IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2022

PRONOUNCED ON : 01.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.23806 of 2021
and Crl.M.P. No.13107 of 2021

Shiva Sankar Baba ... Petitioner

versus

1.State represented by
Inspector of Police,
CBCID, OCU Police Station-II,
Chennai.
(Crime No.2 of 2021)

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to Crime No.2 of 2021 registered by the first respondent Inspector of Police, CBCID, OCU Police Station-II, Chennai and quash the FIR as against the petitioner.

For Petitioner	:	Mr.R.Vijayakumar
For Respondent No.1	:	Mr.Hasan Mohamed Jinnah State Public Prosecutor Asst. by Mr.A.Damodaran Additional Public Prosecutor Asst. by Mr.S.Vinoth Kumar Government Advocate (Crl. Side)
For Respondent No.2	:	Mr.R.Vivekanandan

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to Crime No.2 of 2021 on the file of the first respondent police and quash the same.

2. The case in Crime No.2 of 2021 has been registered against the petitioner on the allegations of sexual harassment caused by him to the second respondent between the academic year 2010-2011. The second respondent has sent a complaint through E-mail on 20.07.2021 and the F.I.R. has been registered on the basis of the same for the offences under Section 354 IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002.

3. Before adverting into the facts and merits of this petition, the trajectory which led to this stage of the order needs to be mentioned. By virtue of an earlier order dated 17.10.2022, this Criminal Original Petition got disposed. The order was to the effect of quashing the F.I.R. by allowing the petition on the ground of limitation under Section 468 Cr.P.C.

4. Subsequently the second respondent has filed a petition to recall the order by stating that she has not been given with notice before disposing the Criminal Original Petition. Though the first respondent / State was heard at length, the State had also filed a separate petition seeking the same prayer by stating the same reasons as stated by the second respondent. Those petitions have been dealt in Crl.M.P.Nos.16421 and 16422 of 2022. During the course of hearing of those petitions, the first respondent submitted that the charge sheet has been filed and it has been taken on file by the trial Court in C.C.No.654 of 2022, even when the Criminal Original Petition was heard and hence the Criminal Original petition ought to have been dismissed as infructuous.

5. Leaving aside the said fact which was not brought to the notice of the Court during the appropriate time, the main thrust for the petition filed to recall was not the submission of want of notice of opportunity for the second respondent. The *de facto* complainant wished to be heard despite the State was heard on her behalf by placing reliance on the judgment of the Hon'ble Supreme Court held in ***J.K.INTERNATIONAL vs. STATE (GOVT. OF NCT OF DELHI) AND OTHERS*** reported in ***(2001) 3 SCC 462***. By accepting the observation made in the above judgment, the petition filed by the *de facto* complainant in Crl.M.P.No.16421 of 2022 to recall the order was allowed and the other petition filed by the State in Crl.M.P.No.16422 of 2022 has been disposed as superfluous by a common order dated 21.11.2022. The said order shall form part of these proceedings which led to the present order.

6. In pursuant to the above said order, the Criminal Original Petition was heard afresh by allowing the second respondent also to make her submissions.

7. With regard to the fact that the charge sheet has been filed already, the learned counsel for the petitioner submitted that his petition to quash the F.I.R. is still maintainable, because the offence itself is barred by limitation even on the day when the second respondent sent her complaint through E-mail and hence filing of the charge sheet is *non-est* in the eyes of law. It is further submitted that even at the time of filing the charge sheet, the prosecution did not file any petition under Section 473 Cr.P.C. for extension of limitation / condonation of delay. The said fact was accepted by the second respondent also and in fact by way of caution, the second respondent is said to have filed a Criminal Revision Petition to set aside the order of cognizance, in order to enable the first respondent to file the charge sheet along with the petition to condone the delay.

8. Though the present order to be passed in this petition would have an impact on the alleged Criminal Revision Petition filed by the second respondent, the legal issue on the point of limitation needs to be settled down and it is primarily the reason for allowing the petition made in Crl.M.P.No.16421 of 2022 dated 21.11.2022.

9. Now coming to the facts of the prosecution, the accused is the Founder of Sushil Hari International Residential School and one Venkataraman, was the Correspondent of the School at the time of the occurrence. The second respondent / *de facto* complainant, had admitted her son Arvind in the said School and he was studying there. During the academic year 2010-2011, he was removed from the said School and the said fact was informed to him when he attended the School for the first day when the School re-opened for the academic year 2010-2011. After coming to know about this, the *de facto* complainant went to the School in person for getting explanation. She met the Correspondent and he told her that Arvind was academically weak and hence, his Transfer Certificate had been issued.

9.1. Later, the *de facto* complainant was asked to meet the accused who was the Founder of the School at his lounge. After waiting for a long time, the second respondent was given permission to meet him and she was asked to come alone. Though it is not agreeable for the second respondent, she did not have any other option except to meet him in person all alone taking into consideration of her child's future. Even while the second

respondent was explaining her issue, the petitioner / accused cut the conversation and asked her to go to the washroom and wash her mouth, face, hands and legs. The second respondent asked him why he wanted her to do. But the petitioner did not give her any explanation but insisted her to freshen up. Subsequently, the petitioner came close to the second respondent, grabbed her hand and forcibly pulled her towards him. The second respondent pulled herself away and left the lounge immediately and went straight to the office of the Correspondent and collected her son's Transfer Certificate and went away.

10. The learned counsel for the petitioner submitted that the case of the prosecution is hopelessly barred by limitation on the day when the complaint itself was sent through an E-mail by the second respondent. Since the incident is said to have taken place during the year 2010-2011 and the punishment prescribed for the offence under Section 354 IPC itself was two years during the relevant point of time and Section 4 of Tamilnadu Prohibition of Harassment of Woman Act, 2002, which is the maximum punishable offence has the maximum punishment for three years

imprisonment, it is barred by limitation on the day when the complaint was given. In view of Section 468 Cr.P.C., the complaint ought to have been filed within three years from the alleged date of its occurrence. The second respondent / *de facto* complainant has chosen to send her complaint through E-mail on 20.07.2021 after a lapse of ten years and hence it is barred by limitation.

10.1. It is not the allegation of the second respondent that the occurrence was a continuing one. Even though the period of limitation can be condoned in some special circumstances, it should be done for any acceptable reasons. The application for condonation ought to have been filed by the first respondent / State before proceeding to take any action on the complaint given for a time barred offence. The period of limitation as contemplated under Section 468 Cr.P.C. would commence from the date on which the offence was committed. Only if the offence committed is not known within the knowledge of the *de facto* complainant or the identity of the offender was not known to the complainant, the limitation will start from the date on which date the complainant came to know about the alleged occurrence or the identity of the accused. Since the second

respondent has got the direct knowledge about the occurrence, the correct provision applicable to the facts of the case is Section 469(1)(a) and not 469(1)(b) or (c) Cr.P.C.

