(1991) 02 BOM CK 0096

Bombay High Court

Case No: Criminal Applns. No''s. 531, 623 to 626, 812 and 1868 of 1987

Sharadchandra Vinayak Dongre and others etc.		APPELLANT
	Vs	
V. State of Maharashtra		RESPONDENT

Date of Decision: Feb. 11, 1991

Acts Referred:

- Bombay Prohibition Act, 1949 - Section 108, 56, 65, 66, 72
- Criminal Procedure Code, 1973 (CrPC) - Section 167, 173, 190, 2, 467

Citation: (1991) CriLJ 3329

Hon'ble Judges: S.W. Puranik, J

Bench: Single Bench

Advocate: V.R. Manohar, Rahimtoola and S.V. Manohar, for the Appellant; M.D. Gangakhedkar, Assistant Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. After hearing the parties at length, I had passed the following operative order on 1st February 1990 :-

"Heard Mr. V. R. Manohar with Mr. Rahimatoola and Mr. S. V. Manohar for the Petitioners and Mr. Gangakhedkar, A.P.P. for the State-Respondent.

For reasons stated in the accompanying judgment, the Rule is made absolute to the extent that the order of issue of process and taking cognizance of the offence is quashed and set aside as also the order of condonation of delay. Writ be issued accordingly. This order shall govern the connected Criminal Application."

I now proceed to give the reasons for the aforesaid order. The judgment in present Criminal Application No. 531 of 1987 will also govern Criminal Applications Nos. 623, 624, 625, 626, 812 and 1868 all of 1987 as the facts are identical and they arise out of the same proceedings.

2. This Application u/S. 482 of the Criminal Procedure Code is directed against the order of the Chief Judicial Magistrate, Satara, dated 21st November, 1986, for quashing the order passed by the trial Court taking cognizance of the offence directing issue of process to the accused and condoning the delay in filing the prosecution. It is necessary to state few facts in order to appreciate the rival contentions and the questions of law stated hereinafter that arise upon the controversy.

3. M/s. Doburg Lager Breweries Private Limited is a Company incorporated under the Companies Act and it carries on business of brewing, bottling and selling Bear. For this purpose, the Company has set up a brewery at Satara in the State of Maharashtra and it was granted a licence in the year 1972 for the manufacture of Bear under the Maharashtra Manufacture of Bear and Wine Rules, 1966, framed under the Bombay Prohibition Act, 1949. The licence was initially for a period of five years and was thereafter renewed from time to time every five years and was valid lastly up to 31st March 1987.

4. On 23rd August 1985, the Officers of the Prohibition and Excise Department of the State of Maharashtra in company with the Sales-tax and the Income Tax Officers carried out surprise raids at the Brewery at Satara. Incidentally, it may be stated that applicant No. 1 in Criminal Application No. 531 of 1987 was at the material time the Managing Director of the said Company and Applicants Nos. 2, 3 and 4 in the said Criminal Application were the employees of the Company as Manager Co-ordinator, Head Brewer and Manager (Accounts) respectively. The residential premises of applicants Nos. 2 to 4 were also searched on the same date and certain documents, including various books, registers, files, Bank statements, etc. were seized and taken away by the Prohibition/Excise Officers without even recording a panchanama thereof.

5. That, on 26th August 1985, the Registered Office of the Company at Bombay was searched, but nothing incriminating was found. On 5th September 1985, the Company''s main Distributor''s premises at Bombay M/s J. P. C. Shroff & Sons were also searched, with no incriminating documents being found thereat. On 4th October 1985, the residential premises of Applicant No. 1 were also raided and searched, but no incriminating documents were even found there. Simultaneously, searches were also carried out at the places of different persons connected with the Company which included Applicants Nos. 1 to 5 in Criminal Application No. 812 of 1987, applicant No. 1 in the said Application being the wholesaler for the products of the Company for the entire State of Maharashtra except Bombay.

