

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPURRamashanker & Ors.
Vs.
State of Rajasthan & Anr.

S.B.CR.REVISION PETITION NO.148/2005
against the order passed by
Additional Judicial Magistrate No.2,
Sujangarh in Criminal Case
No.48/2002.

DATE OF ORDER :: 26-05-2005

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Vinod Bhadu, for the petitioners.
Mr. J.P.S. Choudhary, P.P.
Mr. B.N. Kalla, for non-petitioner No.2.

BY THE COURT:

This criminal revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) is directed against the order dated 12.11.2003 passed by the Additional Judicial Magistrate, Sujangarh (for short 'the trial Court' hereinafter) whereby the trial court took cognizance of offences under Sections 323, 341, 504 read with Section 34 IPC against the petitioners.

Aggrieved by the order impugned taking cognizance, the petitioners have filed the instant revision petition.

I have heard learned counsel for the parties.

Perused the order impugned. I have carefully gone through the statement of the complainants Jagdish CW-1, Narayan Das CW-2 and Raju Sunar CW-3 recorded by the trial Court under Section 200, 202 of the Code.

It is contended by the learned counsel for the petitioner that the trial Court fell in error in taking cognizance against the petitioners after expiry of the period of limitation. Learned counsel for the petitioners submits that occurrence is of dated 17.5.2002 whereas the trial Court took cognizance of offence on 12.11.2003 after expiry of period of one year from the date of occurrence.

It is further contended that from the bare perusal of entire record, no offence under Section 504 IPC is made out even the evidence adduced by the complainant is taken in entirety on its face value.

Learned counsel appearing for the contesting non-petitioner submits that soon after occurrence, a complaint was filed before the trial Court on 18.5.2002 which was sent to Police by the trial Court under Section 156(3) of the Code for investigation. The Police registered the crime report on 7.6.2002 and filed a negative report on 26.6.2002. Thereafter, a notice of F.R. was served to the complainant and complainant filed a protest petition before the trial court. The trial court recorded the statement of the

complainant on 25.11.2002 and the other witnesses on 20.1.2003 and thereafter, proceeded to take cognizance by order dated 12.11.2003. The period of limitation for taking cognizance has to be counted from the date complaint was filed and not the date on which the trial court passed the order. The trial court kept the matter pending for years together and passes the order by the time the period of limitation expires, the complainant cannot be made to suffer only on technicalities of limitation.

I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties.

So far as contention raised by the learned counsel for the petitioner with regards to order of cognizance being barred by limitation, the contention deserves to be rejected in view of the decision of Hon'ble Supreme Court in Bharat Damodar Kale & Anr. Vs. State of A.P., 2003(7) Supreme 736 wherein the Apex Court held as under:-

"A cumulative reading of various provisions of the said Chapter clearly indicates 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 is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing the period of limitation, 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 said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates 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 initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant."

After going through the statement of the

complainant Jagdish CW-1 as also two witnesses produced by him, there is no whisper that the petitioners intentionally insulted and thereby gave provocation to the complainant intending or knowing it be likely that such provocation will cause the complainant to break the public peace, or to commit any other offence. What has been stated in the complaint and by the complainant and his witnesses before the trial Court on oath that on 17.5.2002, he was coming from Jaswantgarh to Bidasar stand about 10.00 pm, near to Municipality, the petitioners namely Ramashanker, Dinesh Kumar and Arun Kumar met him. The petitioner Ramashanker pressed his mouth and caughthold his hairs and thrown him on the ground. The petitioners Dinesh Kumar and Arun Kumar gave kicks and fists blow. He was rescued by CW-2 and CW-3 namely Narayan Das and Raju respectively. The complaint of this occurrence was filed before trial court on 18.5.2002 with the same allegations as stated by afore noticed three witnesses. There is absolutely no evidence that the petitioners ever intentionally insulted the non-petitioner No.2.

In this view of the matter, *prima facie* no offence under Section 504/34 IPC is made out against the petitioners. Therefore, the trial court fell in error taking cognizance of the offence under Section 504/34 IPC against the petitioners.

Consequently, the revision petition is partly allowed. Order impugned dated 12.11.2003 to the extent taking cognizance of offence under Section 504/34 IPC against the petitioners is set aside. However, order taking cognizance for the offence under Section 323, 341/34 IPC is hereby affirmed. The stay petition stands disposed of.

[H.R. Panwar], J.

Praveen