10.2. What can be condoned under Section 473 Cr.P.C. is the delay in filing the charge sheet. Since the complaint is barred by limitation on the face of it on the day when it was given by the complaint, it is not applicable to the case in hand. Since the offence said to have been committed is barred by limitation even before the investigation was initiated, the whole proceedings will become *non-est* in the eyes of law. And even at the time of filing charge sheet the prosecution did not file any petition under Section 473 Cr.P.C. and the trial Judge who had taken the case on file has not passed any order condoning the delay and hence the whole proceedings got vitiated.

10.3. In support of his above arguments, the learned counsel for the petitioner cited the following judgments:-

"[i] STATE OF PUNJAB vs. SARWAN SINGH [1981 SCALE (1) 619]
[ii] CHEMINOVA INDIA LTD. vs. STATE OF PUNJAB [2021 (3) MWN (Cr.) 12 (SC)]
[iii] AMRITLAL vs. SHANTILAL SONI [2022 SCC Online SC 266]
[iv] KAMATCHI vs. LAKSHMI NARAYANAN [2022 SCC Online SC 446]
[v] KAMLESH KALRA vs. SHILPIKA KALRA [(2020) 4 MLJ (Crl) 501 (SC)]
[vi] M.SUDHIR MONI vs. STATE [(2021) 2 LW (Crl) 139]
[vii] KATHAMUTHU vs. BALAMMAL [(1985) SCC Online Madras 193]"

11. The learned State Public Prosecutor on behalf of the first respondent submitted that Section 468 Cr.P.C. deals with limitation for taking cognizance and not for investigation. The word *'cognizance'* employed under Section 190 Cr.P.C. speaks about the *'cognizance of offences by Magistrates'*. As per Section 190(1)(b) Cr.P.C, the Magistrate takes cognizance of any offence upon a police report (charge sheet) of such facts. So the cognizance is taken by the Magistrate, not at the time when the complaint is forwarded to the Magistrate and it is done only when the charge sheet is filed. The scope and meaning of cognizance have been dealt with various judgments and hence there cannot be any other meaning for the word '*cognizance*' except for the purpose of Section 190 Cr.P.C.

11.1. Only when a private complaint procedure is adopted, there is a need to file a petition to extend the period of limitation at the time when the complaint is filed before the Court. Section 473 Cr.P.C. overrides the explanation to Section 468 Cr.P.C. and in the case in hand the 'complaint' would mean the police report and hence there is no need to file any petition to extend the period of limitation at the time when the complaint was received or it was sent to the Magistrate along with the First Information Report.

11.2. Even in the absence of any petition to condone the delay, if the Court is satisfied that the condonation is necessary in the interest of justice that can be done at any stage of the proceedings before the conclusion of the trial. In the case in hand, a *prima facie* case is made out for the offence under Section 354 IPC. The case in hand does not fall under any of the categories mentioned in the case of ***STATE OF HARYANA vs. BHAJAN LAL*** reported in ***(1992) Supp (1) SCC 335*** and hence separate petition for condonation of delay is not a mandate. Further, the delay alone cannot be the reason to quash the F.I.R. Since the charge sheet has already been filed

in this case and the same has been taken on file, this petition itself has become infructuous.

11.3. The procedural law has to be construed liberally in tune with the object of justice. The inherent powers of the High Court to quash the criminal proceedings have to be exercised sparingly and with utmost caution. The legislative intent is of paramount importance and hence the letter of law and spirit of law cannot be contained in water tight compartments by sticking on to the omission to file a petition under Section 473 Cr.P.C.

11.4. The object of Chapter XXXVI Cr.P.C, which contemplates limitation for taking cognizance of certain offences is to quicken the prosecution of complaints and to rid the inconsequential cases from criminal justice system. Since the F.I.R. and the charge sheet disclose the commission of cognizable offence against the accused for the offence under Section 354 IPC it can not be said that the prosecution is inconsequential. Hence, the petition should be dismissed.

11.5. No special treatment should be given to this case which is already charge sheeted. The case is not a standalone case against the accused and he is facing several other offences. The punishment for the offence under Section 354 IPC has been enhanced to five years imprisonment by virtue of the amendment brought in the year 2013. Hence, the accused who had committed such a serious offence cannot be let loose and set free from the prosecution. The decision rendered in ***SARAH MATHEW vs. INSTITUTE OF CARDIO VASCULAR DISEASES*** reported in ***(2014) 2 SCC 62*** does not apply to the present case which is on a police complaint and not on a private complaint. Even if it is found that the delay has not been condoned, the matter has to be remanded back to the Magistrate in order to enable the Magistrate to consider the point on limitation.

11.6. In support of the said contentions, the following judgments were relied on by the learned State Public Prosecutor:-

"[i] JAMUNA SINGH vs. BHADAI SHAH [AIR 1964 SC 1541]

[ii] R.R.CHARI vs. STATE OF U.P. [1951 SCC Online SC 22]

[iii] LEGAL REMEMBRANCER vs. ABANI KUMAR BANERJI [1950 SCC Online Cal.49]

[iv] S.N.SINHA, CHIEF ENFORCEMENT OFFICER vs. VIDEOCON INTERNATIONAL LTD. [(2008) 2 SCC 492]

[v] DEVARAPALLI LAKSHMINARAYANA REDDY AND OTHERS vs. V.NARAYANA REDDY AND OTHERS [(1976) 3 SCC 252]

[vi] VANKA RADHAMANOHARI vs. VANKA VENKATA REDDY [(1993) 3 SCC 4]

[vii] SUKHDEV RAJ vs. STATE OF PUNJAB [1994 Supp (2) SCC 398]

[viii] TARKESHWAR SAHU vs. STATE OF BIHAR [(2006) 8 SCC 560]

[ix] RAJA vs. STATE OF RAJASTHAN [1998 CrI. L.J. 1608 (RAJ)]

[x] STATE OF KARNATAKA vs. KHALEEL [2004 CrI. L.J. (NOC) 10 (KANT)]

[xi] NUNA vs. EMPEROR [(1912) 13 Crl. L.J. 469]

[xii] BISHESHWAR MURMU vs. STATE OF BIHAR [2004 CrI. L.J. 326 (JHAR)]

[xiii] R.V.KUNHIRAM vs. INSPECTOR OF POLICE [1998 SCC Online Ker 478]

