ARUN VYAS AND ANR. A

*v.*

ANITA VYAS

MAY 14, 1999

[K.VENKATASWAMY AND S.S.M. QUADRI, JJ.] B

*Criminal Law:*

*Criminal Procedure Code, 1973 : Sections 190(1) and 473.*

C

*Offence—Discharge of accused—After taking cognizance of—Complaint—Under Section 190(1)—For offence under S.406 IPC—Filed beyond period of limitation—No explanation for delay—Magistrate ordered investigation by Police—Police submitted charge-sheet (final report)—Magistrate took cognizance of the offence and fixed a date for framing charges—But on that date discharged the accused on the ground that complaint was barred by limitation—However, High Court set aside the order of discharge—Permissibility of—Held: Under such circumstances Magistrate rightly discharged the accused—Therefore, High Court not correct in setting aside the order of discharge—Penal Code, 1860, S.406.* D

E

*Sections 468 and 473—Offence—Discharge of accused—After taking cognizance of—Complaint—Under Section 190(1)—For offence under S.498-A IPC—Filed beyond period of limitation—NO explanation for the delay—Wife allegedly beaten by husband and in-laws and driven out of matrimonial home on 13.101988—Complaint filed on 18.10.1995—Police filed charge-sheet after investigation on 22.12.1995—Magistrate took cognizance of the offence and fixed a date for framing charges—But on that date discharged the accused on the ground that complaint was barred by limitation—However High Court set aside the order of discharge—Permissibility of—Held: Offence under S.498-A is a continuing offence in view of S.468(3)—Hence, period of limitation for the offence commenced on 13.10.1988 and ended on 12.10.1991 under S.468(2) (c)—The complaint, therefore, is barred by limitation—However, the Magistrate should have liberally construed the provisions of S.473 in favour of the wife—But the Magistrate did not advert to the necessity of taking cognizance of the offence in the interest of justice on the facts and in the circumstances of the case—Hence, his order of discharge of the accused, no sustainable—High Court right in setting aside the order of discharge—* F G H

A *Magistrate directed to consider the question of limitation under Section 473.*

*Chapter XXXVI—Sections 467 to 473—Object of—Explained.*

*Penal Code, 1860:*

B *Section 498-A—Offence under—Nature of—Held : is a continuing offence in view of S.468(3) Cr. P.C.*

*Words and Phrases:*

*"In the interest of justice"—Meaning of—In the context of Section 473* C *of the Criminal Procedure Code, 1973.*

**In this appeal, the following questions arose before this court.**

**(i) Whether the Magistrate can discharge an accused after taking cognizance of an offence by him but before the trial of the case; and**

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**(ii) Whether the Magistrate was right in discharging the appellants on the ground that the complaint was barred by limitation under Section 468 Cr. P.C.**

**Allowing the appeal in part, this Court**

E

**HELD : 1. The object of having Chapter XXXVI in the Criminal Procedure Code, 1973 is to protect persons from prosecution based on stale grievances and complaints, which may turn out to be vexatious. The reason for engrafting rule of limitation is that due to long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenceless** F **position. This may even result in miscarriage of justice. At the same time it is necessary to ensure that due to delays on the part of the investigating and prosecuting agencies and the application of rules of limitation the criminal justice system is not rendered toothless and ineffective and perpetrators of crime are not placed in an advantageous position. The** G **Parliament obviously taking notes of various aspects, classified offences into two categories, having regard to the gravity of offences, on the basis of the punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for offences for which punishment specified is imprisonment for a term** H **not exceeding three years and even in such cases wide discretion is given**

to the Court in the matter of taking cognizance of an offence after the expiry of the period of limitation. [725-A-D] A

2.1. The essence of the offence in Section 498-A the Penal Code, 1860 is cruelty. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, B within the meaning of the explanation, on 13.10.1988. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under Sections 406 and 498-A from 13.10.1988 and ended on 12.10.1991. But the charge-sheet was filed on 22.12.1995. Therefore, it was clearly barred by limitation under Section 468(2) (c) Cr. P.C. [726-E-F] C

2.2. However, Section 473 Cr. P.C. empowers the court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. The expression "in the interest of justice" in Section 473 does not mean in the interest of prosecution. What the court D has to see is "interest of justice". The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A, the wife will invariably be oppressed. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 Cr. P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do E in the interests of justice. When the conduct of the accused is such that applying rule of limitation will gave an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. This is only illustrative, not exhaustive. [726-G-H; 727-A-C] F

*Vanka Radhamanohari (Smt)* v. *Vanka Venkatta Reddy,* [1993] 3 SCC 4, relied on.

3. In this case the complaint was clearly barred by limitation and no explanation was offered for the inordinate delay. Therefore, in regard to G Section 406 IPC the Magistrate rightly held the complaint to be barred by limitation. Hence, the High Court was not correct insofar as the order of Magistrate relating to Section 406 IPC is concerned. But regarding the offence under Section 498-A the magistrate did not advert to the second limb of the second part in Section 473 Cr. P.C. The order of the Magistrate on that aspect is unsustainable. The Magistrate shall consider the question of H

A **limitation taking note of Section 473 Cr. P.C. [727-D-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 574 of 1999.

