

(1981) 11 CAL CK 0021
Calcutta High Court
Case No: Rev. Case No. 730 of 1980

Asiatic Oxygen and
Acetylene Co. Ltd.

APPELLANT

Vs

Registrar of
Companies, West
Bengal

RESPONDENT

Date of Decision: Nov. 17, 1981

Acts Referred:

- Companies Act, 1956 - Section 370, 371
- Criminal Procedure Code, 1973 (CrPC) - Section 468, 473
- Limitation Act, 1963 - Section 5

Citation: 86 CWN 128

Hon'ble Judges: N.G. Chaudhuri, J; N.C. Mukherji, J

Bench: Division Bench

Advocate: Balai Ch. Roy and D.B. Mukherjee, for the Appellant; Dipak Sengupta and Ramender Nath Basu and J.N. Ram for the State, for the Respondent

Final Decision: Allowed

Judgement

N.G. Chaudhuri, J.

In this Revisional Application filed by the Asiatic Oxygen & Acetylene Co. Ltd., a public limited company incorporated and registered under the Companies Act, 1913, orders dated 18.8.78 and 6.3.80 passed by the Chief Metropolitan Magistrate, Calcutta in case No. C/1147 of 1978 have been challenged any prayer has been made for quashing the proceedings in the aforesaid case now pending in the 5th Court of Metropolitan Magistrate, Calcutta. The case arose out of a petition of complaint filed by the Registrar of companies, West Bengal on 18.8.78 together with an application u/s 473 Cr. P, C, praying for condonation of delay in the matter of filing the complaint. In the petition of complaint the petitioner company was described as accused No. 1. M/s. Pressed Steel Tank Company of India Limited, was

described as accused No. 2, directors of accused Nos. 1 Company were described as accused Nos. 3,4,5,6 and 7 and Secretary of the said company was described as accused No. 8. The substance of the petition of complaint is that report of an authorised officer of the Central Government on the basis of inspection was received in the office of the complainant on 7.11.75 from which it transpired that accused No. 1 Company as a lending company had advanced different amounts of loan on different dates during the financial year ending on 31.3.75 as per details given in the petition of complaint to accused No. 2 Loanee company in excess of the prescribed limit of 30% of the aggregate of the subscribed capital of the lending company and its free reserves without the prior approval of the Central Government. In the aforesaid premises it was alleged that all the accused had contravened the provisions of Section 370 of the Companies Act, 1966 and were liable to be punished u/s 371 of the said Act. The matter was under correspondence and consideration and eventually their petition of complaint was filed on the date mentioned. It was alleged that because of reasons stated in the petition of complaint the cognizance of the offence was not barred by the provision of section 468 Cr. P.C still as a measure of abundant precaution a separate application for extension of time for taking cognizance of the offence was being filed u/s 473 Cr. P.C. It is to be noted that by the order dated 18.8.78 the then Chief Metropolitan Magistrate purported to record an order that the delay was sufficiently explained and interests of justice demanded extension of the period of limitation and thereupon summons were ordered to be issued. Subsequently it was brought to the notice of the succeeding Chief Metropolitan Magistrate that the aforesaid order though purported to be an order of the Chief Metropolitan Magistrate was not actually signed by him. By order dated 6.3.80 the succeeding Chief Metropolitan Magistrate held that the mere omission to sign the order dated 18.8.78 did not vitiate the proceeding and the impugned order was to be deemed as one passed within the jurisdiction of the outgoing Chief Metropolitan Magistrate.

2. It is to be noted that the order dated 18.8.78 was passed *ex parte* after hearing the complainant without giving the accused No. 1 Company an opportunity of being heard.

3. The principal question canvassed for our decision herein is whether or not the learned Magistrate could extend the period of limitation in exercise of his power u/s 473 Cr. P. C. without giving notice to the proposed accused.