[xiv] SHIKHIL KATOCH vs. STATE OF HIMACHAL PRADESH [2020 SCC Online HP 2693]

[xv] NOIDA ENTREPRENEURS ASSOCIATION vs. NOIDA AND OTHERS [(2011) 6 SCC 508]

[xvi] P.SIVAGNANAM vs. STATE [2016 SCC Online Mad 22987]

[xvii] PANKAJ KUMAR vs. STATE OF MAHARASHTRA [(2008) 16 SCC 117]

[xviii] STATE OF PUNJAB vs. DHARAM VIR SINGH JETHI [1994 SCC (Cri) 500]

[xix] SARDAR AMARJIT SINGH KALRA vs. PRAMOD GUPTA [(2003) 3 SCC 272]

[xx] SALEM ADVOCATE BAR ASSOCIATION (II) vs. UNION OF INDIA [(2005) 6 SCC 344]

[xxi] MADHU LIMAYE vs. STATE OF MAHARASHTRA [(1977) 4 SCC 551]"

12. The learned counsel for the second respondent / *de facto* complainant submitted that though the alleged incident had occurred in the year 2010, the same could not be reported by the second respondent till the year 2021, due to lack of support and protection. The second respondent who is a single mother was not in a position to give the complaint immediately after the occurrence. Both the sons of the second respondent had attained majority now and they secured employment. The second respondent read the news about the arrest of the accused recently in connection with many sexual offences and at that time she recalled her own bitter experience and revealed it to her sons. Since her sons supported and encouraged her she could send the complaint E-mail in the year 2021. In sexual offences, the delay in lodging the complaint cannot be the only reason to quash the proceedings. Only due to fear, pandemic, adverse social circumstances and other such factors the second respondent was not able to

report the crime immediately and that cannot be to allowed to go in favour of the petitioner.

13. No doubt the offence which was reported by the second respondent through an E-mail during July 2021 was barred by limitation at the time itself when it was sent. There is unusual and huge delay of nearly 10 years from the time of the commission of the offence. Section 473 Cr.P.C. speaks about condonation of delay. If the Court is satisfied with the explanation given and in the interest of justice, the delay can be condoned.

14. Even though the charge sheet has been filed and that has taken on file, the learned counsel for the petitioner persuaded this Court to hear his petitions by stating that in the absence of any order on the extension of the period of limitation, the whole proceedings would get vitiated and the charge sheet itself is *non-est in* law.

15. Obviously in the order of cognizance passed by the Magistrate dated 18.08.2022, nothing is stated about the extension of limitation. The

prosecution has not filed any petition under Section 473 Cr.P.C. to condone the delay. The second respondent has filed a Criminal Revision Petition for setting aside the order dated 18.08.2022 in order to enable the prosecution to file a petition under Section 473 Cr.P.C. by offering explanation to condone the delay.

16. In the written submissions filed by the first respondent / State also the above fact of filing the Criminal Revision petition by the second respondent has been stated. From the above submission it is made clear that even at the stage of filing the charge sheet, the first respondent has not filed any petition under Section 473 Cr.P.C. for seeking extension of limitation and thereby condoning the delay.

17. The learned State Public Prosecutor has submitted that the object of Chapter XXXVI Cr.P.C. is to expedite the initiation of the prosecution case before the Court and to get rid of those matters which are inconsequential trial and it not applicable to the facts and context of the case on hand.

18. The fundamental difference between Section 5 of Limitation Act and the limitation under Section 468 Cr.P.C. has been dealt by the Hon'ble Supreme Court in ***VANKA RADHAMANOHARI vs. VANKA VENKATA REDDY*** reported in ***(1993) 3 SCC 4*** and it is held that there is a basic difference between Section 5 of the Limitation Act and Section 473 Cr.P.C. Under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the Court by giving sufficient reasons. Whereas under Section 473 Cr.P.C, a duty is cast on the Court to examine whether the delay has not only been explained, but also to ensure whether it is in the requirement of justice to condone or ignore such delay. In the language of the Hon'ble Supreme Court in the above case, it is held as under:-

> "***6****. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under Section 5 that Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas*

Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interest of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim :vigilantibus, et non dormientibus, jura subveniunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women.

7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even

the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh (AIR 1981 SC 1054). But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. 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, 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 interest of justice".

19. The above observation has been made by the Hon'ble Supreme Court in the above said case while dealing with a case for an offence under Section 498(A) IPC. There was also an another offence under Section 494

IPC and for which the bar under Section 468 Cr.P.C. is not applicable. However, the object of prescribing limitation as explained by the Hon'ble Supreme Court in the case of ***STATE OF PUNJAB Vs. SARWAN SINGH*** reported in ***(1981) 3 SCC 34,*** wherein it is held as under:-

> "*3.(a)....*
>
> *(b).....The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which 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 the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the 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 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 become non est."*

20. By taking cue from the above judgments, the learned counsel for the petitioner submitted that for the occurrence said to have taken place

in the academic year 2010-2011, the complaint has been given in the year 2021. The complaint has been sent by the second respondent through E-mail on 20.07.2021 and the information about the complaint was received on 19.08.2021. The endorsement made in the First Information Report shows that the E-mail was sent to the Office of the Director General of Police and that was forwarded to the first respondent police through the proceedings of the Director General of Police in F.I.R. R.C.No.004746/Crime 4(1)/2021, dated 16.08.2021. So the complaint has been filed after a delay of ten years. But the Magistrate did not take note of the delay even in the absence of any petition filed by the prosecution.

21. The learned State Public Prosecutor submitted that Section 468 Cr.P.C. is limited to cognizance and not for investigation. For the sake of convenience, the provisions under Section 468 Cr.P.C. is extracted as under:-

> "**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.

[(3) 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.]"

22. Section 469 Cr.P.C. makes it in unequivocal terms that the period of limitation shall commence on the date of the offence and the position has been well settled by the Hon'ble Supreme Court and hence there can not be any quarrel on that point. Only if the commission of offence is not within the knowledge of the aggrieved or identity of the person by whom the offence was committed is not known, the period of limitation can be computed from the date when the offence came to the knowledge or the identity of the offender came to be known by the aggrieved person. In the

case in hand, commission of offence was within the knowledge of the second respondent even in the year 2010. The limitation comes into play from the date of the commission of the offence itself. Since the punishment that can be imposed for the offence under Section 354 IPC is two years imprisonment and Section 4 of Tamilnadu Prevention of Harassment Against Women Act is the maximum punishable offence for a period of three years, the bar of limitation for the offence is covered under Section 468 (2)(c) Cr.P.C. The first respondent / prosecuting agency did not deny the fact that the offence is barred by limitation on the date when the complaint was lodged. But the contention of the first respondent is that the delay alone cannot be the reason to quash the proceedings and the delay can be condoned at any time before the conclusion of the trial.

