

IN THE COURT OF THE ADDL SESSIONS JUDGE (FTC) BONGAIGAON::::
BONGAIGAON

CRIMINAL MOTION NO-37(4)/2012

Sri. Nibaran Boro
.....Petitioner.

-Vs-

State Of Assam.
.....Respondent.

PRESENT :- Smt. R. Kar.
Addl Sessions Judge (FTC).
Bongaigaon.

APPEARANCE :- Sri R. Debnath.
.....Ld. Counsel for the Petitioner.

Smti. R. Choudhury.
.....Ld. Addl. PP for the Respondent.

Date of Hearing :- 16-12-14.

Date of Judgment :-22-12-14.

J U D G M E N T

This revision under section 397/399 Cr.P.C. has been directed against the order dated 16/11/11 passed by the learned Chief Judicial Magistrate, Bongaigaon In GR Case No-529 of 2006.

1. Brief fact of the case leading to this revision is that on 15/10/06 one Amir Hussain lodged an Ejahar with Bongaigaon police station stating that the driver of the vehicle No. AS-15/1131 by driving the vehicle in most rash and negligent manner knocked his cousin as a result he died on the spot. On receipt of the said Ejahar O/C Bongaigaon P.S registered a case vide Bongaigaon P.S case No.391/2006 U/S 279/304(A) IPC on the same date.

Contd.....P/2

After completion of investigation charge sheet has been submitted on 30/11/2006 vide C.S No. 215/2006 which was forwarded to the learned Chief Judicial Magistrate, Bongaigaon on 2/11/2011 and after receiving the charge sheet on 6/11/11 learned Chief Judicial Magistrate took cognizance against the accused petitioner and issued summon. The accused after receiving summon sought time for appearance. During the pendency of the case at the stage of appearance, the accused-petitioner being highly aggrieved by and dis-satisfied with the order dated 16/11/11 preferred this revision on the following grounds.

GROUND S

- a) for that the Learned court below has erred in law by taking cognizance of the charge sheet so filed by the police beyond the period of limitation that too without having any separate petition for condoning the delay nor stated any ground explaining the cause of delay in the charge sheet either.
- b) for that the Learned court below did not appreciate the spirit and mandate of section 468(2)(c) of Cr. P.C.
- c) for that the Learned court below has miserably failed to understand that the maximum punishment for the alleged offence U/S 279 of IPC is 6(six) months or with fine which may extends upto Rs.1000/- or with both and the maximum punishment for the alleged offence U/S 304(A) of IPC is 2(two) Years or with fine or with both in total the maximum punishment for both the offences are 2(two) Years and 6(six) months but in this case the cognizance has been taken by the Learned court below after five years from the date of commission of the alleged offence or registration of the case. Hence on this score alone the order dated. 16/11/2011 so passed by the Learned chief judicial Magistrate, Bongaigaon is not tenable in the eye of law and liable to be quashed.

d) for that the Learned court below has failed to appreciate the statutory provisions of law as enumerated under section 468 of Cr.pc as the investigating agency has submitted the charge sheet before the Learned court below after 5(five) years from the date of commission of the alleged offence without explaining or assigning any reason for causing such delay and on the basis of the charge sheet so filed by the police beyond the statutory period of limitation the Learned court below without applying his judicious mind has taken cognizance and passed the impugned order dated 16/11/2011 hence the same is liable to be set aside or quashed and the Accused- petitioner is liable to be discharged from the charges leveled against him.

2. I have heard submission of both sides and gone through the LCR.

3. Learned counsel for the petitioner in support of his contention as raised in the petition has placed reliance on the decision of Hon'ble Gauhati High Court reported in 2008(2)GLR 686(K. Vikheho Sema VS State of Nagaland).

4. I have gone through the said citation. I am of the opinion that this citation will not help them as the facts of the said case is different from the instant case. In the instant case accident has taken place on 15/10/06 and on the same date FIR was lodged by the informant and on the same date case was registered and charge sheet has been submitted on 30/11/06. It can thus be seen that there was no delay in filing the FIR. In this case charge sheet has been submitted u/s 279/304(A) IPC. Section 279 IPC is punishable with imprisonment for 6 months or fine of Rs.1,000/- or both and section 304(A)IPC is punishable with imprisonment for 2 years or fine or both.

5. For Ready reference provisions of section 468 Cr. PC is reproduced below :-

“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.]”

6. Now contention has raised in the petition that learned court below has erred in law by taking cognizance of the charge sheet so filed by the police beyond the period of limitation without having separate petition for condoning the delay or explaining the cause of delay in the charge sheet is not tenable. In this case it is evident that charge sheet has been submitted within one and half months from the date of commission of offence as well as from the date of filing of the FIR. As such question of delay in submitting the charge sheet does not arise. It is evident from the charge sheet that same was forwarded to the Chief Judicial Magistrate, Bongaigaon on 2/11/11 and from the LCR it appears that the charge sheet was put up before the learned CJM, Bongaigaon on 16/11/11 and on that date he after taking cognizance made over the case to the court of learned SDJM(S), Bongaigaon for disposal.

7. Now constitution bench of Hon'ble Supreme Court in the case of Mrs. Sarah Mathew VS Institute of Cardio Vascular Diseases by its Director DR. K.M Cherian and Others(Criminal Appeal No. 829 of 2005)

decided on 26/11/2013 has laid down the correct proposition of law for the purpose of computing the period of limitation U/S 468 Cr. PC. In the said judgment Hon'ble Supreme Court in para 41 has held as follows:-

*“41. In view of the above, we hold that for the purpose of computing the period of limitation under section 468 of the Cr. P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that **Bharat Kale** which is followed in **Japani sahoo** lays down the correct law. **Krishna Pillai** will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under section 468 of Cr. P. C.”.*

8. Thus in view of decision of Hon'ble Supreme Court as referred above I hold that there is no infirmity or impropriety in the impugned order dated 16/11/11.

9. The revision has no merit. In the result same is dismissed.
Send back the LCR along with copy of this judgment.

The Judgment is given on **this 22th day of December, 2014** and under my hand and seal of this court.

(R. Kar)

Addl. Sessions Judge (FTC).

Bongaigaon.

Dictated and corrected by me.....

(R.Kar)

Addl Sessions Judge (FTC).

Bongaigaon.

