Supreme Court of India
Japani Sahoo vs Chandra Sekhar Mohanty on 27 July, 2007
Author: C Thakker
Bench: C.K. Thakker, Tarun Chatterjee

CASE NO.:
Appeal (crl.) 942 of 2007

PETITIONER:
JAPANI SAHOO

RESPONDENT:
CHANDRA SEKHAR MOHANTY

DATE OF JUDGMENT: 27/07/2007

BENCH:
C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 942 OF 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 4174 OF 2006 C.K. THAKKER, J.

1. Leave granted.

2. An important and interesting question of law has been raised by the appellant in the present appeal which is directed against the judgment and order passed by the High Court of Orissa on June 20, 2006 in Crl. M. C. No. 5148 of 1998. By the said order, the High Court quashed criminal proceedings initiated against the respondent- accused for offences punishable under Sections 294 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

3. Brief facts of the case are that the appellant is a complainant who is inhabitant of village Damana under Chandrasekharpur Police Station. He had constructed many shops on his land on the side of the main road of Chandrasekharpur Bazar from which he was earning substantial amount by way of rent. It is alleged by the complainant that the accused was, at the relevant time, Inspector of Police at Chandrasekharpur Police Station and was aware that the complainant was receiving good amount of income from shop rooms erected by him.

4. According to the complainant, on February 2, 1996, a Constable of Chandrasekharpur Police Station came to his house and informed him that he was wanted by Officer-in-charge of the Police Station (Bada Babu) at 9 p.m. with monthly bounty. It was alleged by the complainant that even prior to the above incident, he was repeatedly asked by the accused to pay an amount of Rs.5,000/- per month as illegal gratification, but he did not oblige the accused. At about 9.30 p.m. on February 2, 1996, the complainant went to Chandrasekharpur Police Station where the accused was waiting for him anxiously to extract money. As soon as the complainant entered the Police Station, the accused abused him by using filthy language. The complainant was shocked. The accused pushed him as a result of which he fell down and sustained bodily pain. The accused also threatened the

complainant that if the latter would not pay an amount of Rs.5,000/- by next morning, the former would book him in serious cases like 'NDPS' and dacoity. The complainant silently returned home. On the next day, he went to his lawyer and narrated the incident. His lawyer advised him to lodge a complaint before a competent Court instead of lodging FIR against the accused. Accordingly, on February 5, 1996, the appellant filed a complaint being ICC Case No.45 of 1996 in the Court of Sub Divisional Judicial Magistrate (SDJM), Bhubaneswar against the respondent-accused for commission of offences punishable under Sections 161, 294, 323 and 506, IPC.

5. As stated by the appellant, the SDJM examined witnesses produced by the appellant-complainant between March 29, 1996 and July 24, 1996. The matter was adjourned from time to time. Ultimately, on August 8, 1997, the learned Magistrate on the basis of statement of witnesses, took cognizance of the complaint filed by the complainant and issued summons fixing December 19, 1997 for appearance of accused observing inter alia that on the basis of the statements recorded, prima facie case had been made out for commission of offences punishable under Sections 294 and 323, IPC.

6. According to the appellant, the summons was served on the respondent-accused but he did not remain present. After more than one year of issuance of summons, non-bailable warrant was issued by the learned Magistrate on September 23, 1998. The accused thereafter surrendered on November 23, 1998. He, however, filed a petition in the High Court of Orissa on November 20, 1998 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for quashing criminal proceedings contending, inter alia, that no cognizance could have been taken by the Court after the period of one year of limitation prescribed for the offences under Sections 294 and 323, IPC and the complaint was barred by limitation. A prayer was, therefore, made by the accused to set aside order dated August 8, 1997 as also order of issuance of non- bailable warrant dated September 23, 1998 by quashing criminal proceedings.