23. On the issue of limitation, the judgment of the Hon'ble Supreme Court held in ***SUKHDEV RAJ Vs. STATE OF PUNJAB*** reported in ***1994 Supp (2) SCC 398*** is also relevant. And it has been referred in the later judgment of the High Court of Kerala in the case of ***R.V.KUNHIRAM vs.***

INSPECTOR OF POLICE reported in ***1998 SCC Online Ker 478*** and it is held as under:-

> "***8***. *On account of the divergent submissions of both the learned Counsel appearing for the petitioners and the learned Public Prosecutor, C.B.I., the citations referred to by both of them can be referred to after extracting Sections 468 and 473, Cr.P.C. hereunder :*
>
> "*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.*
>
> *(3) 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."*
>
> "*473. Extension of period of limitation in certain cases.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance*

of an offence after the expiry of 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 or that it is necessary so to do in the interest of justice."

1. (1981) 3 SCC 34 : AIR 1981 SC 1054 : (1981 Cri LJ 722), State of Punjab v. Sarwan Singh wherein it is held that it is not mandate that the prosecution, either 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.

2. (1988) 4 SCC 36 : AIR 1988 SC 1729 : (1988 Cri LJ 1803). Srinivas Pal v. Union Territory of Arunachal Pradesh. Offence of delay of 9½ years will not save the limitation for prosecution as provided under Section 468, Cr.P.C.

3. (1989) 2 Ker LT 710, Joseph v. State of Kerala. It is laid down that when the final report has been filed after the expiry of 6 years, the same is gone under Section 468, Cr.P.C. The Supreme Court and this Court in the above citations have laid that the prosecution should not be encouraged by condoning delay like 6 years and 9½ years.

4. (1995) 1 SCC 42 : AIR 1995 SC 231, State of Maharashtra v. S.V.Dongre. In this case after the expiry of the limitation prescribed under Section 468, Cr.P.C. an application under Section 473, Cr.P.C. was moved by the prosecution to condone the delay. In that petition without giving notice and affording opportunity to the opposite party an order was passed by the Magistrate by condoning

the delay. When that be so, according to the Supreme Court the action of the Magistrate in condoning the delay is not proper and however he can pass the final order after giving notice to the other side (respondents). In that view the Supreme Court has remitted the matter for fresh disposal. In all the above judgments the Supreme Court and this Court have interfered into the question of delay only after final orders have been passed in the petitions filed under Section 473. But in the instant case on hand, the Sessions Judge has remitted the matter to the Chief Judicial Magistrate for consideration and decision in the petition to be moved by CB1 for condoning the delay.

5. In a case reported in 1983 Cri LJ 1684, Sureshbhai v. State of Gujarat, it was laid down by the Supreme Court that the Court is not precluded from considering the question of condonation of delay on the petition moved by the prosecution after the cognizance was taken.

6. (1993) 1 Ker LT 290 : (1993 Cri LJ 1441), G.T.C. Industrial Ltd. v. Aburahimankutty. The principle here is that it is the discretion of the Court to condone the delay. If the Court is satisfied on the facts of the case that the delay has been properly explained it can take cognizance of the offence after the expiry of the period of limitation. Even if the delay has not been properly explained by the prosecution, if the Court is satisfied it can take cognizance of the complaint after the expiry of the period of limitation, if it finds necessary so to do in the interest of justice.

7. 1994 SCC (Cri) 1480, Sukhdev raj v. State of Punjab. The Supreme Court is of the view that the condonation petition can be entertained and order can be passed on it at any time before the conclusion of the trial Court. The propositions of law laid down by the Supreme Court and by this Court are so clear that petitions for condonation of the delay should not be encouraged in those cases where the delay is for a quite long time like six years and above, that if proper reasons have been explained by the prosecution for condoning the delay, cognizance can be taken, that even after the cognizance was taken in the cases (where the limitation was already over as prescribed in Section 468 Cr.P.C.) petitions filed by the prosecution under Section 473, Cr.P.C. to condone the delay can be entertained and suitable orders can be passed thereon, that such petitions under Section 473, Cr.P.C. can be filed at any lime before the conclusion of the trial, that even when no petitions under Section 473 are filed, the delay can be condoned if the Court is satisfied in the interest of justice and that when a petition has been filed for condonation of the delay, notice and opportunity must be given to the opposite party for being heard."

24. The holistic reading of the above judgment would show that the procedural relaxation with regard to the filing of the petition for condoning the delay is purely based upon the interest of justice. In ***JOSEPH***

vs. STATE OF KERALA reported in ***(1989) 2 Ker. LT 710,*** it is observed that the prosecution should not be encouraged by condoning inordinate delay like 6 years or 9½ years. In ***STATE OF MAHARASHTRA vs. S.V.DONGRE*** reported in ***AIR 1995 SC 231,*** it is held that in the application moved by the prosecution for condoning the delay, notice of opportunity should be offered to the opposite party. The order to condone the delay without giving proper notice to the accused was held to be not proper.

25. In ***SUKHDEV RAJ vs. STATE OF PUNJAB*** reported in ***1994 SCC (Cri) 1480*** also, it is reasserted that Section 473 Cr.P.C. does not lay down that the application to condone the delay should be filed at the time of filing the challan itself and the Court can condone the delay if it is properly explained and it is necessary to do so in the interest of justice.

26. As explicitly stated in the very provision of Section 468 Cr.P.C., the question of limitation is applicable only for those offences which are punishable for a period not exceeding three years imprisonment. Though discretion is conferred on the Court to extend the period of

limitation under Section 473 Cr.P.C. that has to be exercised judicially and the orders must be through a speaking order by indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. It has been held in a Full bench judgment of the Hon'ble Supreme Court rendered in ***STATE OF HIMACHAL PRADESH vs. TARA DUTT*** reported in ***(2000) 1 SCC 230*** that in the absence of any positive order to that effect it is not permissible for the superior Courts to come to a conclusion that the Court had taken cognizance by condoning the delay. In ***SHIKHIL KATOCH vs. STATE OF HIMACHAL PRADESH*** reported in ***2020 SCC online HP 2693*****,** the High Court of Himachal Pradesh has followed the above principle and held as under:-

> "***17****. ..... Section 473 Cr.P.C. confers power on the Court taking cognizance after the expiry of the period of limitation, if conditions envisaged therein are fulfilled, i.e. where a proper and satisfactory explanation of delay is available and where the Court taking cognizance finds that it would be in the interest of justice, and this discretion conferred upon the Court, has to be exercised judicially and on well- recognized principles and wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court with respect to satisfactory explanation and interest of justice. It is*

further observed that in absence of a positive order to that effect, it may not be permissible for the superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence and the matter of taking cognizance of an offence affecting the society, the Magistrate must liberally construe the question of limitation but the circumstances of the case requiring delay to be condoned must be manifest in the order of Magistrate itself. Discretion exercised by the Magistrate on relevant consideration, cannot be faulted with."

