

(2005) 12 CAL CK 0014

Calcutta High Court

Case No: C.R.R. No. 508 of 2001

Sankar Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 21, 2005**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 468, 468(2), 469, 473
- Penal Code, 1860 (IPC) - Section 406, 408

Citation: (2006) 2 CHN 232**Hon'ble Judges:** Arun Kumar Bhattacharya, J**Bench:** Single Bench**Advocate:** Dilip Kumar Maity, for the Appellant; Samir Chatterjee, for the Respondent**Final Decision:** Dismissed

Judgement

Arun Kumar Bhattacharya, J.

The hearing stems from an application u/s 401 read with Section 482 Cr. PC filed by the petitioner praying for revision of the order being No. 61 dated 14.02.2001 passed by the Id. Sub-Divisional Judicial Magistrate, Dinhata, Cooch Behar in G.R. Case No. 216 of 1997 arising out of Dinhata P.S. Case No. 200 of 1997 dated 19.07.97 u/s 406 IPC.

2. A complaint was lodged u/s 406 IPC against the petitioner by one Arun Kumar Rathi inter alia alleging that his elder brother Surendra Kumar Rathi made over a sum of Rs. 2,91,000/- in cash to their employee the present petitioner with instruction to deposit the same in three accounts of the State Bank of India, Dinhata Branch, but on 17.07.97 on enquiry they came to learn that only Rs. 91,000/- was deposited by the said employee instead of Rs. 2,91,000/- and thus he misappropriated a sum of Rs. 2,00,000/-. On the basis of the said complaint/ Dinhata P.S. Case No. 200 of 1997 dated 19.07.97 u/s 406 IPC was started against the petitioner who was arrested and produced before the Court of Id. Sub-Divisional

Judicial Magistrate, Dinhata on 22.07.97. The police after investigation submitted chargesheet bearing No. 172 of 2000 dated 31.07.2000 u/s 406 IPC against the petitioner, and the Id. Sub-divisional Judicial Magistrate took cognizance on 01.08.2000. The petitioner filed petition on 29.09.2000 praying for his discharge from the case as chargesheet was not filed within the period of limitation of three years which was rejected by the impugned order whereby the Id. Magistrate applying the provisions of Section 473 condoned the delay.

3. Being aggrieved by the said order, the petitioner has preferred the above revision.

4. All that now requires to be considered is whether the Id. Court was justified in passing the said order.

5. Mr. Dilip Kumar Maity, Id. Counsel for the petitioner, advanced argument contending that since the alleged offence took place on 16.07.97 and the police submitted chargesheet on 01.08.2000 after expiry of the period of limitation of three years as embodied in Section 468(2)(c) cognizance taken was bad in law and as such the impugned order should not be sustained. Mr. Samir Chatterjee, Id. counsel for the State, on the other hand, contended that since the Id. Court below condoned the little delay for about 16 days by exercising power u/s 473 Cr. PC, the impugned order does not suffer from any infirmity.

6. The Court is enjoined not to take cognizance of an offence specified in Sub-section (2) of Section 468 Cr. PC after expiry of the period of limitation as mentioned therein. As per Clause (c) of Sub-section (2) of the said Section 468, the period of limitation in respect of an offence punishable with imprisonment for a term not exceeding three years, is three years. u/s 469 Cr. PC, the period of limitation prescribed in Section 468 in relation to an offender commences on the date of offence, or where the commission of the offence was not known to the person aggrieved or to any police officer, from the first day on which such offence comes to the knowledge of such person or to police officer whichever is earlier etc. Notwithstanding the said prohibition, in view of the words "Except as otherwise provided" in Section 468 which covers the provisions u/s 473 and the non-obstante clause in Section 473, the Court is invested with the discretionary power to take cognizance of an offence despite the expiry of the period of limitation. This power can be exercised if the Court is satisfied that (1) the delay has been properly explained, or (2) it is necessary to take cognizance in the interests of justice. Power to condone the delay can be exercised even after taking cognizance of the offence, as condonation of delay is not a pre-condition to taking cognizance of offence after the period of limitation. Even when no petition is filed, the delay can be condoned by the Court in suitable cases. So, here, when the Id. Magistrate after hearing both sides exercised his discretion in condoning the delay of about sixteen days only, and the said discretion does not appear to have been exercised arbitrarily or capriciously, no interference is called for from this Court to upset the same.

7. Furthermore, criminal breach of trust committed by clerk or servant falls within the purview of Section 408 IPC and not section 406 IPC, the punishment for which is imprisonment which may extend to seven years and fine. Mere omission to state the correct provision of the statute under which the offence was committed or a wrong mention thereof would not make the cognizance of the offence ipso facto bad. In other words, the Magistrate can take cognizance of an offence and frame charge for that offence which appears to have been committed from the facts alleged, even though specific section of that offence is not quoted in the chargesheet submitted by the investigating agency. Therefore, when the materials placed before the Court prima facie leads to show commission of an offence by the petitioner u/s 408 IPC, the punishment for which may extend up to seven years, the question of attracting the provision of Section 468 Cr. P.C. is out of the way.

8. Accordingly, in the light of the above discussion, there being no merit in the present revisional application, it be dismissed. The impugned order dated 14.02.2001 passed by the Id. Court below is affirmed.

9. Let a copy of this order be sent down at once to the Id. Court below.