7. A counter was filed by the complainant asserting that admittedly, the complaint was filed by him in the Court of SDJM within three days of the incident i.e. the incident took place on February 2, 1996 and the complaint was filed on February 5, 1996. There was, therefore, no question of the complaint being barred by limitation. According to the complainant, the question of limitation should be considered on the basis of an act of filing complaint; and not an act of taking cognizance by the Court. It was submitted that two acts, viz. (i) act of filing complaint and (ii) act of taking cognizance are separate, distinct and different. Whereas the former was within the domain of the complainant, the latter was in the exclusive control of the Court. The accused, according to the complainant, was labouring under the misconception that the 'countdown' begins from the date of taking cognizance by the Court and not from the date of instituting a complaint by the complainant. It was, therefore, submitted that the complaint was within time and should be decided on merits.

8. The High Court, in the order impugned in the present appeal, held that the date relevant and material for deciding the bar of limitation under the Code was the date of taking cognizance by the Court. Since the offences under Sections 294 and 323 were punishable for six months and one year respectively, cognizance thereof ought to have been taken within one year of the commission of offences. Cognizance was admittedly taken on August 8, 1997, i.e. after more than one year of the

commission of offences and as such, it was barred by limitation under Section 468 of the Code. The learned Magistrate had not condoned delay by exercising power under Section 473 of the Code and hence, the complaint was liable to be dismissed on the ground of limitation. The proceedings were accordingly quashed. The complainant has questioned the legality of the order passed by the High Court.

9. We have heard the learned counsel for the parties.

10. The learned counsel for the appellant contended that the High Court committed an error of law in holding that the complaint filed by the complainant was barred by limitation. According to him, when the complaint was filed within three days from the date of incident complained of, the learned Magistrate was wholly justified in proceeding with the said complaint treating it within the period of limitation. It was stated that the complainant produced his witnesses who were examined between March 29, 1996 and July 24, 1996 and after taking into consideration the statements of those witnesses and after application of mind, the learned Magistrate took cognizance of offences and issued summons under Sections 294 and 323, IPC. It was also submitted that provisions of Section 468 must be read reasonably by construing that the action must be taken by the complainant of filing a complaint or taking appropriate proceedings in a competent Court of Law. Once the complainant takes such action, he cannot be penalized or non-suited for some act/omission on the part of the Court in not taking cognizance. It was submitted that taking of cognizance was within the domain of the Magistrate and not within the power, authority or jurisdiction of the complainant and the act of Court cannot adversely or prejudicially affect a party to a litigation. It was also submitted that the respondent- accused abused his position and misused his powers and, by administering threat and intimidating the complainant, wanted to extract money by resorting to illegal means. The complainant, therefore, by proceeding in a recognized legal mode, instituted a complaint and there was no reason for the High Court to abruptly terminate the proceedings half-way without entering into merits of the matter. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the High Court and by directing the learned Magistrate to decide the matter on merits.

11. The learned counsel for the respondent- accused, on the other hand, supported the order passed by the High Court. He submitted that the bar imposed by the Code is against 'taking cognizance' and not filing complaint. The High Court properly interpreted Section 468, applied to the facts of the case and held that since cognizance was taken by the Court after one year, the provision of law had been violated and the complaint was barred by limitation. No fault can be found against such an order and the appeal deserves to be dismissed.

12. Before we proceed to deal with the question, it would be appropriate if we consider the relevant provisions of law. Chapter XXXVI (Sections 466-473) has been inserted in the Code of Criminal Procedure, 1973 (new Code) which did not find place in the Code of Criminal Procedure, 1898 (old Code). This Chapter prescribes period of limitation for taking cognizance of certain offences. Section 467 is a 'dictionary' provision and defines the phrase 'period of limitation' to mean the period specified in Section 468 for taking cognizance of an offence. Sub-section (1) of Section 468 bars a Court from taking cognizance of certain offences of the category specified in sub-section (2) after

expiry of the period of limitation. It is material and may be quoted in extenso.

Section 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 a term exceeding one year but not exceeding three years.

(3) For the purpose 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.

13. Section 469 declares as to when the period of limitation would commence. Sections 470-471 provide for exclusion of period of limitation in certain cases. Section 472 deals with 'continuing' offences. Section 473 is an overriding provision and enables Courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation.