27. Though much leverage has been given to the prosecution in the interest of justice to file a petition under Section 473 Cr.P.C. at any point of time before the conclusion of the trial, the true import of Section 473 Cr.P.C. as it is understandable from the words 'extension of the period of limitation' would only imply that the prosecution is bound to get extension of limitation before the Court takes cognizance of the complaint. Though for extraneous reasons the petition under Section 473 Cr.P.C. can be filed at a later stage, that cannot be due to conscious omission or indifference on the part of the prosecution. But it should be only for some exceptional reasons and circumstances. It has been held in various judgments of the Hon'ble

Supreme Court that the order to condone the delay can be made on a petition filed subsequent to the order of cognizance.

28. In so far as the complaints filed by adopting the private complaint procedure, it is needless to state that the complainant has to file a petition to condone the delay in case the offence is barred by limitation at the time when the complaint was filed and on which an order has to be passed by the Magistrate after giving a notice of opportunity to the accused. It is worthwhile to reiterate the significant observation of the Hon'ble Supreme Court made in ***SARAH MATHEW vs. INSTITUTE OF CARDIO VASCULAR DISEASES*** reported in ***(2014) 2 SCC 62*** for bringing Chapter XXXVI in the Criminal Procedure Code. In the said judgment, a reference about the law commission's report and the report of the Joint Parliamentary Committee mentioning the the object for inserting Chapter XXXVI in the Criminal Procedure Code has been made. The significant paragraphs nos.17 to 20 on the above subject are extracted as under:-

> "***17****. The Joint Parliament Committee ("the JPC") accepted the recommendations of the Law Commission for prescribing period of limitation for certain offences. The*

relevant paragraphs of its report dated 30/11/1972 read as under:

"*Clauses 467 to 473 (new clauses) – These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission.*

Among the grounds in favour of prescribing the limitation may be mentioned the following:

1. As time passes the testimony of witnesses become weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.

2. For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at some time or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

3. The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the persons concerned.

4. The sense of social retribution which is one of the purposes of criminal law looses its edge after the expiry of a long period.

5. The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The actual periods of limitation provided for in the new clauses would, in the Committee's opinion be appropriate having regard to the gravity of the offences and other relevant factors.

As regards the date from which the period is to be counted the Committee considered has fixed the date as the date of the offence. As, however this may create practical difficulties and may also facilitate an accused person to escape punishment by simply absconding himself for the prescribed period, the Committee has also provided that when the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the period of limitation would commence from the day on which the participation of the offender in the offence first comes to the knowledge of a person aggrieved by the offence or of any police officer, whichever is earlier. Further, when it is not known by whom the offence has 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.

The Committee has considered it necessary to make a specific provision for extension of time whenever the court is satisfied on the materials that the delay has been properly explained or that the accused had absconded. This provision would be particularly useful because limitation for criminal prosecution is being prescribed for the first time in this country".

***18**. Read in the background of the Law Commission's Report and the Report of the JPC, it is clear that the object of Chapter XXXVI inserted in the Cr.P.C. was to quicken the prosecutions of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system more orderly, efficient and just by providing period of limitation for certain offences. In Sarwan Singh, this Court stated the object of Cr.P.C in putting a bar of limitation as follows:*

"*The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which 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 the offence. The object which the statutes seek to sub-serve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is,*

therefore, of the 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."

***19**. It is equally clear however that the law makers did not want cause of justice to suffer in genuine cases. Law Commission recommended provisions for exclusion of time and those provisions were made part of Chapter XXXVI. We, therefore, find in Chapter XXXVI provisions for exclusion of time in certain cases (Section 470), for exclusion of date on which the Court is closed (Section 471), for continuing offences (Section 472) and for extension of period of limitation in certain cases (Section 473). Section 473 is crucial. It empowers the court to take cognizance of an offence after the expiry of 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 or that it is necessary to do so in the interest of justice. Therefore, Chapter XXXVI is not loaded against the complainant. It is true that the accused has a right to have a speedy trial and this right is a facet of Article 21 of the Constitution. Chapter XXXVI of the Cr.P.C. does not undermine this right of the accused. While it encourages diligence by providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It must be mentioned here that where the legislature wanted to treat*

certain offences differently, it provided for limitation in the section itself, for instance, Section 198(6) and 199(5) of the Cr.P.C. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter XXXVI of the Cr.P.C."

29. In ***STATE OF PUNJAB Vs. SARWAN SINGH*** reported in ***1981 SCALE (1) 619*** the Hon'ble Supreme Court has held that putting a bar due to limitation is in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is further held that the utmost importance should be abided for Chapter XXXVI and the letter of law laid down therein, in any prosecution, whether by the State or a private complainant. Or else, it should take the risk of the prosecution failing on the ground of limitation. It is clarified that Chapter XXXVI is not loaded against the complainant but has a balance between the right of speedy trial under Article 21 of the Constitution of India and the right to get justice for the aggrieved who is affected due to commission of a crime.

30. The offences punishable for imprisonment exceeding three years do not fall under the purview of Chapter XXXVI of the Court. So

there is no escape for the offender on the ground of limitation, if he had committed any offence punishable for a period beyond three years. Even while prescribing limitation Section 468 (3) Cr.P.C., it is clarified that if there are more than one offences are tried together, the limitation will be determined with reference to an offence which has more severe punishment. The overriding effect of Section 473 Cr.P.C. is also a balance between the right of the accused for a fair trial and the right of the aggrieved seeking justice.

31. So far as the case arising out of the police complaint is concerned, the expiry of limitation can be at three stages:-

[i] At the stage of First Information Report itself with reference to the date of commission of offence;

[ii] Expiry of limitation at the time when the charge sheet is filed. Even though at the time of the First information Report was filed there is no bar of limitation with reference to the date of commission of the offence; and

[iii] Expiry of limitation at the time when the Court takes cognizance even though the charge sheet was filed in time.

32. In so far as the third instance is concerned, there need not be any second thought that for the lapse on the part of the Court, the aggrieved should not be affected. When the charge sheet is filed in time but the delay is in taking the cognizance by the Court due to any administrative reasons, even without any application is filed to condone the delay, the Court has got a duty to take the case on file without seeking any other explanation for the delay. Because the delay is caused due to the inaction on the part of the Court, even though the charge sheet has been filed in time.