6. Thereafter, nothing further was heard, but on 18th November 1985, without giving any show cause notice or giving the Company an opportunity of being heard, the State of Maharashtra in the purported exercise of the powers u/S. 56(b) of the Bombay Prohibition Act cancelled the licence granted to the Company for the manufacture of Beer and on the same day, the Brewery was sealed and closed. On

22nd November 1985, applicant No. 1 in Criminal Application No. 531 of 1987 made an application for grant of anticipatory bail and the City Sessions Court at Bombay passed an order that he be given 72 hours prior notice of his arrest. On 22nd November 1985 itself, a complaint was filed by L. G. Sheshware, Inspector of Prohibition and Excise, with the police which was registered as Crime No. 275/85 against the applicants in Criminal Application No. 531 of 1987 and 10 others. Upon an application moved on 26th November 1985, as applicant No. 1 in Criminal Application No. 531 of 1987 was given notice of his impending arrest, an application for grant of anticipatory bail was made before the City Sessions Court at Bombay on his behalf and vide order dated 4th December 1985 an order granting anticipatory bail to Applicants No. 1 for four weeks was made by the City Sessions Court at Bombay. Applicant No. 1 and the other accused were thereafter formally arrested and were bailed out by the orders of the Chief Judicial Magistrate at Satara.

7. In the meanwhile, against the cancellation of the licence of the Company, it filed Writ Petition No. 2369 of 1985 before this Court in its original jurisdiction and this Court vide its judgment and order dated 18th November 1986 quashed and set aside the order of the State Government cancelling the licence granted to the Company. An appeal against this order at the instance of the State is pending before this Court, but stay having been declined in the said appeal some time in the month of March/April 1987, the licence of the Company was renewed for a further period of 5 years valid up to 31st March 1992 and the brewery subsequently commenced its operation.

8. From 9th December 1985, remand applications were filed before the Chief Judicial Magistrate, Satara, by the Respondent-State on different dates as enumerated in Exhibit ''C'' at page 33 of Criminal Application No. 531 of 1987. It may, however, be stated that the accused-applicants were not present before the Court on these dates as they were granted exemption from personal attendance.

9. On the basis of the complaint dated 22nd November 1985, offences were registered u/Ss. 65(b)(d)(e), 66(1)(b), 72, 75(c), 77(b), 79, 82(1), 83 and 108 of the Bombay Prohibition Act, 1949. The Respondent-State alleged that the applicants in Criminal Application No. 531 of 1987 along with other 15 accused had committed the aforesaid offences inter alia relating to manufacture and selling beer without payment of excise duty thereon. The gravamen of the complaint was really one relating to section 108 of the said Act which reads as under :-

"Whoever imports, exports, transports, possesses (sells) or manufactures any intoxicant or hemp without the payment of duty or fee provided for under this Act shall, on conviction (in addition to being required to pay such duty or fee) be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or the amount of such duty or fee, whichever is greater, or with both."

10. It appears that the main and really the only charge was under the said S. 108 of the Bombay Prohibition Act, 1949, and in the event of the opponent failing to establish that the accused-applicants had contravened the same, the remaining offences by themselves could not stand as the said offences were merely incidental thereto. It is needless to state that without the ingredients of S. 108 being established, the remaining offences must necessarily fall to the ground. It is also necessary at this juncture to state that S. 108 of the Bombay Prohibition Act inter alia provides for punishment by imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1,000/- or the amount of such duty or fee, whichever is greater, or with both, a circumstance relevant while dealing with applicability of Ss. 468/473 of the Criminal Procedure Code.

11. It further appears, as is clear from the record, that on 21st November 1986 the opponent caused five different charge-sheets pertaining to five different periods to be filed in the Court of the Chief Judicial Magistrate, Satara, and it is further an admitted fact that the said charge-sheets were incomplete as would be clear from the note appended thereto. That the investigation was incomplete is further clear and admitted from the fact that on 21st November 1986 the Investigating Officer filed an application before the Chief Judicial Magistrate at Satara (Exhibit 2) stating that the investigation could not be completed before filing of the charge-sheet and as such the prosecution may be permitted to make further investigation and collect further additional evidence in respect to the offences after filing of the charge-sheet. It was prayed that permission be granted to the prosecution to file an additional charge-sheet within 6 months from the date of the application after collecting additional evidence.