14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.

15. In Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr., (1969) 2 SCR 438 : AIR 1970 SC 962, this Court stated:

"This takes us to the contention whether the prosecution must be quashed because of the delay in instituting the same. It is urged on behalf of the accused that because of the delay in launching the same, the present prosecution amounts to an abuse of the process of the Court. The High Court has repelled that contention. It has come to the conclusion that the delay in filing the complaint is satisfactorily explained. That apart, it is not the case of the accused that any period of limitation is prescribed for filing the complaint. Hence the court before which the complaint was filed could not

have thrown out the same on the sole ground that there has been delay in filing it. The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint". (emphasis supplied)

16. At the same time, however, ground reality also cannot be ignored. Mere delay may not bar the right of the 'Crown' in prosecuting 'criminals'. But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at 'any time' for 'any crime' irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences".

17. The Law Commission considered the question in the light of legal systems in other countries and favoured to prescribe period of limitation for initiating criminal proceedings of certain offences.

18. In the Statement of Objects and Reasons, it had been observed;

"There are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission."

19. The Joint Committee of Parliament also considered the following as sufficient grounds for prescribing the period of limitation; (1) As time passes the testimony of witnesses becomes weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.

(2) For the purpose of peace and repose, it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with multifarious laws creating new offences many persons at sometime or other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

(3) The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of persons concerned. (4) The sense of social retribution which is one of the purposes of criminal law loses its edge after the expiry of long period.

(5) The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly. (vide Report, dated December 4, 1972; pp. xxx-xxxi)

20. It is thus clear that provisions as to limitation have been inserted by Parliament in the larger interest of administration of criminal justice keeping in view two conflicting considerations;

(i) the interest of persons sought to be prosecuted (prospective accused);

(ii) and organs of State (prosecuting agencies).

21. In State of Punjab v. Sarwan Singh, (1981) 3 SCR 349 : AIR 1981 SC 1054, this Court stated: "The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, 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".

22. Bearing in mind the above fundamental principles, let us examine the rival contentions and conflicting decisions on the point.

23. Admittedly in the instant case, the offence was alleged to have been committed by the accused on February 2, 1996 and complaint was filed on February 5, 1996. It was punishable under Sections 294, 323, 161 read with 506, IPC. It is not in dispute that the learned Magistrate took cognizance of an offence punishable under Sections 294 and 323, IPC on August 8, 1997. Concededly, the period of limitation for an offence punishable under Sections 294 and 323 is six months and hence, it was barred under Section 468 of the Code if the material date is taken to be the date of congnizance by the Magistrate.

24. The learned counsel for the parties drew our attention to decisions of various High Courts as also of this Court. From the decisions cited, it is clear that at one time, there was cleavage of opinion on interpretation of Section 468 of the Code. According to one view, the relevant date is the date of filing of complaint by the complainant. As per that view, everything which is required to be done by the complainant can be said to have been done as soon as he institutes a complaint. Nothing more is to be done by him at that stage. It is, therefore, the date of filing of complaint which is material for the purpose of computing the period of limitation under Section 468 of the Code.

25. According to the other view, however, the law places an embargo on Court in taking cognizance of an offence after lapse of period of limitation and hence, the material date is the date on which the Magistrate takes cognizance of offence. If such cognizance is taken after the period prescribed in sub-section (2) of Section 468 of the Code, the complaint must be held to be barred by limitation.

26. Let us consider some of the decisions on the point.

27. In Jagannathan & Ors. v. State, 1983 Crl.LJ 1748 (Mad), an occurrence took place on March 2, 1981. Investigation was completed by May 6, 1981 and the Magistrate took cognizance for offences punishable under Sections 448, 341 and 323, IPC on March 12, 1982 after the expiry of period of limitation prescribed under clause

(b) of sub-section (2) of Section 468 of the Code.