33. The second instance is when there is no bar of limitation at the time of filing the complaint and it gets expired due to the delay made during the course of investigation. In that case, the delay is caused by the prosecuting agency and it is the prosecution agency, who has to offer explanation for filing the charge sheet after the expiry of limitation. Even if the Court had taken cognizance on the charge sheet filed beyond period of limitation, the Court can call up on the prosecution at any stage to offer explanation for the delay. If the prosecution is not vigilant and allows the

discretion of the Court to be exercised without offering any explanation, it faces the risk of failure on account of bar of limitation.

34. The liberty available to file a petition to condone the delay under Section 473 Cr.P.C. at any stage of the case before its conclusion is not to give any preferential consideration to the prosecution but in the interest of justice in certain extraneous circumstances. Deliberate inaction on the part of the prosecution in filing a petition under Section 473 Cr.P.C. at the stage when the charge sheet is filed can not guard the case of the prosecution from getting failed due to bar of limitation. What was beyond the control of the prosecuting agency and what prevented it from filing the petition to condone the delay at the time of filing the charge sheet should also be explained in order to appreciate the reasons for condonation of delay in the interest of justice.

35. The third instance is the expiry of limitation even at the time when the complaint is lodged. The case in hand falls under this category. Since the occurrence is said to have occurred during the year 2011 and the

complaint through E-mail has been sent by the second respondent to police during July 2021, the offence which is punishable for a maximum punishment of three years imprisonment is barred by limitation with reference to the date of commission of the offence.

36. It is vehemently argued by the learned State Public Prosecutor that the First Information Report is not a complaint in the context of the police report as defined under Section 2 (d) Cr.P.C. and nothing will prevent the police to act upon a complaint even if it is made for an offence barred by limitation when the complaint was given by the *de facto* complainant. '*Complaint*' is defined under Section 2(d) Cr.P.C. as under:-

> "*2(d)."complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*
>
> *Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"*

37. In view of the above definition, it is claimed that the term 'cognizance' would only refer to the stage when the police report is filed before the Magistrate for initiating criminal proceedings under Section 190 Cr.P.C. Section 190 reads as under:-

> "**190. Cognizance of offences by Magistrates**.
> (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-
> (a) upon receiving a complaint of facts which constitute such offence;
> (b) upon a police report of such facts;
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

38. The case in hand does not fall under a private complaint or under information received from any person other than the police officer. No doubt it would fall under Section 190(b) Cr.P.C. It is relevant to refer

the judgments on the term 'cognizance'. It is observed in the case of ***GOPAL MARWARI Vs. EMPEROR*** reported in ***1943 SCC Online Pat 5*** that the word ***'cognizance***' is used in the Code to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. An incidental reference has been made about the said judgment in the later Full Bench judgment of the Hon'ble Supreme Court rendered in ***R.R.CHARI vs. UTTAR PRADESH*** reported in ***1951 SCC online SC 22*** and it is held that commencement of proceedings different from initiation of proceedings. And taking cognizance is a condition precedent to the initiation of proceedings by a Magistrate. The Court has observed that the word *'cognizance'* is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense. For the sake of clarity, the relevant portion of the judgment is extracted as under:-

> *".... that the word 'cognizance' is used in the Code indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. it is a different thing from the initiation of proceedings. It is the condition precedent to the initiation of proceedings by the Magistrate. The Court noticed that the word 'cognizance' is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense."*

39. The criminal proceedings cannot be initiated by the Magistrate without taking judicial notice of the offence and taking cognizance of the same. In ***S.N.SINHA, CHIEF ENFORCEMENT OFFICER vs. VIDEOCON INTERNATIONAL LTD.*** reported in ***(2008) 2 SCC 492***, it is reasserted that the word ***'cognizance'*** would mean taking judicial notice. For convenient understanding, the relevant paragraphs of the judgment are extracted as under:-

> "***19***. *The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.*
>
> ***20***. *"Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an*

offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

40. The above judgment would show that while dealing the Court had the occasion in the above case to deal with the distinction between issuance of process under Section 204 Cr.P.C. (under Chapter XVI) and taking cognizance under Section 190 Cr.P.C. (under Chapter XIV). The Court has also made a distinction between applying the mind to find out a *prima facie* case by making an inquiry under Section 202 Cr.P.C. and issuing process under Section 204 Cr.P.C. for commencing the proceedings. Before reaching the stage of commencing the proceedings under Section 204 Cr.P.C., the case has to pass the stage of '*taken cognizance'* under Section 190 Cr.P.C. While *taking cognizance* falls under Chapter XIV for initiating the proceedings, *issuing process* falls under Chapter XVI for commencing the proceedings. Both the initiation of proceedings and commencement of proceedings are magisterial functions and for which the Magistrate has to apply his mind and exercise his magisterial power. A Magistrate cannot '*become cognizant'* of any fact and take any action

without application of mind. And this is irrespective of the resultant effect of the judicial act done by the Magistrate. The *act of becoming cognizant* during a judicial proceedings is a continuous process, though its purpose might differ from time to time as seen under the various chapters of the Criminal Procedure Code, where a Magistrate is expected to exercise his magisterial powers conferred upon him.

41. It is only in view of the above reality, in paragraph 19 of ***S.N.Sinha,*** the Hon'ble Supreme Court has observed that the word '*cognizance*' has got no esoteric or mystic significance in criminal law and it obviously connotes something which falls under judicial notice of the Magistrate for the purpose of initiating any proceedings irrespective of the fact whether it is for initiation of proceedings under Chapter XIV or for the commencement of proceedings under Chapter XVI.

42. The Magistrate has got the duty to apply his mind whenever he exercises powers to pass orders on any application filed or any proceedings brought before him in accordance with the Code of Criminal Procedure.

S.N.Sinha has also settled the legal position that the commencement of the period of limitation for the purpose of Section 468 Cr.P.C. would start from the date of the occurrence and not from the date of taking cognizance.

43. The learned State Public Prosecutor submitted that the registering of F.I.R. is not a magisterial action and it does not fall under Chapter XVI and hence the prosecution has got no obligation to file any petition under Section 473 of Cr.P.C., at the stage of registering the F.I.R. or sending the F.I.R. to Court.

44. When a police complaint is given by someone by alleging the commission of an offence including a cognizable offence, the complaint is considered as an information about the commission of the offence and thereafter, the officer in-charge of the police station enters the substance of the said information in a book kept by such officer in a form as prescribed by the State Government. Such recording of the information and causing entries are called as First Information Report. After registering the F.I.R. on the basis of the information of a cognizable offence, the officer in-charge of

the police station would send the F.I.R. along with the complaint to the jurisdictional Court as early as possible.

