2001 thus remanding the case for rehearing on the matter of limitation and, lastly, the matter was transferred to the Court of the Sessions Judge who disposed of the matter thus holding that the complaint filed by the petitioner is time barred under the impugned order dated 24.12.2002. Being dissatisfied with the impugned order dated 24.12.2002, the petitioner filed this revision petition.

2. At the very outset, Mr. M. Chandran, the petitioner herein contended that there is no delay in filing the complaint-petition, inasmuch as, about 4-5 days' prior to the appearance of the respondent before the Court concerned on 31.3.1997, the petitioner had inspected the case records and for the first time he

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found photo copies of the related 4 letters written by Mr. K. N. P. Nair containing defamatory remarks against the petitioner which were made known to others by the respondent, and the petitioner also found that for more than a year those papers were in an open condition and the offence is continuing one for which fresh cause of action arose. That being the position, there is no delay in filing the complaint-petition and the same is not barred by limitation Mr. M. Chandran argued. It is also submitted by the petitioner that the petitioner had not been given opportunity of being heard for enabling him to explain the delay, if any, in filing the related complaint-petition. According to Mr. M. Chandran, the learned Court below had failed to consider material facts rather misappreciated the provisions of law as laid down under Section 468 read with Section 469 Cr.P.C. while passing the impugned order. Supporting his contention on the issue of limitation, Mr. M. Chandran has drawn my attention to a copy of paragraph 36 of a related complainant's affidavit dated 30.7.1999 and submitted that in the month of March, 1997, a few days before the defendant/respondent herein appeared in the Court concerned, as witness he had occasion to inspect the case records and then for the first time he saw amongst the records an open folder in which the said photo copies of the four letters had been openly placed, and, as such, the findings of the learned Court below under the impugned order that complaint is time barred, are not tenable under the law and as such the impugned order is liable to be set aside. It is also argued by the petitioner that even assuming but not admitting that there is delay and the complaint-petition is barred by limitation, there shall be no automatic discharge of the accused. Supporting this submission, Mr. M. Chandran had relied upon the decision of the Apex Court rendered in Rakesh Kumar Jain, Appellant vs. State through CBI, New Delhi, Respondent reported in 2000 Criminal Law Journal 3973.

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3. At the hearing Mr. A. Moulik assisted by Mr. N. Rai, learned Counsel entered appearance on behalf of the respondent.

4.. Upon hearing the petitioner at length and also on perusal of the available matters on record, I am of the view that the present petitioner could not make out a case to justify the interference with the impugned order dated 24.12.2002 passed by the learned Sessions Judge (E&N) Sikkim at Gangtok in Criminal Case No.2 of 2002 for the following reasons: -

(1) From the available materials on record, it is revealed that the petitioner-complainant is/was quite aware of the existence of the alleged remarks and "Explanatory Note" which, according to the complainant, the same is defamatory, since a pretty long time, as the said note was of the year 1982 for which he sought for expunction which was also expunged by the authority concerned long long back but, the complainant did not make any attempt and endeavour to file any defamatory suit or complaint petition against the real author of the "Explanatory Note" ; Mr. K. N. P. Nair at any point of time. However, he filed the present complaint-petition against the respondent in the year 2000 that is after a lapse of more than 18 years from the date of the existence of the said Explanatory Note". According to the petitioner, because of the alleged communication and filing of documents, Sl. No.1 to 4 (Exbt. P2) as well as photocopies of item/Sl. No.5 - 16 in February 1989, by the respondent to the official concerned and in Civil Suit No.261 of 1987, and his alleged knowledge of the existence of the related folder as highlighted in paragraphs 3 and 4 of the complaint-petition, the offence is a continuing one as the same was published by the respondent and that being the position, the complaint-petition is not barred by limitation. At this stage, it may be mentioned that, the learned Sessions Judge had dealt with the matter exhaustively and gave a reasoned finding which finds its place in paragraph 12 and 13 of the impugned judgment and, the relevant portion of those findings are quoted below: -

