

Sarah Mathew Vs The Institute of Cardio Vascular Diseases and Others

Court: Supreme Court of India

Date of Decision: March 26, 2014

Acts Referred: Child Marriage Restraint Act, 1929 " Section 9
Criminal Procedure Code, 1973 (CrPC) " Section 200, 4(2), 468, 468(2), 469
Penal Code, 1860 (IPC) " Section 304A

Citation: 2014 (5) SCALE 54

Hon'ble Judges: Sudhansu Jyoti Mukhopadhyaya, J; R.M. Lodha, J; Dipak Misra, J

Bench: Full Bench

Final Decision: Allowed

Judgement

1. Bereft of unnecessary facts, suffice it to observe that the, Appellant (for short "complainant") filed a complaint (C.C. No. 3354 of 1997) in the

court of XVIIth Metropolitan Magistrate, Saidapet, Chennai u/s 200 of the Code of Criminal Procedure, 1973 (for short "the Code") against the

present Respondents for an offence u/s 304A of the Indian Penal Code, 1860 (Indian Penal Code). On the day the complaint was filed, the Court

made an endorsement "check and call on 13.12.1996".

2. On 13.12.1996, the complainant's statement was recorded in part and thereafter certain witnesses were also examined.

3. On 13.6.1997, the Metropolitan Magistrate found the prima facie case in the complaint and issued process to the accused.

4. The present Respondents challenged the order issuing process in a petition u/s 482 of the Code before the Madras High Court.

5. Before the High Court, on behalf of the Respondents, diverse contentions were raised. Save and except the contention that cognizance taken by

the Magistrate was barred by period of limitation, insofar as other contentions were concerned, the High Court felt that those were founded on

facts and disputed by the complainant and, therefore, could not be examined in the petition u/s 482 of the Code. The Learned Counsel for the

Respondents, accordingly, confined the petition to the sole ground whether the prosecution would survive when the Magistrate has taken

cognizance of the same after a period of limitation.

6. The High Court considered Section 468 of the Code and few decisions of this Court and ultimately held that the cognizance taken by the

Magistrate on 13.6.1997 was barred by limitation provided u/s 468 of the Code and consequently quashed the proceedings in the complaint

without going into the merits of the case.

7. It is from this order that the present criminal appeal has arisen, by special leave.

8. Initially the matter came up before the Court on 9.2.2011. On that day, the Court passed the order referring the matter to a 3-Judge Bench. The

order of 9.2.2011 reads as follows:

Mr. K. Swami, counsel appearing for the Appellant, submitted that the High Court was clearly wrong in holding that the proceeding against the

Respondents was barred by limitation, as provided u/s 468(2)(c) of the Code of Criminal Procedure, 1973, because the order issuing summons

against the accused was passed by the Magistrate after three years from the date of the occurrence, even though the complaint was admittedly filed

within the period of limitation. In support of the contention, he relies upon a two Judges' Bench decision of this Court in Bharat Damodar Kale

And Another Vs. State Of A.P. in which, on an examination of the provisions contained in Chapter XXXVI of the Code of Criminal Procedure, it

was held that the Court can take cognizance of an offence, the complaint of which is filed before it, within a period of limitation prescribed and, if

need be, after excluding such time which is legally excludable. It further held that the limitation prescribed is not for taking cognizance within the

period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of

limitation prescribed under the Code of Criminal Procedure. The decision in Bharat Damodar Kale is followed in another two Judges' Bench

decision of this Court in Japani Sahoo Vs. Chandra Sekhar Mohanty . In paragraph 52 of the decision in Japani Sahoo, it was reiterated that for

the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal

proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. Mr. K.V. Viswanathan, learned senior

counsel appearing on behalf of Respondent No. 1, submits that in both the decisions, an earlier three Judges' Bench decision in Krishna Pillai v.

T.A. Rajendran was not taken note of. The decision in Krishna Pillai, though arising under the Child Marriage Restraint Act, 1929, also dealt with

the period of limitation prescribed for taking cognizance, as provided u/s 9 of that Act.