45. However, law does not say that there is an obligation on the part of the Station House Officer that the F.I.R. should be sent immediately to the Court of the Jurisdictional Magistrate. But the seal of the Court on receipt of the F.I.R. is an important proof to show that time of registering the F.I.R. as shown therein is genuine and there was no manipulation done in the police station with regard to the time or the contents of the complaint or the substance of the F.I.R.

46. The case in hand involves an offence which is barred by limitation at the time when the complaint was made through E-mail. No doubt, the exercise done by the Station House Officer while registering the F.I.R. under Section 154 Cr.P.C. is just causing entries and it is not sending the final report after concluding the investigation.

47. It is at the option of the Investigative officer either to send the F.I.R. before filing the final report or send the F.I.R. along with the final report. The risk goes with the concerned Investigating Officer. But when a request is given to the Magistrate for remanding an accused for a cognizable offence which has been already barred by limitation, but on which F.I.R. is registered, the prosecution cannot seek shelter by stating that Section 473 Cr.P.C. does not prescribe any stage during which the petition for seeking extension of limitation / condonation of delay can be made and claim that without getting any extension of limitation a magisterial order for remand can be obtained.

48. As rightly held in the case of ***S.N.Sinha***, the word '*cognizance*' has not been defined in Criminal Procedure Code. It is probably because it does not have any mystic significance and it merely means *'becoming aware of something*' when it was brought to the judicial notice. All magisterial acts or orders passed prior to taking cognizance under Section 190 Cr.P.C., are done only after Magistrate *becomes cognizant* of the facts on the basis of the records produced before him and by applying his mind.

49. If the complaint is filed before the expiry of limitation and the limitation is barred during the course of the investigation or the delay is caused by the Court itself after the charge sheet was filed, it is altogether a different game. But when the offence is barred by limitation at the very instance when the complaint was given to the officer in-charge of the police station and if the Investigating Officer continues to investigate the case without seeking any permission or condonation from the Court, the risk goes with the Prosecuting Agency.

50. As stated already, the balance between Sections 468 and 473 Cr.P.C. is obviously a protective balance between the interest of the aggrieved and the interest of the accused and ultimately for serving the ends of justice by preventing the abuse of the process of the Court. So from the object of Chapter XXXIV it can be known clearly that no preferential treatment can be given to the prosecution, if it receives a complaint after several years of delay and takes action. Time and again it is held that the offences which are barred due to lapse of several years cannot be taken

lightly, as it accrues a right upon the accused to get rid of the prosecution for those offences falling within the purview of Section 468 Cr.P.C.

51. It is needless to state that speedy trial is the core element for fair trial and it is a facet of Article 21 of the Constitution of India, which guarantees right to life and personal liberty. If a police officer registers a case involving an offence barred by limitation at the time when it was registered and goes on to investigate or even arrest the accused, it may be due to his unbridled powers. But the Court can not endorse the same, unless it is shown to be in the interest of justice. Even then, the Court can not pass any orders on a time barred complaint without giving any notice of opportunity to the opposite party and passing a reasoned orders for extension of limitation under Section 473 Cr.P.C.

52. Hence if an accused is brought for remand for an offence which is barred by limitation at the inception of receiving a complaint by police, the Court cannot remand the accused without passing any order as to the justification for remanding the accused in a time barred case, whether or not

the investigative agency files a petition seeking extension of limitation. The reasons so stated should be independent of the well founded nature of any offence and would warrant a remand within the meaning of Section 167 Cr.P.C. In case, the Court deems it fit after being cognizant of the fact of commission of an offence barred by limitation, extension should be given after a notice of opportunity is given to the accused in whose favour a right to get rid of the criminal proceedings for the said offence had already accrued in view of the offence barred by limitation under Section 468 Cr.P.C.

53. A *cognizable offence* is defined under Section 2 of Cr.P.C., as a case in which a police officer may, in accordance with the first schedule or under any other law for the time being in force, arrest the accused without a warrant. While reading the first schedule for finding out what are the cognizable offences, the limitation under Section 468 Cr.P.C. can not be overlooked. Even while giving the interpretation for the word '*cognizance*' as found under Section 468 Cr.P.C., from the import of Section 190 Cr.P.C,

the Courts can not mutely witness violation of the right to life and personal liberty.

54. The learned Special Public Prosecutor submitted that so far as this case is concerned, this is not a stand alone offence against the petitioner / accused and he has been already booked for many sexual offences and hence there is justification for continuing the proceedings against the petitioner. The petitioner / accused involved in this case is a self-proclaimed god man and who has lot of followers. In the year 2021, several cases have been registered against him on the allegations that he had abused the children who studied at his Sushil Hari International Residential School. It has been alleged that the accused is the Founder of the said School and he had misused his position and committed the sexual offences on some students during the period between 2007 and 2020.

55. Many of those cases involve the offences which are punishable for more than three years and hence they did not fall under the risk of Section 468 Cr.P.C. So far as this case is concerned, the maximum

punishment that can be imposed for the maximum punishable offence during the relevant point of time is three years imprisonment. The occurrence is said to have taken place in the year 2010-2011. The learned counsel for the second respondent / *de facto* complainant submitted that after seeing the news about the other cases registered against the accused, the second respondent / *de facto* complainant recalled her own trauma and conveyed it to her sons and they prompted her to send the complaint through E-mail during July 2021.

56. On the face of it, the case is barred by limitation in view of the delay of nearly seven years, excluding the permissible time limit of three years from the date of the commission of the offence. While settling or reasserting a legal position, the Court cannot be influenced by the nature of the crime or the criminal. So while dealing with the interpretation of the law and understanding its import, the Court can not have any different attitude by reading more about the type of the offender than on the law which governs the situation on hand. The Court only can take cognizance of the offence and not the offender. Even in the Indian Penal Code the punishment is prescribed for the offence.

57. Further, a question of law which is omitted to be settled in a case involving a hardcore criminal will have the same impact on a case which involves a first offender or a person falsely implicated in the case. The impact of law is uniform irrespective of the character of the offender. Though such facts about the offender might play a crucial role in fixing the quantum of the punishment by exercising the discretion of the Court, while settling down the law, the Courts can not be carried over by the type of the offender, the type of the publicity / media attention or any other sensationality given or blown to the case, except the position of law.