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- “12 It is once more reiterated that because of various petitions filed by the parties relating to extraneous matters the proceedings could not progress smoothly from the stage of substance of accusation. Coming to the point of limitation, I have already reproduced the observation of the trial Court dated 9.5.2001 concerning the issue. And while allowing revision application filed by the complainant against the said order of Ld. Trial Court dated 9.5.2001 dismissing the complaint being time barred, this Court had afforded opportunity to the parties to lead evidence if found necessary. The contending parties did not lead evidence and simply filed synopsis of arguments and made verbal submissions. Practically speaking there is no change of circumstance from 9.5.2001 when Ld. Chief Judicial Magistrate (E&N) dismissed the complaint on the ground of limitation.
13. The complainant did not try to substantiate his case by leading further evidence he simply produced certain additional documents. The complainant failed to discharge his duty to call for the originals of documents listed in item No.1 to 4 of list of documents in Civil Suit No.216 of 1987 renumbered as Civil Suit No.14 of 1996. No endeavor was made by the complainant to substantiate his case that the offence is a continuing offence which would not bar by limitation by documentary or oral evidence. The decision arrived by the Ld. Chief Judicial Magistrate (E&N) dated 9.5.2001 that the items Nos. 5 to 16 were filed along with the list of documents and that some were filed in February 1989 jointly by the defendants in Court and complaint was in the know of said documents as far back as in February 1989 holds good. In the result I hold that the complaint filed by the complainant is time barred and the same is hereby dismissed. Accused person is hereby discharged from his bail bond.”

(2) Section 468 read with Section 469 deal with the matter pertaining to bar to taking cognizance after lapse of period of limitation and commencement of the period of limitation. According to me, the learned Court below rightly pointed that the petitioner had full knowledge of the existence of those documents which contained the alleged defamatory remarks long back and the complaint-petition was filed after the lapse of period of limitation. The relevant provisions of sub clause (1) and (2) of Section 468 and sub section 1(b) of Section 469 of the Code of Criminal Procedure are relevant in the instant case and accordingly, these are quoted below for better appreciation of the real points in controversies between the parties in the present case: -

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“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.

.....”

469. Commencement of the period of limitation –

(1) The period of limitation, in relation to an offence 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 the 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)

The alleged offence levelled by the petitioner as against the respondent is “defamation” which is non-cognizable and if any person or persons is or are liable to be punished, the punishment should be of simple imprisonment for 2 years, or fine, or both. In view of the nature of the offence levelled against the present respondent, the period of limitation shall be three years and the same shall commence on the date of the offence, or on the first day on which such offence comes to the knowledge of the

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aggrieved person. In the case in hand, the petitioner had the knowledge of the existence of the alleged offence leveled against the present respondent as far back as in February 1989 and he filed the complaint-petition in the year 2000. Therefore, there is inordinate delay in filing the present complaint against the respondent before the Court below and the same is barred by limitation as required under Sections 468 and 469 Cr. P.C. Hence, there is no infirmity or illegality in the impugned judgment.

(3) So far, the contention of the petitioner that, the respondent is not entitled for to discharge or to seek discharge on the ground of delay in filing complaint, relying upon the decision of Apex Court rendered in Rakesh Kumar Jain v. State through CBI, New Delhi (Supra), I am of the view that this decision of the Apex Court does not help the case of the petitioner, rather it goes against him, for the following reasons :-

In the case of Rakesh Kumar Jain v. State through CBI, New Delhi (Supra), certain period were spent in obtaining the consent and sanction from the Government, but in fact, in that case no sanction or consent was to be taken from the Government and that being the position, the Apex Court held that period spent cannot be excluded under Explanation to Section 470 (3) Cr.P.C.. However, Apex Court was of the view that under the law a complainant has a right to seek for extension of time, under Section 473 Cr.P.C. and that, the complainant in that case could satisfy the Magistrate on the facts and circumstances of the case that the delay was explainable which was occasioned on account of their bona

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fide belief to obtain the sanction for the purpose of filing the complaint and keeping in view of it, the Apex Court held that the complainant in that case was entitled to extension of period of limitation under Section 473 Cr.P.C., in other words, the Apex Court was of the view that the complainant had explained delay in filing the complaint-petition in that case.