In Krishna Pillai, the Court after referring to the Constitution Bench decision in A.R. Antulay Vs. Ramdas Srinivas Nayak And Another , made the

following observations:

The extract from the Constitution Bench judgment clearly indicates that filing of a complaint in court is not taking cognizance and what exactly

constitutes taking cognizance is different from filing of a complaint. Since the magisterial action in this case was beyond the period of one year from

the date of the commission of the offence the Magistrate was not competent to take cognizance when he did in view of the bar u/s 9 of the Act.

We accordingly allow the appeal and quash the prosecution. The writ petition is permitted to be withdrawn as not pressed.

Mr. Viswanathan contends that in terms of Section 4(2) of the Code of Criminal Procedure, all the provisions to Chapter XXXVI, i.e. Section

469, 473, etc., would equally apply to a proceeding under the Child Marriage Restraint Act, 1929.

According to Mr. Viswanathan, the latter two Judges' Bench decisions are directly in conflict with the view taken by the three Judges' Bench

decision in Krishna Pillai. In view of the aforesaid position, put up this case before a three Judges' Bench for an authoritative pronouncement on

the issue.

9. When the matter came up for consideration before the 3-Judge Bench on 6.9.2011, it found that being a co-ordinate Bench, it was not possible

for it to declare that the judgment of this Court in Krishna Pillai v. T.A. Rajendran did not lay down correct law. Accordingly, on that day the

matter was referred to a 5-Judge Bench to examine the correctness of the view taken in Krishna Pillai v. T.A. Rajendran. The order dated

6.9.2011 reads as under:

This matter has been referred to a three Judge Bench as there is a direct conflict in the three Judge Bench decision of this, Court in Krishna Pillai v.

T.A. Rajendran on the one hand and the two Judge Bench decisions; (one) Bharat Damodar Kale And Another Vs. State Of A.P. ; (two) Janani

Sahoo Vs. Chandra Sekhar Mohanty , on the other. The latter two decisions have not noted the earlier decision in Krishna Pillai (supra).

We have heard Mr. K. Swami, Learned Counsel for the Appellant and Mr. K.V. Viswanathan, learned senior counsel for Respondent No. 1 for

some time. Prima facie, we are persuaded by the decision in Bharat Damodar Kale (supra) which has been followed in Janani Sahoo (supra)

wherein it has been held that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of

complaint or the institution of prosecution and not the date of taking cognizance by a Magistrate or issuance of process by a Court. The three

Judge Bench in Krishna Pillai (supra) has not adverted to diverse aspects including the aspect that inaction on the part of the Court by not taking

cognizance swiftly or within limitation, although the complaint has been filed within time or the prosecution has been instituted within time, should

not act prejudicial to the prosecution or the complainant.

As a co-ordinate Bench, we cannot declare that Krishna Pillai (supra) does not lay down correct law. We are therefore, of the view that matter

should be referred to a Five Judge Bench to examine the correctness of the view in Krishna Pillai (supra).

Let the papers be placed before the Hon"ble the Chief Justice for constitution of an appropriate Bench.

10. The 5-Judge Bench Mrs. Sarah Mathew Vs. The Institute Of Cardio Vascular Diseases By Its Director Dr. K.M. Cherian And Others has

now answered the reference on 26.11.2013. The view taken in Krishna Pillai v. T.A. Rajendran has not been accepted and the view taken by this

Court in Bharat Damodar Kale and Japani Sahoo has been approved. This is what the 5-Judge Bench has answered:

40. ...For all these, we are unable to endorse the view taken in Krishna Pillai.

41. In view of the above, we hold that for the purpose of computing the period of limitation u/s 468 of the Code of Criminal Procedure 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 u/s 468 of

the Code of Criminal Procedure.

11. In view of the authoritative pronouncement of the 5-Judge Bench on the question of law referred to it, the view taken by the High Court cannot

be allowed to stand. The view of the High Court is clearly wrong and has to be set-aside.

12. Consequently, the impugned order is set-aside. The 17th Metropolitan Magistrate, Saidapet, Chennai shall now proceed with the complaint. It

will be open to the accused to raise all available pleas for discharge, at the time of framing of charges by the Metropolitan Magistrate including the

plea based on a decision of this Court in Jacob Mathew Vs. State Of Punjab And Another , Obviously, on such plea being raised, the

Metropolitan Magistrate shall consider the same after hearing the counsel for the complaint in accordance with law. Appeal is allowed as above.