From the Judgment and Order dated 17.3.98 of the Rajasthan High
B Court in S.B. Cr. No. 316 of 1996.

Adarsh Goel and Mrs. Sheela Goel, for the Appellants.

Pallav Shishodia and A.P. Medh for the Respondent.

C The Judgment of the Court was delivered by

**S. SHAH MOHAMMED QUADRI, J.** Leave is granted.

This appeal is from the judgment and order of the High Court of Rajasthan at Jodhpur in S.B.Crl.Revision No.316/96 dated March 17, 1998
D setting aside the order of discharge passed in favour of the appellants by the Additional Chief Judicial Magistrate, Jodhpur on April 23, 1996.

The facts giving rise to this appeal may briefly be noted here.

Appellant No.1 married the respondent in accordance with the Hindu
E rites on May 20, 1986. They were blessed with a girl on January 2, 1988. The respondent, in the complaint filed before the Court on October 18, 1995, alleged that she was beaten up by her husband, mother-in-law and sisters-in-law as her parents failed to satisfy the demand of dowry and ultimately she was pushed out of the house on October 13,1988. The complaint was filed against the appellants under Sections 498-A, 406 IPC read with Section 6 of
F the Dowry Prohibition Act before Additional Chief Judicial Magistrate, Jodhpur, under Section 190(1) Cr.P.C., who ordered investigation by police. The police investigated the complaint under Section 156(3) Cr.P.C. and submitted charge-sheet (final report) under Section 498-A IPC on December 22, 1995. On that report the learned Magistrate took cognizance of offence
G under Sections 498-A as well as 406 IPC and issued summons to the appellants. The case was posted on April 23, 1996 for framing charges. On that day it was submitted on behalf of the accused that the complaint was barred by limitation and that referring the case for investigation to the police itself was bad, therefore, no charges could be framed against the accused. That plea of the appellants found favour from the learned Magistrate who discharged the
H appellants by his order dated April 23, 1996. The respondent challenged the

validity of that order of the learned Magistrate before the High Court of Rajasthan in S.B.Cr.No.316 of 1996. On March 17,1998, the High Court set aside the order of the learned Magistrate and directed him to proceed with the case from the stage where he had discharged the accused and decide the same in accordance with law. It is that order of the High Court which is the subject-matter of this appeal.

Mr. Adarsh Goel, learned senior counsel appearing for the appellant, contended that the High Court has committed illegality in holding that there was no delay in filing the complaint and in observing that even if there was delay in view of Section 468 Cr.P.C. the learned Magistrate should not have overlooked the provisions of Section 473 Cr.P.C. He argued that no provision in Cr.P.C. provides that after taking cognizance, the learned Magistrate could not have discharged the appellants and that the reasons given by the High Court in setting aside the order of the learned Magistrate are erroneous in law.

Mr. Pallav Shishodia, learned counsel appearing for the respondent, submitted that the respondent was subjected to cruelty and harassed for the demand of dowry and she was sent out of the matrimonial home, therefore, the High Court was justified in setting aside the order of the learned Magistrate who did not take note of Section 473 Cr.P.C. and directing him to proceed with the case.

On this above submissions, two questions arise for consideration, namely:

(i) whether the learned Magistrate can discharge an accused after taking cognizance of an offence by him but before the trial of the case; and

(ii) whether the learned Magistrate was right in discharging the appellants on the grounds that the complaint was barred by limitation under Section 468 Cr.P.C.

Point No.(i) : The answer to this point can be found in Section 239 Cr.P.C. which is in the following terms :

> "239. When accused shall be discharged - If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused,

A and record his reasons for so doing."

A perusal of the aforementioned section shows that the Magistrate has to discharge the accused : if (1) on consideration of (a) the police report, (b) the documents filed under Section 173 Cr.P.C.; and (2) making such examination, if any, of the accused as the Magistrate thinks necessary; and (3) after giving B the prosecution and the accused an opportunity of being heard, he considers charge against the accused to be groundless. This section, however, casts an obligation on the Magistrate to record his reasons for holding that the charge is groundless and discharging the accused.

Section 239 has to be read along with Section 240 Cr.P.C. If the Magistrate C finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with Section 240 Cr.P.C. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being D groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 Cr.P.C., the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed in a case where the Magistrate takes cognizance of an offence without taking note of Section 468 Cr.P.C., the most appropriate stage at which the E accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.