But in the case in hand, the facts of the case are quite different from that of Rakesh Kumar Jain v. State through CBI, New Delhi (Supra). As discussed above, despite the Court below had afforded opportunity to the parties to lead evidence, the parties did not examine any witness in support of their respective cases on the related issue of limitation nor did they lead evidence; though the parties, that is the present petitioner and the respondent were quite aware of the fact that the point of limitation was only subject matter for consideration at the relevant stage of the case and apart from that, the present petitioner did not explain the delay in filing the complaint, except the statement that the offence is a continuing one. According to me, mere statement of the complainant, petitioner herein, that the offence is of continuing offence-one, it does not bring fresh cause of action and moreover, the complainant-petitioner had utterly failed to prove and establish his case that the complaint is not barred by limitation. As I am also of the view that the complaint was not filed within time, certainly, accused is entitled to discharge.

(4) At the hearing, Mr. M. Chandran submitted that he did not lead evidence nor did he produce or cite any witness in support of

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his case on the related issue of limitation, and, he alone will give evidence as solitary witness if the trial proceeds with, for which he did not furnish list of witnesses and did not cite a single witness in his complaint. A bare perusal of the complaint-petition shows that no witness was cited by the complainant-petitioner in the written complaint. Section 200 Cr.P.C. contemplates the provisions for examination of the complainant while the Court is taking cognizance of an offence on complaint and by virtue of this provision of law, the complainant and the witness present, if any, shall be examined provided that when the Court need not examine the complainant and the witness in the specific circumstances as highlighted in the proviso of Section 200 Cr.P.C. In terms of provision of Section 499 I.P.C. "*Explanation 4.* – No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful." In the instant case, the complainant-petitioner is not going to produce or cite any witness except his evidence or statement in support of his case if cognizance is taken and the trial proceed with. Therefore, it is established that the complainant-petitioner miserably failed to make out a prima facie case that such imputation directly or indirectly, in the estimation of others, lowers his moral and the intellectual character.

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(5) In order to bring defamatory imputation within the meaning of Section 499 I.P.C., there must be intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that the imputation will harm the reputation of the person concerned. On perusal of the entire contents of the complaint and after reading it as a whole, I am of the view that the allegations disclosed therein did not constitute an offence under Section 499 I.P.C. It may be mentioned that the real author of the alleged defamatory articles or remarks, namely, Mr. K.N.P. Nair was not made a party in the complaint and, the complainant-petitioner at the hearing contended that he will not produce any witness in support of his case except his evidence and that being the position, he did not cite any witness nor did he append the list of witnesse(s) in the complaint-petition.

(6) It is well settled that a prosecution for defamation cannot be actually instituted unless the following sine qua non stand fulfilled viz.,-

- (a) an offence has been committed;
- (b) its commission has become known; and
- (c) its offender is identified.

A prosecution otherwise would be a still-born process bad ab initio.

As highlighted in the foregoing paragraphs, the real author is Mr. K.N.P. Nair, and the complainant-petitioner is/was quite aware his identity. But, the complainant-petitioner did not make any endeavour not to speak of initiating criminal proceedings for


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defamation against him (K.N.P. Nair), even did not array him as one of the accused persons in the complaint.

(7) According to me, the learned Court below did apply its mind to the question of limitation at the pre-cognizance stage as required by law. It may be mentioned that it would be without jurisdiction if the Magistrate or the Court below took cognizance of the cases without deciding the legal issue of limitation as required under Sections 468 and 469 Cr.P.C. In the instant case, the complainant-petitioner did not make any endeavour or any attempt to explain the delay in filing the complaint nor did he sought for extension of period of limitation as required under Section 473 Cr.P.C.

5. In the result, this revision petition is devoid of merit and accordingly, it is dismissed with a cost of Rs.1,000/- (Rupees one thousand) only which is to be paid by the complainant-petitioner to the respondent within a period of three weeks from today for which the petitioner is to deposit a cost of Rs.1,000/- (Rupees one thousand) only with the Registry of this Court and that, liberty is also granted to the respondent to withdraw the said amount after he is properly identified by a learned lawyer of this Court.


(N. Surjamani Singh)
Judge
06.03.2003