12. Curiously enough, on the same day, another application (Exhibit 3) came to be filed before the Chief Judicial Magistrate at Satara presumably u/S. 473 of the Criminal Procedure Code, 1973, for condonation of delay for filing the charge-sheets on the ground that some time was required for taking the necessary steps against the licensee for cancelling the licence and a bulk of evidence was required to be investigated by the Investigating Officer. On this date, the accused including the applicants in the three applications allege, that they were not before the Court and the copies of the applications were not supplied to the accused or to their counsel.

13. It is at this juncture necessary to say something about the order-sheets maintained by the trial Court and the manner in which the proceedings have taken place and judicial orders purported to have been passed. The manner leaves little to commend in that behalf. On 6th December 1986, the Counsel for the accused filed an application that the accused have come to know that "incomplete charge-sheet" and the aforesaid two applications (Exhibits 2 and 3) have been filed by the prosecution but no copy has been given to the accused or their counsel and that the prosecution be directed to furnish copies of the charge-sheets and the applications to the accused or their counsel and until the accused are heard, no orders on these

applications be passed. The endorsement on Exhibit 2 shows that the copies were handed over to the counsel for the accused on 6th December 1986 and the orders passed on Exhibits 2 and 3 are reproduced as under :-

Orders on Exhibit 2 :
"Copy received at 2.22 p.m. after presentation of the application and argum
Satara. Dated : 6-12-86.

Sd/- D. B. Kshirsagar.
Advocate for the Accused.

Keep for orders on 2-1-87.

Sd/- S. W. Khadse,
C.J.M., Satara,

Keep for orders until further orders.

Sd/- S. W. Khadse,
C.J.M., Satara,

ORDER

Prosecution is directed to produce all the documents in the Court.

Sd/- S. W. Khadse,
C.J.M., Satara,

Orders on Exhibit 3 :
"Copy received at 2-23 p.m. after presentation of the application and argum
Satara, 6-12-86.

Sd/- D. B. Kshirsagar,
Advocate for the Accused.

Keep for order on 2-1-87.

Sd/- S. W. Khadse,
C.J.M., Satara,

Keep for orders until further order

Sd/- S. W. Khadse,
C.J.M., Satara,

14. As against this, surprisingly enough, the order-sheet of Criminal Cases Nos. 57 to 61 of 1987 dated 21st November 1986 reads as under :-

"21-11-86 Before Shri S. W. Khadse C.J.M., Satara.

1. Charge-sheet received from the Inspector of Excise is examined and registered. Issue process against the accused. Accused produced along with the charge-sheet.

2. Application by the Excise Inspector for permission to file additional charge-sheet.

Keep for orders.

3. Application by the Investigating Officer for delay condonation. Application granted.

Adjourned for inspection on 4-3-87.

Sd/- S. W. Khadse,

15. Reading of the endorsement on Exhibits 2 and 3 referred to above and the orders passed thereon and the order-sheet dated 21st November 1986 recorded by the Chief Judicial Magistrate, Satara, would reveal not only the utter non-application of mind on behalf of the trial Court but the perfunctory and casual approach of the trial Court in respect of making judicial orders. It is needless to state that taking cognizance of an offence under S. 190(1)(b) of the Code of Criminal Procedure and condoning delay in filing prosecutions u/S. 473 of the Code are judicial orders in judicial proceedings. The order-sheet dated 21st November 1986 reveals that the trial Court mechanically took cognizance of the offence, directed process to be issued against the accused and at the same time passed an order that the application to file additional charge-sheet is kept for orders. This reveals that the trial Court was aware that the charge-sheets filed were incomplete and further after having taken the cognizance of the offence granting the application for condonation of delay without recording any reasons and without hearing the accused made the said order behind their back. Having so acted as revealed by the order-sheet dated 21st November, 1986, in a further casual manner, the trial Court proceeded to make orders on Exhibits 2 and 3 which are already quoted above treating Exhibit 3 which has already been granted on 21st November 1986 as pending and keeping it for orders. It is high time that the trial Court could realise the sanctity for the judicial orders which he was purporting to pass and of which presumably he was totally unaware.