F Point No.(ii) : The new Code of Criminal Procedure contains Chapter XXXVI, (Sections 467 to 473) which deals with limitation for taking cognizance of certain offences. Section 467 defines that the period of limitation for the purposes of that Chapter, to mean the period specified in Section 468 for taking cognizance of offence. Bar to taking cognizance on the expiry of period of limitation and extension of period of limitation, are dealt in by Sections 468 G and 473 respectively. The point of commencement of period of limitation in the case of continuing offence is embodied in Section 472 and in the case other than a continuing offence is contained in Section 469. The provisions for exclusion of time in computing the period of limitation are incorporated in Sections 470 and 471.

H It may be noted here that the object of having Chapter XXXVI in Cr.P.C.

is to protect persons from prosecution based on stale grievances and complaints which may turn out to be vexatious. The reason for engrafting rule of limitation is that due to long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenseless position. It will cause great mental anguish and hardship to them and may even result in miscarriage of justice. At the same time it is necessary to ensure that due to delays on the part of the investigating and prosecuting agencies and the application of rules of limitation the criminal justice system is not rendered toothless and ineffective and perpetrators of crime are not placed in advantageous position. The Parliament obviously taking note of various aspects, classified offences into two categories, having regard to the gravity of offences, on the basis of the punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for offences for which punishment specified is imprisonment for a term not exceeding three years and even in such cases wide discretion is given to the Court in the matter of taking cognizance of an offence after the expiry of the period of limitation. Section 473 provides that if any Court 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 interests of justice, it may take cognizance of an offence after the expiry of the period of limitation. This section opens with a *non obstante* clause and gives overriding effect to it over all the other provisions of Chapter XXXVI.

A B C D E

It is useful to read Section 468 Cr.P.C. here :

"**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 -

(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,

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(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation

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A 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."

A perusal of the provision, extracted above, shows that Sub-section (1) of Section 468 enjoins that no Court shall take cognizance of an offence of B the categories specified in sub-section (2), after the expiry of the period of limitation mentioned therein. This rule is, however, subject to the other provisions of the Code. Sub-section (2) specifies the period of limitation of six months, if the offence is punishable with fine only; of one year, if the offence is punishable with imprisonment for a term not exceeding one year C and of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Sub-section (3) which is inserted by Act 45 of 1978, deals with a situation where offences, are tried together and directs that for the purposes of that section the period of limitation 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 D punishment.

The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed E against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under Sections 406 and 498-A from October F 13, 1988 and ended on October 12, 1991. But the charge-sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468(2)(c ) Cr.P.C.

It may be noted here that Section 473 Cr.P.C. which extends the period of limitation is in two parts. The first part contains *non obstante* clause and G gives overriding effect to that section over Sections 468 to 472. The second part has two limbs. The first limb confers power on every competent court to take cognizance of an offence after 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 and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances H of the case that it is necessary so to do in the interests of justice. It is true

that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the Court has to see is 'interest of justice'. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. This is only illustrative not exhaustive.

Any finding recorded by a Magistrate holding that the complaint to be barred by limitation without considering the provisions of Section 473 Cr.P.C. will be a deficient and defective finding, vulnerable to challenge by the aggrieved party. In this case the complaint was clearly barred by limitation and no explanation was offered for inordinate delay; this is what the learned Magistrate took note of and concluded that the complaint was barred by limitation. This is correct insofar as the offence under Section 406 is concerned. Therefore, in regard to Section 406 the order of the learned Magistrate discharging the appellants cannot be faulted with. But regarding offence under Section 498-A the learned Magistrate did not advert to the second limb of the second part in Section 473 Cr.P.C. referred to above. The order of the learned Magistrate on this aspect was unsustainable so the High Court has committed no illegality in setting aside that part of the order of the learned Magistrate.

In *Vanka Radhamanohari (Smt.)* v. *Vanka Venkata Reddy & Ors.*, [1993] 3 SCC 4, the wife who was subjected to cruelty left the matrimonial home in 1985. In 1990 she filed the complaint alleging cruelty and maltreatment against the husband and mother-in-law and further stating that the husband had remarried. The Magistrate took cognizance of offences under Sections 498-A and 494 IPC. On the petition of the husband under Section 482 Cr.P.C., the High Court quashed the complaint. This Court, on appeal from the judgment of the High Court, held that the High Court erred in quashing the complaint as Section 468 Cr.P.C. could not be applied to offence under Section 494 IPC (for it is punishable with imprisonment for a term which may extend to 7 years) and even in respect of offence under Section 498-A, the attention of the High

A Court was not drawn to Section 473 Cr.P.C. While setting aside the impugned order of the High Court this Court observed :

> "As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question,
B 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 interests of justice".

For the reasons stated above the High Court was not correct insofar as the order of Magistrate relates to Section 406 IPC. But in regard to offence
C under Section 498-A IPC no exception can be taken to the impugned order under appeal as the learned Magistrate did not take note of Section 473 Cr.P.C., while ordering discharge of the appellants. Now the learned Magistrate shall consider the question of limitation taking note of Section 473 Cr.P.C. in the light of observations made hereinabove. Accordingly, the appeal is allowed
D in part.

V.S.S. Appeal partly allowed.