

**(2013) 08 MP CK 0196**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Miscellaneous Criminal Case No. 7991 of 2012

Chaudhary Anil and Others

APPELLANT

Vs

Sanjeev Sharma and Another

RESPONDENT

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**Date of Decision:** Aug. 8, 2013

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154(3), 200, 200, 201, 202
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 294, 323

**Hon'ble Judges:** D.K. Paliwal, J

**Bench:** Single Bench

**Advocate:** Pradeep Katare, for the Appellant; Y.K. Pathak, Advocate for Respondent No. 1 and Ku. Nutan Saxena, Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

D.K. Paliwal, J.

This petition has been filed u/s 482 of Cr.P.C. for quashing the proceedings pending in Criminal Case No. 1226/12 for the offence punishable under Sections 294, 147, 148, 336, 452, 323/149, 506(2) of IPC. against the petitioners in the Court of Judicial Magistrate First Class, Bhind. The brief facts of the case are that respondent No. 1/complainant filed a private complaint in the Court of Judicial Magistrate First Class, Bhind alleging that the petitioners are his neighbours and when he was raising construction of his house and work of one R.C.C. pillar was almost completed then petitioner No. 1 armed with gun and other petitioners armed with lathi came and told that the pillar has been constructed in their land measuring 1 "inch", therefore, they will demolish the construction. When complainant objected then Anil fired from his licensee gun and Vimal fired from katta on the complainant and thereafter petitioners entered in the house of the complainant and gave beating by means of kicks and fists as well as by gun and lathi. When father, mother and other ladies of

the family of the complainant tried to intervene, they were also beaten. Thereafter, they ran away. Complainant went to lodge the report of the incident at Police Station Dehat, Bhind, he saw that Anil and other petitioners were present there. It is further alleged that Anil claimed himself to be Press Reporter, therefore, Police is under his influence and report of the complainant was not registered. Thereafter, complainant has approached the A.S.P., Bhind alongwith an application u/s 154(3) of Cr.P.C., but no case has been registered against the petitioners. Therefore, he filed a private complaint.

2. Learned Magistrate after recording the statements u/s 200-202 of Cr.P.C. vide order dated 6.7.2011, dismissed the complaint, against which complainant has preferred a revision before Sessions Court, Bhind. The Sessions Court vide order dated 01.03.2012 in Criminal Revision No. 149/2011 has set-aside the order of J.M.F.C. and remanded the matter with a direction to call Dr. S.S. Parihar, who examined the complainant Sanjeev Sharma and Rajesh Shukla and also call the report from S.P. Bhind as to what action has been taken on the complaint made by the complainant and thereafter, shall pass a fresh order. On this, Dr. S.S. Parihar has been called and by impugned order, cognizance has been taken against the petitioners for the offence punishable under Sections 294, 147, 148, 336, 452, 323/149, 506(2) of IPC. Being dissatisfied, petitioners have filed this petition.

3. It is submitted by the learned counsel for the petitioners that the impugned order is illegal and against the record, hence same is liable to be set aside. Earlier complaint was dismissed vide order dated 06.07.2011, therefore, on the same facts cognizance would not be taken. It is further submitted that the incident is alleged to be taken place on 24.07.2008, but the cognizance has been taken on 04.09.2012, i.e. after lapse of four years, which is barred by limitation, therefore, proceedings are liable to be quashed.

4. Learned counsel for the complainant/respondent supported the impugned order.

5. In order to appreciate the rival submissions of the learned counsel for the parties, I have perused the record.

6. The order passed by the learned CJM, Bhind on 06.07.2011, reveals that after filing of the complaint the statement of complainant has been recorded u/s 200 of Cr.P.C. and statements of Rajendra Prasad Shukla, Phool Singh, Ramnaresh, Rishikesh Sharma, Mithlesh and Rajkumari have been recorded u/s 202 of Cr.P.C. Learned CJM has held that the allegations are not true, no prima facie ground exists to register the complaint, hence complaint is dismissed.

7. It seems that against the impugned order respondent/complainant preferred a Criminal Revision No. 149/2011 before the learned 6th ASJ, Bhind, which has been disposed of vide order dated 01.03.2012 by holding that the impugned order is illegal and improper, hence order impugned is set aside. It was directed that learned Court below to examine Dr. S.S. Parihar, who examined the complainant Rajendra

Shukla and Sanjeev Sharma alongwith their medical report, further call the report from the Superintendent of Police, Bhind in respect to what action has been taken on the report lodged by the complainant on 01.08.2008, thereafter pass a fresh order.