28. Dismissing the complaint on the ground of limitation, a single Judge of the High Court of Madras observed;

"Therefore, when the punishments provided for these offences are one year and less, the cognizance of the offences ought to have been taken within a period of one year from the date of the offences. Indisputably the trial Court has taken cognizance of the offences beyond the statutory period of limitation of one year. On that ground, the entire proceeding in C.C. 78 of 1982 on the file of the Court below is quashed ."

29. In Court on its own motion v. Sh. Shankroo, 1983 Crl. LJ 63 (HP), the offence in question alleged to have been committed by the accused was punishable under Section 33 of the Forest Act, 1927 of illicit felling of trees. The offence was punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. It was said to have been committed by the accused on March 26, 1979, but the challan was presented in the Court on August 11, 1980, i.e. after a period of one year. The Court held that the challan ought to have been filed within one year and since it was not done, "the Court had no jurisdiction to take cognizance of the offence". The proceedings were, therefore, ordered to be dropped.

30. In Shyam Sunder Sarma v. State of Assam & Ors, 1988 Crl. LJ 1560 (Gau), the Court held that cognizance of offence ought to be taken within the period of limitation. In Shyam Sunder, the offence in question was punishable under Sections 448, 427, 336 and 323 read with 34, IPC. It was alleged to have been committed on May 28, 1974. The matter was submitted before the Magistrate on June 11, 1974. But after the investigation, the police submitted the charge-sheet on December 8, 1978 and process was issued by the Magistrate on January 2, 1979. It was held by the Court that the cognizance could not be said to have been taken on June 11, 1974 when the matter was submitted to the Magistrate, but only on January 2, 1979 when the process was issued. It was clearly barred by limitation and since the offence was not a "continuing offence" within the meaning of Section 472 of the Code, prosecution was barred by limitation.

31. In Bipin Kalra v. State, 2003 Crl LJ (NOC) 51 (Del), the High Court held that valid cognizance in respect of an offence punishable under Section 323, IPC could be taken within one year 'from the date of commission of offence'. Cognizance could not be taken after lapse of that period.

32. In Dr. Harihar Nath Garg v. State of Madhya Pradesh, (2003) 3 Crimes 412 (MP), the offence with which the Court was concerned was punishable under Section 491, IPC. The incident was of June 27, 1996 and charge-sheet was filed on January 17, 1997, i.e. after a period of six months. It was held to be barred by limitation and the proceedings were quashed.

33. In Dandapani & Ors. v. State by Sub-Inspector of Police, Tiruvannamalai Town, (2002) 1 Crimes 675 (Mad), offences punishable under Sections 147, 148, 325, 427, 323 and 324, IPC had been committed by the accused on February 1, 1999. The case was registered on the same day. Cognizance was taken by the Magistrate on February 11, 2000 for an offence of affray punishable under Section

160, IPC. It was held that prosecution was barred by limitation and was liable to be quashed. Referring to an earlier decision in ARU v. State, 1993 L.W. (Cri) 127, the Court observed that the investigating agency and the prosecuting authority must be aware of the Law of Limitation and its link to cognizance contemplated under Section 468 of the Code and they should perform their duties diligently.

34. There are, however, several decisions wherein the courts have taken the view that the relevant date for the purpose of deciding the period of limitation is the date of filing of complaint or initiation of proceedings and not of taking cognizance by a Magistrate or a Court.

35. The leading decision on the point is Kamal H. Javeri & Anr. v. Chandulal Gulabchand Kothari & Anr. of the High Court of Bombay reported in 1985 Crl. LJ 1215 (Bom). In that case, a complaint was filed for an offence punishable under Section 500, IPC within the period of limitation, but the process was issued by the Metropolitan Magistrate after the prescribed period of limitation. The Court was called upon to consider and interpret Sections 468, 469 and 473 of the Code. The Court examined the relevant provisions of the Code and observed;

The Limitation Act prescribes the limitation for taking action in the Court of law and if the action is taken after the expiry of the period prescribed under the Limitation Act, the remedy is said to be barred. The same principle would also apply while considering the question of limitation provided under Section 468 of the Cr. P.C. I may give an illustration to demonstrate how the submission of Shri Vashi in connection with the interpretation of Section 468, will lead to illogical situation and disastrous result. It is also well settled that a party can take action on the last date of the limitation prescribed under the Act. (1) Suppose a complaint is filed on the last day of limitation prescribed under the Act and if on that date the Magistrate is on leave and/or otherwise unable to hear the party and/or apply his mind to the complaint on that date then naturally his complaint will have to be held barred by limitation if arguments of Shri Vashi are to be accepted.