16. To complete the narration of facts, the applicants in para 7 of Criminal Application No. 531 of 1987 have made an averment that the charge-sheets filed were incomplete. The Investigating Officer Shri Sheshware filed an affidavit dated 23rd March 1988 in reply to the allegations contained in the application of the accused-applicants and it is conspicuous to note that he has not denied this allegation and further curiously enough in the said affidavit a statement is made contrary to the order-sheet dated 21st November, 1986 that the application for condonation of delay is still pending and no orders have been passed thereon.

17. It is in this background Shri V. R. Manohar, learned Counsel for the applicants, raised two contentions. Firstly, it is argued that in the absence of a Police Report as contemplated by sub-sec. (2) of S. 173 of the Code of Criminal Procedure, the Chief Judicial Magistrate could not have taken cognizance of the offences and directed issue of process, and secondly, that the order passed on Exhibit 3 for condonation of delay is illegal and without jurisdiction having been made without any application of

mind, without notice to the accused behind their back and without recording any reasons.

18. It is the submission of Shri Manohar that sub-sec. (2) of S. 173 of the Code of Criminal Procedure provides that as soon as the investigation under Chapter XII of the Code is completed, the Officer-in-charge of the Police Station is required to forward to the Magistrate empowered to take cognizance of the offence a police report in the form prescribed by the State Government. According to him, the first requisite of the condition precedent of sub-sec. (2) of S. 173 is the completion of the investigation and the second is forwarding the police report to the Magistrate for taking cognizance of the offence. The endorsement on the charge-sheet and the application (Exhibit 2) dated 21st November 1986 seeking permission to further investigate on the ground that the investigation is incomplete distinctly and undisputedly shows that the investigation was not completed on 21st November 1986 when the "incomplete charge-sheets" were presented by the opponent-State in the Court of the Chief Judicial Magistrate, Satara. Thus, according to Shri Manohar, the pre-requisite of filing the police report which is a condition precedent for the Court to take cognizance was not there.

19. It is his further submission that the police report has been defined in cl. (r) of S. 2 of the Code in the following terms :

"Police report" means a report forwarded by a police officer to a Magistrate under sub-sec. (2) of S. 173."

Thus, according to him, there is only one specie of a police report which is intended by the above provision of the Code, particularly for the purposes of S. 173(2) of the Code. According to him, S. 190(1)(b) under Chapter XIV of the Code which provides for the cognizance of the offence by the Magistrate states that the Magistrate of the First Class may take cognizance of an offence upon a "police report" of such facts. Thus, according to him, on reading the provisions of S. 2(r), S. 173(2) and S. 190(1)(b) of the Code of Criminal Procedure, 1973, no cognizance of the offence could have been taken and consequently, no process could have been issued when admittedly a police report after completion of the investigation was not presented before the Chief Judicial Magistrate, Satara, on 21st November 1986 on which date the trial Court mechanically proceeded to take cognizance and to issue process against the accused-applicants.

20. Shri Gangakhedkar, learned A.P.P. on behalf of the State, except for contending that the cognizance was properly taken was not able to reply to the aforesaid contentions. On the contrary, on a query made by me as to whether the investigation was at least now complete, the answer was in the negative.

21. Reference here may usefully be made to a decision of the Supreme Court in Abhinandan Jha and Others Vs. Dinesh Mishra, , which points out that the investigation under the Code takes in several aspects and stages ending ultimately

with the formation of an opinion by the police as to whether, as from the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of either a charge-sheet or a final report is dependent on the nature of the opinion so formed. The formation of the said opinion by the police is the final step in the investigation evidenced by the "police report" contemplated under S. 173(2) of the Code.