8. It appears that in compliance of the order passed by the revisionary Court, learned CJM, Bhind has recorded the statement of Dr. S.S. Parihar on 03.09.2012 and after considering the statement of the complainant and his witnesses has passed the order directing for registration of the complaint and summon the petitioners.

9. The submissions of the learned counsel for the petitioners that once the learned Magistrate has dismissed the complaint it was not open for him to direct for registration of the complaint, but I do not find any substance in the submission because the learned Magistrate in compliance of the order of the revisionary Court has recorded the statement of Dr. S.S. Parihar and also called the report from the Police. Dr. S.S. Parihar deposed that on 25.09.2008 he was posted as Medical Officer, District Bhind. On the said date he had examined Sanjeev Sharma and Rajendra and found one contusion on left shoulder and one contusion on right shoulder. Both the injuries were caused by hard and blunt object. On the same day he has also examined Rajendra and found abrasion on right elbow and right fore arm. The injuries were caused by hard and blunt object. Dr. S.S. Parihar has given his report which is exhibited as Ex. P/1 and P/2. It is pertinent to mention that in the statement of Dr. S.S. Parihar the date of examination has been mentioned as 25.09.2008, while incident is alleged to be taken place on 24.07.2008. It seems that due to typographical mistake instead of 25.07.2008 the date has been typed as 25.09.2008. Thus, from the statement of Dr. S.S. Parihar the statement of complainant and his witnesses have been corroborated.

10. From perusal of the impugned order, it appears that the police report was called in compliance of the order passed by the Revisionary Court and as per police report the incident took place and complainant has sustained simple injuries. Thus, in view of the evidence the learned Magistrate has found that the evidence of the complainant and his witnesses is supported by medical evidence therefore, directed for registration of the complaint. The evidence has been collected and has been taken on record as per direction of the revisionary Court, therefore, the submissions of the learned counsel for the petitioners that once the complaint was dismissed, learned Court was not correct in taking cognizance is devoid of merits.

11. The next contention of the learned counsel for the petitioners is that the incident alleged to be taken place on 24.07.2008 and the cognizance has been taken on 04.09.2012 i.e. after lapse of four years, hence it is barred by limitation as provided u/s 466 of Cr.P.C.

12. I have considered the submissions of the learned counsel for the petitioners. The learned Magistrate has taken cognizance under Sections 294, 147, 148, 336, 452,

323/149, 506-II of IPC. Section 468 of Cr.P.C. speaks about the limitation for taking cognizance as under:-

Section 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-s(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 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 purpose 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.

13. As noticed above the complaint has been registered under Sections 294, 147, 148, 336, 452, 323/149, 506-II of IPC. The offence u/s 294 of IPC is punishable with imprisonment for three months or fine of both. The offence u/s 147 of IPC is punishable with imprisonment for two years or fine or both. The offence u/s 148 of IPC, is punishable with imprisonment for three years, or fine or with both. The offence punishable u/s 336 of IPC is punishable with imprisonment for three months, or fine of Rs. 250 or both. The offence u/s 452 of IPC is punishable with, imprisonment for seven years and fine. The offence u/s 323/149 of IPC is punishable with imprisonment for one year or fine of Rs. 1,000 or both. The offence u/s 506-II of IPC is punishable with imprisonment for seven years, or fine, or both.

14. Thus, the bar u/s 468 of Cr.P.C. is not applicable in this case because the offence punishable u/s 452 of IPC and Section 506-II of IPC are punishable with imprisonment with seven years, therefore, the limitation as prescribed u/s 468 of Cr.P.C. is not bar for taking cognizance.

15. The allegations made in the complaint are prime facie corroborated by the statement of the complainant as well as by the statements of witnesses and prima facie the ingredients of offence punishable under Sections 294, 147, 148, 336, 452, 323/149, 506-II of IPC, are present, therefore, in my opinion, the learned Magistrate has not committed any error in taking cognizance in the offence.

16. The power u/s 482 of Cr.P.C. cannot be exercised when prima facie the complaint and the material discloses the commission of offence. In view of the above, petition deserves to be dismissed. Consequently, petition stands dismissed.