(2) Suppose a complaint is filed quite in advance before the expiry of the period of limitation and if the Magistrate in his discretion postpones the issue of process by directing an investigation under Section 202, Cr. P.C. and if that, investigation is not completed within the prescribed period of limitation, naturally the Magistrate shall not be able to apply his mind and take cognizance and/or issue the process until report Under Section 202 of the Code is received and in that event the complaint will have to be dismissed on the ground that the Court cannot take cognizance of an offence after the expiry of the period of limitation from the date of offence. There could be several such situations. The complaint although filed within limitation but the Magistrate due to some or other reasons beyond his control could not apply his mind and take cognizance of the complaint and/or could not issue the process within the prescribed period of limitation as provided under Section 468 of the Code, then the complaint will have to be dismissed in limine. So also if the Magistrate takes cognizance after the period prescribed under Section 468 of the Code the said order of taking cognizance would render illegal and without jurisdiction. In such contingencies can the complainant be blamed who has approached the Court quite within limitation prescribed under the Act but no cognizance could be taken for the valid and good reasons on the part of the Magistrate and should the complainant suffer for no fault on his part. This could not be the object of

the framers of the provisions of Section 468, Cr. P.C.

36. After referring to several decisions, the Court held that the limitation prescribed under Section 468 of the Code should be related to the filing of complaint and not to the date of cognizance by the Magistrate or issuance of process by the Court.

37. In Basavantappa Basappa Bannihalli & Anr. v. Shankarappa Marigallappa Bannihalli, 1990 Crl LJ 360 (Kant), a complaint was filed within ten days of the occurrence, but cognizance was taken by the Magistrate after the period of limitation prescribed by the Code. Following Kamal Javeri, the Court held that the relevant date would be date of filing complaint and not of taking cognizance by the Magistrate for deciding the bar of limitation.

38. In Anand R. Nerkar v. Smt. Rahimbi Shaikh Madar & Ors., 1991 Crl. LJ 557 (Bom), the High Court held that the relevant date for deciding the period of limitation is the date of prosecution of complaint by the complainant in the Court and not the date on which process is issued. It was observed that various sections of the Code make it clear that before taking cognizance of a complaint, the Magistrate has to consider certain preliminary issues, such as, jurisdiction of court, inquiry by police, securing appearance of accused, etc. It, therefore, necessarily follows, observed the Court, that the material date is not the date of issuance of process, but the date of filing of complaint. Subsequent steps after the filing of the complaint, such as, examination of witnesses, consideration of case on merits, etc. are by the court. Moreover, taking cognizance or issuance of process depends on the time available to the court over which the complainant has no control. It would, therefore, be wholly unreasonable to hold that a complaint even if presented within the period of limitation would be held barred by limitation merely because the Court took time in taking cognizance or in issuing process.

39. In Zain Sait v. Intex-Painter, etc., 1993 Crl. LJ 2213 (Ker), the Court held that the crucial date for computing period of limitation would be date of filing of complaint. Limitation under Section 468 of the Code has to be reckoned with reference to date of complaint and not with reference to date of taking cognizance. It was also observed that there could be a case where a complaint is filed on the last day of limitation and on account of inconvenience or otherwise of the court, the sworn statement of the complainant could be recorded on a later date and the Magistrate takes cognizance after the expiry of limitation. If the date of cognizance is taken as the date for determining the period of limitation, it would be penalizing the party for no fault of his. Such a construction cannot be placed on Section 468 of the Code. [See also Malabar Market Committee v. Nirmala, (1988) 2 Ker LT 420]

40. In Labour Enforcement Officer (Central) Cochin, v. Avarachan & Ors., 2004 Crl. LJ 2582 (Ker), the same High Court held that starting point of limitation is the date when the complaint is presented in the Court and not the date on which cognizance is taken. If the initial presentation of the complaint is within the period of limitation prescribed by the Code, it cannot be dismissed as barred by limitation and proceedings cannot be dropped.