58. In the case in hand, though it has been stated in the counter filed by the first respondent / State that they would file a petition under Section 473 Cr.P.C. to extend or condone the limitation, while filing the charge sheet, the first respondent did not file any such petition under Section 473 Cr.P.C. At one stretch, the prosecution vehemently argues about the seriousness of the sexual offences but at another stretch it remains indifferent by not choosing to file a petition under Section 473 Cr.P.C. at the time when the charge sheet was filed and thus creating a

ground for the accused to claim that the charge sheet so filed is *non-est* in law. Prosecuting Agency who demands a serious consideration from the Courts should have also acted in a serious manner by taking all possible action at the earliest point of time.

59. At the risk of repetition, it is reiterated that the object of introducing Chapter XXXVI is to prevent the parties from filing cases after a long time and as a result of which the material evidence might disappear and prevent abuse of the process of Court by filing vexatious and belated prosecution after a long time. As held in the case of ***STATE OF PUNJAB vs. SARWAN SINGH*** reported in ***1981 SCALE (1) 619*** that any prosecution whether by the State or through a private complainant, must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. It is because even if the accused was convicted in a case barred by limitation, the entire proceedings would get vitiated and become *non-est*. Even while condoning the delay, the interest of justice which has to play a paramount role and not any other extravagant reasons. Hence the Court has to take note of the nature of the offence, the class to which the victim

belongs and the background of the victim, the amount of cruelty or inhumane treatment undergone by the victim at the hands of the accused etc. while considering the request for condoning the delay. Any factor like inconsequential nature of the offence, deliberate inaction on the part of the prosecution etc., would defeat the interest of justice and hence those can be the reasons to reject the plea for extension of limitation.

60. In the case in hand, admittedly neither the prosecution had filed any petition to condone the delay nor the jurisdictional Court has passed any speaking order as to why the case has been taken cognizance even though the offence is barred by limitation and there was a delay of ten years at the time when the F.I.R. was registered.

61. The learned counsel for the petitioner submitted that since the cognizance was taken in a case which is already barred by limitation due to delay of ten years from the date of the occurrence, the proceedings have become *non-est* in the eyes of law.

62. However, the learned counsel for the second respondent submitted that she has filed a Criminal Revision Petition to set aside the order of cognizance for the purpose of enabling the prosecution to file a petition under Section 473 Cr.P.C. and to enable the Court to pass a speaking order on the point of limitation. In fact, the Criminal Revision Petition has been filed along with the petition to condone the delay in filing the same and the same is said to be pending.

63. In view of the above discussions on the law of limitation applicable to the criminal cases, I feel it is essential to lay down the following guidelines:-

> **(i)** If any magisterial action / orders including an order for remand is required to be passed against any accused in a case involving a F.I.R. which has been registered for an offence which is already barred by limitation, the Court shall not pass any such order, without passing a speaking order about the extension of the period of limitation / condonation, after giving a notice of opportunity to the accused.
>
> **(ii)** The accused shall be remanded only if the Court positively considers the extension of limitation or

condonation of delay and the case is well founded with grounds for remanding the accused.

(iii) If the Court does not choose to grant a favourable order for extending the limitation or condoning the delay, the accused shall not be remanded and he should be released forthwith.

(iv) If no magisterial action / order is required to be passed on a case registered for an offence already barred by limitation, but the charge sheet has been filed, the Court has to pass an order for either extending the period of limitation and condoning the delay or rejecting the extension for the reasons recorded thereon and in the interest of justice, after causing a notice of opportunity to the accused. The above order shall be passed before the magistrate proceeds to take cognizance of the charge sheet.

(v) The orders as to the extension / condonation or rejection of limitation is essential even in the absence of any petition filed by the prosecution under Section 473 Cr.P.C.

(vi) In case the Court takes cognizance of the charge sheet filed for a time barred offence without passing any order for extending the period of limitation or condoning the delay, the accused shall have a right to file a petition for discharging him, irrespective of the stage of the proceedings, on the ground of limitation.

(vii) If the offence is not barred by limitation at the time when the F.I.R. was registered, but limitation expired during the course of investigation, the charge sheet has to be filed along with a proper application under Section 473 Cr.P.C. In the event of such application is filed, the Court shall give notice of opportunity to the accused and pass an order after hearing both sides. Only if the delay is condoned by means of a speaking order the charge sheet can be taken cognizance.

(viii) If for extraneous reasons the charge sheet has been taken on file without a petition filed under Section 473 Cr.P.C. along with the charge sheet filed as mentioned above and without any order about condoning the delay, the prosecution can file a petition under Section 473 Cr.P.C. even at any subsequent stage of the proceedings,

for any acceptable reasons. However, an order on the said petition can be passed only after a notice of opportunity is given to the accused. A positive order on such a petition filed under Section 473 Cr.P.C. can not be a routine one but after considering the genuineness of the reasons stated and all other relevant factors in the interest of justice.

(ix) If the offence is not barred by limitation at the time when the F.I.R. was registered and also when the charge sheet was filed, but the limitation expired due to the delay on the part of the Court in taking cognizance, the Court shall not insist for any petition under Section 473 Cr.P.C., but take cognizance of the charge sheet, by recording the reasons of its own delay.

64. Since the second respondent is said to have filed a Criminal Revision Petition for setting aside the order of cognizance in order to enable the prosecution to file a petition under Section 473 Cr.P.C. along with the charge sheet and the same is pending, this Criminal Original Petition is **disposed** with the above observation. Depending on the orders passed in the Criminal Revision Petition, the petitioner can raise his objections in the event of any petition is filed by the first respondent under Section 473

Cr.P.C. Even if the Criminal Revision Petition is pending but there is no order of stay, the petitioner shall have the liberty of either filing a fresh Criminal Original Petition for quashing the charge sheet or a petition before the trial Court for discharging him on the ground of limitation. Consequently, connected Miscellaneous Petition is closed.

65. Before parting, this Court places it on record about an ugly turn that had taken place after this matter was reserved for orders. Pseudonymous letters of threat was sent for dissuading this Court from passing orders in this petition. Such cheap attitude on the part of the person who sent would only show cowardice and disregard to the process of the Court. The Courts are not pliable for such kind of threats and those cheap attempts will not stand in the way of dispensing justice. The above message is delivered in louder terms by way of passing the orders in this Criminal Original Petition.

01.03.2023

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
sri / gsk

To

1.The Inspector of Police,
Government of Tamil Nadu,
CBCID, OCU Police Station-II,
Chennai.

2.The Public Prosecutor,
Madras High Court,
Chennai.

R.N.MANJULA, J.

sri/gsk

Pre-Delivery Order made in
Crl.O.P.No.23806 of 2021
& Crl.M.P.No.13107 of 2021

01.03.2023