

Vivekanandan Vs The Inspector of Police, Central Crime Branch
The Inspector of Police, Central Crime Branch Vs Vivekanandan

Court: Madras High Court

Date of Decision: Aug. 31, 2009

Acts Referred: Constitution of India, 1950 " Article 21

Copyright Act, 1957 " Section 51, 63

Criminal Procedure Code, 1973 (CrPC) " Section 468, 468(2), 468(2)(C), 473

Penal Code, 1860 (IPC) " Section 34

Citation: (2010) CriLJ 1119 : (2009) 2 LW(Cri) 1099 : (2010) 7 RCR(Criminal) 433

Hon'ble Judges: T. Sudanthiram, J

Bench: Single Bench

Advocate: M.L. Ramesh, for the Appellant; J.C. Durai Raj, Government Advocate (Criminal side), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Sudanthiram, J.

The respondent police filed a final report against the revision petitioner for the offences under Sections 51 and 63 of the

Copy Rights Act read with Section 34 of I.P.C. The case is pending before the learned Chief Metropolitan Magistrate, Egmore, Chennai, in C.C.

No. 8085 of 2006 and the allegation against the petitioner by the prosecution is that the omni bus operators, without the permission of the

producers, have executed the films, which has not been given any copy right and thereby, they violated the provisions of the Copy Rights Act.

2. Totally, there are two accused in this case and both the accused, after issuance of the summons, appeared before the Trial Court and filed a

petition to discharge them on the ground that the complaint was barred by limitation as per the provision u/s 468(2)(C) of the Code of Criminal

Procedure and the said petition was dismissed by the learned Magistrate and aggrieved by the said order, only the first accused has preferred the

criminal revision before this Court.

3. The learned Counsel for the petitioner submits that the maximum punishment, provided under the Copy Rights Act for an offence u/s 63 of the

Copy Rights Act, is only three years imprisonment and as such, the period of limitation for filing the final report as per Section 468(2)(C) of the

Code of Criminal Procedure is three years. The date of occurrence in this case is 13.08.2003 and on the same day the First Information Report

was registered and the final report was filed only on 28.12.2006 with a delay of 137 days. The learned Counsel for the petitioner further submits

that the learned Magistrate has dismissed the petition filed by the petitioner strangely holding that the issue could be decided only after the

examination of the witnesses in the Trial giving opportunity to the Investigating Agency. The learned Counsel for the petitioner also submits that the

petitioner has got right to raise an objection even at the initial stage, since the taking of cognizance by the learned Magistrate is illegal.

4. The learned Government Advocate (Crl.Side) also fairly admitted that there is a delay in filing the final report.

5. This Court considered the submissions made on either side and perused the materials available on record.

6. There is no dispute in this case regarding the date of alleged offence i.e., on 13.08.2003 and the date of filing the final report i.e., on 28.12.2006

and the period of limitation for filing the final report is three years, but admittedly, the final report was filed with a delay of 137 days and the

prosecution also has not filed any application seeking the Magistrate to take cognizance of the offence after the expiry of the period of limitation as

per Section 473 of the Code of Criminal Procedure.

7. Section 473 of the Code of Criminal Procedure reads as follows:

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 circumstances of the case that the

delay has been properly explained or that it is necessary so to do in the interest of justice.

8. In this case, admittedly, the learned Magistrate before taking cognizance of the case has not passed any order; has not observed that the Court

was satisfied with the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest

of justice. In a case where, the limitation for taking cognizance is barred u/s 468 of the Code of Criminal Procedure, it is the duty of the Court

before taking cognizance to observe the provision u/s 473 of the Code of Criminal Procedure. If it is not done so, then the cognizance taken by the

learned Magistrate is illegal and as such, the accused has every right to challenge the cognizance that had already been taken, immediately after

being summoned.

9. As a statutory obligation is placed upon the Court u/s 468 of the Code of Criminal Procedure not to take cognizance of the offences specified in

Sub-section (2) thereof after lapse of the period of limitation and as the Code also does not envisage issue of any process against the accused

before taking cognizance of the offence, it is open to the accused to plead before the Court in response to the process issued to him that the

complaint or the final report filed against him and cognizance taken by the Court is barred by limitation.

10. It is also decided by the Hon"ble Supreme Court in the case of State of Punjab Vs. Sarwan Singh, that it is 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. As the bar of limitation u/s 468 of the Code of Criminal Procedure has been included by the Hon"ble Supreme Court in the case of

Sarwan Singh, within the guarantee or protection of personal liberty under Article 21 of the Constitution under which no person can be deprived of

his life or personal liberty except according to the procedure established by law, in the humble opinion of this Court, the accused can raise the plea

of limitation before the Court at any stage.

11. In this case, the observation of the learned Magistrate that ""it will be proper to lead the evidence and decide the matter in the factual issue of

limitation by giving an opportunity to the investigation Officer only after examination of witness in the trial"" is erroneous.

12. As it is admitted by the prosecution itself that the cognizance taken by the learned Magistrate is barred by limitation and as the learned

Magistrate also not invoked the provision u/s 473 of the Code of Criminal Procedure before taking cognizance, since condonation of delay should

precede taking of cognizance of the offence, this Court is to hold that the cognizance taken by the learned Magistrate in C.C.No.8085 of 2006 is

illegal and the proceeding on the basis of such cognizance is non est.

13. In the result, the order passed by the learned Chief Metropolitan Magistrate in CrI.M.P. No. 192 of 2008 in C.C. No. 8085 of 2006 is set

aside and this Criminal Revision Petition is allowed. The petitioner, who is the first accused and also the other co-accused, who had not preferred

the revision are discharged from the case. Consequently, the connected miscellaneous petitions are closed.