IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.9439 M OF 2005

DATE OF DECISION: FEBRUARY 28,2007

Janardhan Upadhyay

.....Petitioner

VERSUS

The State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rajan Gupta, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioner seeks quashing of the FIR, charge-sheet and the consequential proceedings initiated against him by invoking the provisions of Section 468 Cr.P.C. The petitioner claims that in view of the bar of limitation laid down in the said Section, the Magistrate could not have competently taken cognizance of this offence as the same was barred by limitation.

F.I.R. No.64 dated 6.5.1999 (Annexure P-1) was registered against the petitioner with the allegation for the offences under Sections 406, 420 and 120-B IPC. The complainant alleges that Satish Kumar Upadhya son of the petitioner was doing iron business and had business transaction with him. The complainant further claims that he was cheated and defrauded by said Satish

Kumar Upadhya in connivance with the petitioner and his other family members. The complainant also says that he was influenced and persuaded by the petitioner working as Head Cashier in a renowned bank, to have business dealing with his son, who was running an iron business under the name of M/s Satish Iron Store. It is further alleged that the petitioner had taken responsibility of his son, who had issued certain cheques in favour of the complainant, which were dishonoured. When the complainant approached the petitioner, he rebuked him besides threatening him with dire consequences. Allegations are also made that the petitioner and his family members have, thus, decamped with a sum of Rs.90 lacs (approximately) of various creditors. Allegation of the complainant is that he is duped of Rs.3.50 lacs. The police carried out investigation in this case and presented a challan against the petitioner on 10.1.2004. The Court ultimately framed charges against the petitioner under Sections 406, 120-B IPC on 7.7.2004. Being aggrieved against the order framing the charge against him, the petitioner has filed the present petition, seeking quashing of the same on various grounds, one of which relates to a bar of limitation, as provided under Section 468 Cr.P.C. Relying on Section 468 Cr.P.C., it is submitted that the Section provides a period of limitation for taking cognizance of offence and in view of this, the trial Court would have no jurisdiction to take cognizance of the offence under Section 406 IPC after expiry of period of 3 years, the offence being punishable upto 3 years.

Notice of motion was issued. Reply on behalf of the State is filed. While opposing the prayer, It is stated that the offence alleged against the petitioner is under Section 420 IPC and

accordingly Section 468 Cr.P.C. would not be applicable in this case. This submission of course is countered by counsel for the petitioner, who would say that though the FIR did contain an offence under Section 420 as well but the petitioner has now been charged only for an offence under Sections 406 and 120-B IPC.

I have heard learned counsel for the parties.

In ***State of Punjab v. Sarwan Singh***, 1981 Crl.L.J.722, the Hon'ble Supreme Court held that the object of Criminal Procedure Code in putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which the 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 offence. Further, in ***Moti Pathak and others v. State of U.P.***, 1988(2) Crimes page 659, it was observed that the plea of bar of limitation can be raised at any stage of proceedings and that even when it was not raised, the Magistrate should have considered his power and authority in the light of sections 468 and 473 Cr.P.C.

Section 468 Cr.P.C. creates a bar for taking cognizance of an offence after expiry of period of limitation and reads:-

> "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.
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> (2)The period of limitation shall be-
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> (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.

(6) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

Accordingly a period of three years is provided as a limitation in respect of those offences, which are punishable with imprisonment for a term not exceeding three years. As the offences charged in this case under Section 406 IPC is punishable with three years imprisonment, the limitation in this case would be three years. Section 468 Cr.P.C. cannot be read in isolation. The commencement of period of limitation is regulated by the provisions of Section 469 Cr.P.C. and this reads as under:-

"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) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

It would be thus clear that the period of limitation in relations to an offence would commence from different dates depending upon three situations, as noticed in Section 469 (a) (b) and (c). Thus, the period of limitation would commence from the date of offence or from some different dates depending upon the knowledge about the offence or the identity of the offender. The period of limitation accordingly would commence from the date of offence if the identity of the offender as well as the offences is known. The FIR in this case, which was registered on 6.5.1999, would clearly show that the identity of offender was known to the person aggrieved of the offence i.e. the complainant. The complainant had also made an allegation of specific offences, which were under Sections 406 and 420 IPC. The commission of the offences as well was known to the complainant. In this view of the factual position, provisions of Sections 469 (b) and (c) may not come into play in this case to determine limitation. It would be a case where the person aggrieved of the offence was knowing the offence as well