22. In my view, a plain reading of S. 173 of the Code shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the officer-in-charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up of a "police report" within the meaning of S. 173 and sub-sec. (2) of Criminal Procedure Code until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of sub-sec. (2) of S. 173 of the Criminal Procedure Code read with S. 2(r) of the Code and there is no question of the Magistrate taking cognizance of the offence within the meaning of S. 190(1)(b) of the Code on the basis of an incomplete charge-sheet. In the present case, admittedly an incomplete charge-sheet has been filed and it is specifically stated therein that the investigation is not yet completed. The application, Exhibit 2, clearly further recites that the investigation is not completed and this fact is even admitted before me as stated in the reply affidavit filed by the Investigating Officer opposing the present Application. Consequently, the incomplete charge-sheets cannot be treated as a "police report" at all as contemplated u/S. 173(2) of the Code to entitle the Magistrate to take cognizance of the offences. The learned Counsel for the applicants is right in contending that the definition of "police report" as given in the Code cannot be enlarged under the guise of interpretation and it is contended that when the meaning of a statutory provision is plain and clear, the Court should not be impelled by factors like practical difficulties and inconvenience. The learned Counsel appears to be further right when he canvassed that the expression "incomplete charge-sheet" does not occur anywhere in the Code and that forwarding of a "police report" after the completion of the investigation is the requirement of sub-sec. (2) of S. 173 of the Code. Any report or statement of facts in the form of an "incomplete charge-sheet" does not become "police report" by merely giving a particular nomenclature.

23. The learned counsel for the State contended that the new provision added in sub-sec. (8) of S. 173 of the code can be resorted to by the Investigating Officer for collecting further evidence. According to him, it tends to indicate that the investigation is not shut but remains in suspended animation till the police report is sent to the Magistrate. As has already been pointed out, a police report as defined in S. 2(r) of the Code can only be filed "as soon as the investigation is completed." If it is not complete, no such report can be filed. When no report is forwarded as required by the Code, the Magistrate cannot take cognizance. Thus, unless all these steps are crossed, sub-sec. (8) cannot be pressed in aid for collecting further evidence which

really can be called in aid if further evidence is discovered after the filing of the charge-sheet or the police report on the completion of the investigation.

24. As stated earlier, sub-sec. (2) of S. 173 of the Code also speaks of taking cognizance of the offence by a Magistrate on a police report. Thus, without the police report as defined in S. 2(r) of the Code, the Magistrate is not empowered and is incapacitated to take cognizance and unless cognizance has been taken, sub-sec. (8) cannot be set in motion.

25. The question thus emerges naturally is, whether the Magistrate can take cognizance on the admittedly "incomplete charge-sheet" forwarded by the police. The answer stubbornly and admittedly must be in the negative, because the investigation is yet incomplete and the "police report" yet remains to be filed. Thus, the filing of the incomplete charge-sheet cannot circumvent the provisions of sub-sec. (2) of S. 173 of the Code and incomplete report or an incomplete charge-sheet with whatsoever expression it may be called does not meet the obligatory requirements of law. If the view as contended by the State is accepted, the provisions of S. 167(2) or to say S. 468 of the Criminal Procedure Code can always be circumvented by the prosecution and the apparent legislative intents under those provisions would not only be not effectuated but undoubtedly stultified.

26. Apart from these facts, as contended by the learned Counsel for the applicants and as held in R.R. Chari Vs. The State of Uttar Pradesh, the said Court after considering the view in Gopal Marwari and Others Vs. Emperor, , has held that the word "cognizance" is used in the Code to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of the proceedings. It is the condition precedent to the initiation of proceedings by a Magistrate. The Court noticed there that the word "cognizance" is a word of somewhat indefinite import and it is perhaps always not used in exactly the same sense and it further noticed the view in Superintendent and Remembrancer of Legal Affairs, Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, , that "what is taking cognizance has not been defined in the Cr.P.C. and I have no desire to attempt to define it". It seems to me clear that before it can be said that any Magistrate has taken cognizance of an offence u/S. 190(1)(b) of the Code, he must not only apply his mind to the contents of the charge-sheet but he must have done so for the purposes of proceeding in a particular way as indicated in the subsequent provisions of the Chapter. In this case, the orders referred to above on Exhibits 2 and 3 apparently showing that the applications have not been decided and the order sheet dated 21st November 1986 which proposes to take cognizance admittedly on the basis of an incomplete police report, depicted the utter non-application of mind on the part of the trial Court while making a judicial order and for that additional reason, the order of the trial Court taking cognizance of the offence on the incomplete police report and consequently

issuing process is vitiated and is liable to be quashed and set aside. The view I have taken finds support from T.V. Sarma Vs. Smt. Turgakamala Devi and Others, ; Shyam Sunder Sarma Vs. State of Assam and Others, ; Motilal Vs. State, ; and Bandi Kotayya Vs. State (S.H.O. Nandigama) and Others, .