41. In Hari Jai Singh & Anr. v. Suresh Kumar Gupta, 2004 Crl LJ 3768 (HP), it was held that the period of limitation should be counted from the date of presentation of complaint and not from the date of issuance of process by the Magistrate. In that case, defamatory news was published on May 31, 1995 and a complaint was presented on May 14, 1998, well within three years prescribed for the purpose. Process was, however, issued by the trial Magistrate on November 12, 1998, i.e. after three years. It was held by the Court that the complaint could not be dismissed on the ground of limitation.

42. The Court said;

The words "A Magistrate taking cognizance of an offence on complaint shall examine on oath the complainant and the witnesses present" evidently provides the manner in which the Magistrate taking cognizance on the complaint is to proceed to take preliminary evidence of the complainant on the basis of which he is to determine whether process against the accused is to be issued or not. Therefore, with reference to the context it cannot be held for the purpose of Section 468 of the Code that the Magistrate invariably takes cognizance of offences only when he decides to issues process against the accused under Section 204 of the Code. Therefore, for all intents and purposes of Section 468 of the Code, a Court must be deemed to have taken cognizance on a criminal complaint at the stage of presentation of the complaint to the Court and its proceedings therewith as provided under Section 200 of the Code. To hold contrary, will lead to injustice and defeat the provisions of the Code intended to promote the administration of criminal justice. It cannot be disputed that after the presentation of the complaint the Magistrate has to examine the complainant and his witnesses or postpone the issue of process and inquire into the case himself or direct an investigation to be made by the police officer or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. These processes in a given case are likely to take time and are dependent on the time available with the Magistrate or the person who has been directed to investigate the allegations made in the complaint and early conclusion of these processes is not within the power and control of the complainant. Therefore, it would be unreasonable to hold that a complaint even if presented within the period of limitation but the process against the accused is not issued by the Magistrate within the period of limitation, the Court shall be debarred from taking cognizance of an offence. Therefore, it will be rational and reasonable to hold that the period of limitation is to be determined in view of the date of presentation of the complaint and not with regard to the date when the process is ordered to be issued by the Magistrate against the accused under Section 204 of the Code.

43. We may now refer to some of the decisions of this Court. The first in point of time was Surinder Mohan Vikal v. Ascharaj Lal Chopra, (1978) 2 SCC 403. In that case a complaint under Section 500, IPC was filed on February 11, 1976. It was alleged that the accused had committed an offence of defamation on March 15, 1972. A petition was, therefore, filed by the accused in the High Court under Section 482 of the Code for quashing proceedings on the ground that the complaint was barred by limitation. Upholding the contention and observing that the complaint was time-barred, the Court observed; "But, as has been stated, the complaint under Section 500, IPC was filed on February 11, 1977, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation."

(emphasis supplied)

44. It is thus clear in that case the complaint itself was filed after the expiry of period of limitation which was held barred under Section 468 of the Code.

45. In Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada, (1997) 2 SCC 397 : JT 1996 (11) SC 175, a complaint was filed by the wife against her husband on September 10, 1990 for an offence punishable under Section 406, IPC. It was alleged in the complaint that she demanded from the respondent-husband return of jewellery and household articles on December 5, 1987, but the respondent refused to return stridhana to the complainant-wife and she was forced to leave matrimonial home. The complaint was admittedly within the period of three years from the date of demand and refusal of stridhana by the respondent-husband. The complaint was held to be within time and the matter was decided on merits.