as the offender. Accordingly, on the date of lodging of the FIR i.e. 6.5.1999, the complainant, who is aggrieved of the offence and offender, was knowing the offence as well as the offender. The limitation for this purpose would, as such, commence from the date of offence. The date of offence in this case is either 6.5.1999 or any date prior thereto, whenever the alleged offence was committed. The cognizance of this offence is taken on the basis of a challan filed by the police on 10.1.2004. On the basis of this challan, charges under Sections 406 and 120-B IPC have been framed on 7.7.2004. A perusal of Section 468 Cr.P.C. clearly provides that no Court shall take cognizance of an offence after the expiry of period of limitation as provided therein. Thus, in this case the limitation is to be calculated from the date of offence to the date of taking cognizance and if it is beyond the period of three years, the action of taking cognizance by the Magistrate would be barred and without jurisdiction in view of the provisions of Section 468 Cr.P.C. As already noticed, the offence and the offender were known to the complainant on the date he lodged this FIR i.e. 6.5.1999. That being so, the Magistrate could have taken cognizance of this offence upto a period of three years commencing from the said date i.e. upto 5.5.2002. Admittedly, challan in this case was presented on 10.1.2004 and charges were framed on 7.7.2004. It is pleaded by the petitioner that the cognizance of offence in this case was taken on 10.1.2004 when the police filed the challan. This fact appears to have not been seriously disputed by the State in the reply filed. The only defence taken is that the provisions of Section 468 would not apply in view of the allegation for an offence under Section 420 IPC, which is

punishable with RI for more than three years and the bar of limitation being applicable to offence punishable upto 3 years R.I. as per Section 468 Cr.P.C. It may require consideration as to what would be the date of taking cognizance of an offence in this case. As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. This was so observed by the Hon'ble Supreme Court in Narayandas Bhagwandas Madhavdas v. The State of W.B., AIR 1959 Supreme Court 1118. Accordingly, the issuance of search warrant for the purpose of investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance is taken of an offence. It was further observed that it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Ch.XVI of the Code of Criminal Procedure or under Section 204 of Ch.XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. In Darshan Singh Ram Kishan v. The State of Maharashtra, 1971(2) Supreme Court Cases 654, it was observed that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. It is said that cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence and this is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon the police report, prima facie,

he does so of the offence or offences disclosed in such report.

In ***Cref Finance Ltd. Vs. Shree Shanthi Homes (P) Ltd. and another,*** (2005) 7 Supreme Court Cases 467, the Hon'ble Supreme Court observed that the cognizance is taken of the offences and not of the offender and, therefore, once the Court, on perusal of the complaint, is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage and proceeds further in the matter, it must be held to have taken cognizance of the offence. In this case only, the Hon'ble Supreme Court held that one should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. Having regard to the ratio of law laid down in the above mentioned cases, it will be safe to conclude that the Magistrate had taken cognizance of the offence in this case either on the date of presentation of the challan or on the date of framing charges and not any date prior thereto. Since the challan was presented under Sections 406, 420 IPC, the Magistrate may have been justified in entertaining the challan even after expiry of period of three years. However, after application of his mind, the Court found that the offences under Sections 406 and 120-B IPC alone are made out. It is pleaded by the petitioner that the trial Court took cognizance of the offence on the basis of a challan filed by the police. The police has filed a challan

not only under Section 406 IPC but 420 as well. Section 420 is punishable with an imprisonment upto 7 years. Accordingly, on the date of taking cognizance, the provisions of Section 468 Cr.P.C. would not have got attracted. The Magistrate was justified in not taking into consideration the plea of limitation on the said date. Reference may be made to the provisions of sub-section (3) of Section 468 Cr.P.C., as reproduced above. It clearly stipulates that for the purpose of this Section, period of limitation in relation to offences, which may be tried together, shall be determined with reference to the offence, which is punishable with more severe punishment. Accordingly, for the purpose of limitation, the offence under Section 420, for which the challan was presented, was necessarily required to be taken into consideration. In this regard support can be taken from the observations made by the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh Vs. Tara Dutt and another,*** AIR 2000 Supreme Court 297. Referring to sub-section (3) of Section 468, the Hon'ble Supreme Court held that limitation provided for taking cognizance is in respect of offence charged and not in respect of the offence finally proved. In this very case, the Hon'ble Supreme Court referred to its earlier decision in Sarwan Singh's case (supra). In the said case, the charge had been framed under Sections 408 and 406 IPC but ultimately conviction was only under Section 406 IPC. The High Court in this case allowed the appeal and acquitted the person mainly on the ground that prosecution launched against the respondent was clearly barred by limitation under Sections 468 and 469 Cr.P.C. The Hon'ble Supreme Court while dismissing the appeal filed by the State of Punjab

observed as under:-

> "The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is nonest. For these reasons given above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds."

However, in Tara Dutt's case (supra), it is observed that provisions of sub-section (3) of Section 468 Cr.P.C. were not considered while deciding Swaran Singh's case (supra). In the present case, sub-section (3) of Section 468 may not apply, as the petitioner in this case has only been charged under Section 406 and not under any offence as in the cases of Tara Dutt and Swaran Singh (Supra). Thus, it will be a case where provisions of Section 468 would get attracted. In Swaran Singh's case(supra), it is said by the Court that the object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It was further observed that it is of utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The limitation is required to be determined on the basis of the offence/offences

charged and not in respect of offence finally proved. The offence charged in this case is under Section 406 IPC. Having regard to the decision afore-mentioned, the prosecution against the petitioner would be barred by limitation in view of the provisions of Section 468 Cr.P.C.

The present petition is accordingly allowed and all the proceedings against the petitioner are hereby quashed.

February 28, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**