27. That, on the finding recorded on the first submission, the second question really does not arise. But in view of the fact that it was argued before me at some length and particularly in the state of the record maintained by the trial Court, I propose to briefly deal with the said question.

28. On 21st November 1986, the opponent-State filed an application u/S. 468 read with S. 473 of the Criminal Procedure Code seeking condonation of delay and the order sheet dated 21st November 1986 in Criminal Cases Nos. 57 to 61 of 1987 reveals that the trial Court mechanically granted the same, even when the accused and their counsel were absent and admittedly even without serving the copy of the application for condonation of delay on them and admittedly behind their back and without hearing them. S. 468 of the Code provides a period of limitation prescribed for taking cognizance of an offence unlike under the old Code where no such provision existed. Chapter XXXVI was introduced in the New Code prescribing the period of limitation for launching of a criminal prosecution in certain categories of cases. S. 467 defines "period of limitation" as the period specified in S. 468 for taking cognizance of an offence. U/S. 473, the Court may take cognizance of the offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. This new Chapter was apparently introduced in the Code in the interest of administration of justice with a view to put pressure on the organs of the criminal prosecution to make all efforts to ensure the detection and punishment of the crime quickly and also to shut out belated prosecutions and save the accused from unnecessary harassment and from the risk of facing a trial at a time when his evidence might have been lost due to the delay on the part of the prosecution. On account of the inordinate delay in the prosecution, the evidence of witnesses becomes weaker and uncertain due to the lapse of memory. One of the grounds given by the Law Commission for introducing this Chapter is that the sense of social retribution which is one of the purports of criminal law loses its edge after the expiry of the longer period.

29. It is thus clear from the language of S. 468 of the Code that there is a legislative interdiction against taking cognizance of the offences in the category specified in sub-s. (2) after the expiry of the period of limitation except as otherwise provided elsewhere in the Code. Thus, protection has been given to an accused person u/S. 468(1) of the Code against belated and time-barred prosecutions and this is certainly a benefit given in favour of the accused. It cannot, therefore, be said that S. 468 does not confer a right on the accused persons to plead that an offence or offences disclosed in a complaint filed against him should not have been taken cognizance of

as the prosecution was barred by limitation.

30. Thus, the Court is duty bound on the presentation of the charge-sheet to consider the question of limitation and to see as to whether it is competent to take cognizance and whether the limitation has expired or not. In case the limitation has expired, it has no jurisdiction to take cognizance and if in disregard to the provisions the Court takes cognizance, the order of the Court would be without jurisdiction.

31. It is contended by the State that the accused persons are not entitled to a hearing or a notice as there was no express provision in that behalf in the Code. It is needless to say that, even if the Statute is silent, a very valuable right arises in favour of the accused persons on account of the expiry of the prescribed period of limitation and they are entitled to an opportunity of being heard and principles of natural justice inevitably require that they should be heard on the question of extension of period of limitation by the Court. In any view, before taking cognizance of the offence, in case the charge-sheet is presented after the expiry of the period of limitation, an opportunity of being heard should be given to the accused persons before extending the period of limitation. It would be relevant to refer to the observations of the Supreme Court in Surinder Mohan Vikal Vs. Ascharaj Lal Chopra, :-

"The appellant was entitled to the benefit of S. 468 which prohibits every Court from taking cognizance of an offence of the category specified in sub-sec. (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative policy behind it. For instance they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated a bar to the taking of cognizance has been prescribed u/S. 468 of Cr.P.C. and there is no reason why the appellant should not be entitled to it in the facts and circumstances of the case."