46. In State of H.P. v. Tara Dutt & Anr., (2000) 1 SCC 230 : JT 1999 (9) SC 215, this Court held that in computing the period of limitation where the accused is charged with major offences, but convicted only for minor offences, the period of limitation would be determined with reference to major offences.

47. Special reference may be made to Bharat Damodar Kale & Anr. v. State of A.P., (2003) 8 SCC 559 : JT 2003 Supp (2) SC 569. This Court there considered the scheme of the Code and particularly Section 468 thereof and held that the crucial date for computing the period of limitation is the date of filing of complaint and not the date when the Magistrate takes cognizance of an offence. In Bharat Damodar, a complaint was filed by Drugs Inspector against the accused for offences punishable under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The complaint was lodged in the Court on March 3, 2000 in respect of offence detected on March 5, 1999. The period of limitation was one year. The Magistrate took cognizance of the offence on March 25, 2000. Now, if the date of complaint was to be taken into consideration, it was within time, but if the date of cognizance by the Magistrate was the material date, admittedly it was barred by time. The Court considered the relevant provisions of the Code, referred to Rashmi Kumar and held the complaint within time observing that the material date for deciding the period of limitation was the date of filing of complaint and not the date of taking cognizance by the Magistrate.

48. The Court observed;

"On facts of this case and based on the arguments advanced before us we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to delay in instituting the prosecution or to delay in taking cognizance. As noted above according to learned counsel for the appellants the limitation prescribed under the above Chapter applies to taking of cognizance by the concerned court therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the Chapter-Heading of Chapter XXXVI of the Code which reads thus : "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the Heading of the

Chapter the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant.

(emphasis supplied)

49. The learned counsel for the appellant-accused, no doubt, submitted relying on the italicized portion quoted above, that the Court was not right in observing that the argument of the accused was based on and inspired by the 'Chapter Heading' of Chapter XXXVI of the Code which reads "Limitation for taking cognizance of certain offences". The counsel submitted that the Court proceeded to decide the point primarily on the basis of the argument advanced by the accused that the limitation prescribed by the 'Chapter Heading' applied to taking of cognizance and not filing of complaint, which was not correct. He submitted that apart from title (Chapter Heading), Section 468 itself places bar and puts embargo on taking cognizance of an offence by a Court. It expressly provides and explicitly states that "No court shall take cognizance of an offence " Bharat Damodar, thus, submitted the learned counsel, is per incuriam and is not binding upon this Court. The counsel, therefore, submitted that in that case the matter may be referred to a larger Bench.

50. We are unable to uphold the contention. We are equally not impressed by the argument of the learned counsel for the accused that the decision in Bharat Damodar is per incuriam. We have gone

through the said decision. We have also extracted hereinabove paragraph 10 wherein the contention of the accused had been dealt with by this Court and negatived. It is true that in that case, the Court observed that taking clue from Chapter Heading (Chapter XXXVI : Limitation for taking cognizance of certain offences), an argument was advanced that if cognizance is not taken by the Court within the period prescribed by Section 468(2) of the Code, the complaint must be held barred by limitation. But, it is not true that this Court rejected the said argument on that ground. The Court considered the relevant provisions of the Code and negatived the contention on 'cumulative reading of various provisions'. The Court noted that so far as cognizance of an offence is concerned, it is an act of Court over which neither the prosecuting agency nor the complainant has control. The Court also referred to the well-known maxim "actus curiae neminem gravabit" (an act of Court shall prejudice none). It is the cumulative effect of all considerations on which the Court concluded that the relevant date for deciding whether the complaint is barred by limitation is the date of the filing of complaint and not issuance of process or taking of cognizance by Court.

51. We are in agreement with the law laid down in Bharat Damodar. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem gravabit" (an act of Court shall prejudice none) would indeed apply. [Vide Alexander Rodger v. Comptoir D'Escompte, (1871) 3 LR PC 465]. One of the first and highest duties of all Courts is to take care that an act of Court does no harm to suitors. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

52. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take

cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14 of the Constitution.

53. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.

54. In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible.

55. Appeal is accordingly allowed.