IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1854 OF 2018

Mahesh Murthy ….Petitioner
versus
The State of Maharashtra and anr. ….Respondents

Dr. Yug Mohit Chaudhry along with Mr. Ajay Basutkar, Mr. Aniket Ramsubhe, Mr. Milind Nakashe, Ms. Suvarna Ambre and Ms. Monika Nathrani, advocate for the petitioners.
Mr. K. V. Saste, APP for the State.
Ms. Vandana Shah, advocate for respondent No.2.

CORAM : RANJIT MORE &
N. J. JAMADAR, JJ.

DATE : 9th SEPTEMBER, 2019.

P. C. :

Rule. Rule is made returnable forthwith and, by consent, the matter is heard finally.

2. Heard learned counsel and learned APP appearing for the respective parties.

3. The petition is filed for quashing and setting-aside the proceedings of CC No.1172/PW/2018 pending on the file of learned Metropolitan Magistrate, 12th Court at Bandra, Mumbai. The said case arises out of registration of FIR bearing CR No.174 of 2018 with Bandra Police Station, at the instance of respondent No.2, for the offences punishable under Sections 354 and 509 of the Indian Penal Code, 1860 (for short “the IPC”). The said FIR is registered on 16th March, 2018 and

after completion of investigation, charge-sheet is filed before the concerned Magistrate at Bandra and cognizance of the offence is taken by the Magistrate on 3rd September, 2019.

4. Dr. Chaudry, learned counsel for the petitioner, took us through the charge-sheet and especially the FIR. He stated that he is not disputing the allegation in the FIR for the purpose of quashing. He submitted that even if the allegations made in the FIR are taken on face value, the same are barred by limitation and, therefore, cognizance could not have been taken. He relied upon the decision of the Hon'ble Apex Court in the case of ***State of Haryana and ors. versus Bhajanlal and ors. 1992 Supp (1) SCC 335.***

5. Ms. Shah, learned counsel for respondent No.2, opposed the petition vehemently. She submitted that the petitioner is a serial sexual offender and charge-sheet being filed after completion of investigation into the subject FIR, this Court should not entertain the petition in exercise of jurisdiction conferred upon it under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.PC."). She also submitted that the limitation provided under Section 468 of the Cr.PC. does not apply to sexual offences. She lastly submitted that the petitioner should face the trial and there in no question of the quashing the proceedings of the subject criminal case, at this stage.

6. We have considered the rival submissions. We have also gone through the charge-sheet and especially the FIR. The FIR, as stated, is registered on 16th March, 2018. The allegations made by the complainant/respondent No.2 against the petitioner is in respect of the incident that occurred in the month of February 2004, when the petitioner and the complainant were sitting in a coffee shop and the petitioner misbehaved with her by putting his hands on her thigh and by kissing her against her will. As stated above, investigation into the subject FIR, having been completed, charge-sheet is filed and cognizance of the offence is also taken on 3rd September, 2019.

7. Section 468 of the Cr.PC speaks about limitation period to take cognizance of an offence, which reads as follows:

> ***"468. Bar to taking cognizance after lapse of the period of limitation.***
>
> *(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be-*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.*
>
> *(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."*

7. The commission of offence as alleged by respondent No.2 against the petitioner is in the month of February, 2004. On that day, offence under Section 354 of the IPC was punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both and offence under Section 509 of the IPC was punishable with simple imprisonment for a term which may extend to one year, or fine, or both. If the punishment provided under offences under Sections 354 and 509 of the IPC is considered along with limitation provided under Section 468 of the Cr.PC., then, it is clear that for the offences punishable under Section 509 of the IPC, the limitation provided is of one year and for offences punishable under Section 354 of the IPC is concerned, the limitation provided is of three years.

8. No doubt, the provisions of Section 473 of the Cr.PC. deals with extension of period of limitation in certain cases. Under these provisions, the Court may take cognizance of an offence after the expiry of the period of limitation, provided it is satisfied on the facts and circumstances of the case that the delay has been properly explained or it is necessary to do so in the interests of justice. The subject FIR came to be filed 14 years after the occurrence of the incident in question and 11 years after the period of expiration of limitation. We have perused the order taking cognizance by the concerned Magistrate and, we find that neither there is an application by the prosecutions for extension of

limitation or condonation of delay nor there are reasons for condoning such delay by the Magistrate. In other words, neither delay is properly explained nor there are reasons by Magistrate for condoning the same in the interests of justice. In our opinion, the Magistrate, after expiry of the period of limitation, could not have taken cognizance especially in the absence of explanation under Section 473 of the Cr.PC..

9. The Apex Court in ***Bhajanlal and ors. (supra)*** has given categories of cases, by way of illustrations, wherein powers of the High Court under Article 226 of the Constitution of India and Section 482 of the Cr.PC. can be exercised to secure the ends of justice. We are concerned with category (6) which reads as under :

> *"102….*
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party."*

The facts and circumstances of the present case, in our considered opinion, clearly falls in the above category. We are satisfied that the Magistrate, in view of the provisions of Section 468 of the Cr.PC and when there is no case made out under Section 473 of the Cr.PC., could not have taken cognizance. Continuation of the prosecution of the petitioner, therefore, in our opinion, would be abuse of the process of law.

9. Before parting with this order, we must make a reference to the argument made by Ms.Shah, learned counsel for respondent No.2, regarding petitioner being serial sexual offender and the provisions of limitation could not be made applicable to sexual offences. We are unable to accept the said argument in the absence of any supporting material. Section 468 of Cr.PC. is applicable to every offence under IPC and offences under Sections 354 and 509 as alleged against the petitioner are under IPC. The allegations against the petitioner that he is a serial sexual offender would not be relevant to examine the validity and legality of subject criminal proceedings pending before the learned Magistrate.

10. Taking totality of the facts and circumstances of the case into consideration, we are of the view that continuation of the impugned proceedings against the petitioner would be abuse of the process of law and, therefore, same are required to be quashed and set-aside. The writ petition is, accordingly, made absolute in terms of prayer clause (a) and is disposed off as such.

[N. J. JAMADAR, J.] **[RANJIT MORE, J.]**