The Supreme Court further in State of Punjab Vs. Sarwan Singh, , has observed that the object of criminal procedure in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time as a result of which material evidence may disappear and also to prevent the abuse of the process of the Court by filing vexations and belated prosecution long after the date of the offence. The object which the statute seeks to subserve is clearly in. consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution. From these observations, it is clear that the prosecution runs the risk of failing on the ground of limitation if the prosecution is filed beyond the prescribed period of limitation and as such the accused acquires a right to contend before the Court that belatedly filed prosecutions should not be entertained and as a consequence to oppose the application u/S. 473, Cr.P.C. seeking condonation of delay in filing the prosecution.

32. In the light of the aforesaid observations, it can certainly be said that the accused is rightly interested in the question of extension of the period of limitation and he cannot be denied a hearing on that question. Admittedly, the trial Court even on this aspect of considering the application for condonation of delay and extending the period of limitation has passed the order mechanically and admittedly without notice to the accused and without hearing them. The order condoning the delay admittedly is a judicial order and could not have been made in this sloven, manner.

33. Incidentally, there is another infirmity in respect of this order condoning the delay by the trial Court. The Magistrate has no power or jurisdiction to take cognizance of an offence which is time barred u/S. 468 of the Code. That being the position, there is no scope for condonation of delay after taking cognizance of the offence. Such delay has to be condoned in accordance with the provisions of the Criminal Procedure Code, 1973; prior to the taking of the cognizance of the offence. In the present case, the process has just been reversed : The Magistrate takes the cognizance of the offence, directs process to be issued and later on proceeds to grant the application fox condonation of delay. That has been done in the present case and as such I feel no hesitation in holding that on this additional ground the trial Court acted illegally and without jurisdiction in taking cognizance of the offence alleged in the present case.

34. An additional reason why this order suffers from infirmity is the total absence of reasons recorded by the trial Court for his satisfaction that the delay has been properly explained and that it requires to be condoned. The order condoning the delay should reflect objectively the facts and circumstances on which the satisfaction of the Magistrate was based. It is on this additional ground for absence of recording reasons that the order passed granting the application for condonation of delay is rendered illegal.

35. The view I have taken finds support in Provident Fund Inspector v. Mohammad, 1980 Ker LT 698; Panney Singh and Others Vs. State of Rajasthan, ; Debidayal Sukhali v. D. N. Dass, Provident Fund Inspector 1978 Cal HC N 224 ; Shyam Sunder Sarma Vs. State of Assam and Others, ; Anil Mohan Bannerjee v. Registrar of Companies, West Bengal; (1978) I C LJ 617; Gulabchand Jain v. State 180 BLJR 156; State (Delhi Administration) v. Anil Puri, ILR (1979) Delhi 350; X. M. Dakashinamurti v. State (1989) 1 Crimes 185 :Vankeppa v. Regional Transport Officer, (1978) 2 Kant L.J 457; and State of Maharashtra v. Pandurang Virya, 1985 Mah LR 185.

36. Thus, in my view, the Chief Judicial Magistrate, Satara, was plainly in error in taking cognizance of the offence on the basis of the incomplete "police report" presented before him and consequently the order taking cognizance of the offence and issuing process to the accused is quashed and set aside as also the order of condonation of delay made by him vide order dated 21st Nov. 1986.

37. The applicants in Criminal Application No. 812 of 1987 are accused Nos. 12 to 16 in the aforesaid Criminal Cases Nos. 57 to 61 of 1987, whereas the applicants in Criminal Application No. 1868 of 1987 are the original accused Nos. 17 to 19 in the aforesaid Criminal Cases. For the reasons already stated, the judgment in Criminal Application No. 531 of 1987 shall also govern the Criminal Applications Nos. 812 of 1987 and 1868 of 1987 and for the reasons stated above, all the Criminal Applications Nos. 531 of 1987, 623 to 626 of 1987, 812 of 1987 and 1868 of 1987 are "allowed in terms of the order referred to above. Rule made absolute accordingly.

38. Order accordingly.