4. In the case reported in [Cushrow Russy Irani Vs. The State and Another](#), J. of this High Court held that for the purpose of extending the period of limitation u/s 473 Cr. P. C. the Court is not obliged to give opportunity to the accused of being heard before passing an order condoning delay and taking cognizance. It has been observed After the process is issued and the accused appear before the Magistrate it is open to raise the question regarding bar of limitation and it is for the learned Magistrate to consider at the proper stage of proceeding whether the accused can

avail of the bar of limitation as imposed upon the Court. This view was approved by the Madras High Court in the case reported in 1978 Cr. L.J. 116 Sulochana vs. State Registrar of Chits. Mr Balai Ch. Roy the learned advocate for the petitioner Company contends that it is doubtful if the observations made by Banerjee, J. as quoted above are correct He contends the implication of Banerjee, J's views are that extension of limitation as contemplated u/s 473 Cr. P. C. can be grafted provisionally or tentatively subject to review of the order at a later stage subsequent to the appearance of the accused before the Magistrate after the Magistrate has taken cognizance of the offence. Mr. Roy argues that their Lordships of the Privy Council has deprecated such practice in connection with condonation of delay in the matter of filing appeals u/s 5 of the Limitation Act in the case reported in I.L.R, 41 Madras 412 Krishnasami vs. Ramasami. His further contention is that to implement the above view of Banerjee, J. the Magistrate taking cognizance of the offence inspite of expiry of the period of limitation prescribed u/s 468 Cr.P.C is to review his own order and he is not legally competent to do that in view of the decision of the Supreme Court in [Bindeshwari Prasad Singh Vs. Kali Singh](#), .

5. The next phase of Mr. Roy's argument is that in the case of [Krishna Sanghi and Others Vs. The State of Madhya Pradesh](#), it has been hold that before taking cognizance of the offence delay, if any, is require to be condoned u/s 473 Cri, P.C. This view has received wide acceptance by different High Courts. Mr. Roy in this connection relies on the ruling reported in 1978 Cri. Law Journal 61, Bharat Hybrid Seeds and Agro Enterprises vs. The State, At page 62 it has been observed- "When the court extends that time, it means it is interfering with the rights of the accused which have vested in him by virtue of the expiry of period of limitation. Therefore, even though there is no rule of law requiring the court to issue notice to the proposed accused and to give him an opportunity for meeting the case of the complainant in regard to the extension of time, interest of justice and principles of natural justice require that the condonation of the delay and extension of time can be done only after giving a reasonable opportunity to the proposed accused. It would be violating the very principles of natural justice and, in fact, the very spirit of administration of justice, if a party is prosecuted in a court of law after the period prescribed for the launching of the prosecution has been over and without giving him an opportunity to explain his case as to why the delay should not be condoned. Absence of a rule of law shall not enable the court to extend time for final prosecution without hearing the proposed accused." Rajasthan High Court appears to have approved the above view in the ruling reported in 1980 Criminal Law Journal 339 Panney Singh and Others vs, State of Rajasthan. It has been observed at page 344 "Before condoning the delay, although I do not find any provision of giving of notice to the accused persons in Chapter XXXVI of the Code, but natural justice demands that the accused persons must be heard before passing an order in that regard as such an order is bound to affect a valuable right which accrues to the accused and which cannot be allowed to be taken away lightly".

6. Similar views have been expressed by the Allahabad High Court in 1980 Criminal Law Journal 578 Prakash Chandra Sharma vs. Kaushal Kishore. Delhi High Court also seems to have approved the above view in the decision reported in 1980 Criminal Law Journal 742 Jagmohan vs. State.

7. From the discussion of the rulings of the different High Courts it appears to us that the proper and legitimate course for taking cognizance of an offence after extension of the period of limitation, as contemplated u/s 473 Cr.P.C, is to give prior notice to the proposed accused of the petition of complaint and the reasons put forward in a petition u/s 473 Cr. P.C. for extending the period of limitation so that the accused can be heard before the offence is taken cognizance of and the court taking cognizance of the offence can avoid the necessity of reviewing its own tentative decision. That procedure was not followed in the case before us while the learned Chief Metropolitan Magistrate recorded orders dated 18.8.78 and 6.3.80, The aforesaid orders were passed in violation of rules of natural justice. We therefore, set aside the orders dated 18.8.78 and 6.3.80 passed by the Chief Metropolitan Magistrate in case Mo. C/1147 of 1978. The learned Chief Metropolitan Magistrate will, however, be at liberty to give notice to the accused named in the petition of complaint of the petition for condonation of delay filed by the complainant u/s 473 Cr.P.C. and hear the proposed accused and thereafter to pass appropriate orders on the said petition. We express no opinion regarding sufficiency or otherwise of the explanation for delay given in the petition of complaint and in the petition u/s 473 Cr. P. C. The Revisional Application accordingly succeeds and is allowed on contest without costs. Let the records be sent down to the court below forthwith.

The learned Magistrate will act as noted above.

N.C. Mukherji, J.

I agree.