



Condonation of delay application not required for filing delayed police charge-sheet before Court: Explained

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Abstract: There is a practice of seeking application for condonation of delay from Investigating Officers for filing police charge-sheet before Courts after the period of limitation prescribed under Section 468 of the Code of Criminal Procedure, 1973 (in short “Cr.PC”). The said application is filed by the Investigating Officers under Section 473 of Cr.PC to explain the delay in filing police charge-sheet before Courts, citing transfer of the initial Investigating Officer, heavy work load of the cases pending investigation with the Investigating Officers etc. as the reasons for the delay. This paper shall analyse the relevant statutory provisions, Standing Orders and the jurisprudential developments in order to understand as to whether the said practice is in conformity with the law or not.

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Introduction

The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy as is expressed in the legal maxim *vigilantibus et non dormientibus, jura subveniunt*.

It is noteworthy that under the old Code of Criminal Procedure of 1898, no period of limitation was prescribed for launching a criminal prosecution. So much so, the court could not have thrown out a private complaint or a police charge-sheet solely on the ground of delay, though the delay was treated as a good ground for doubting the prosecution story or a circumstance to be taken into consideration in arriving at the final verdict.

The Law Commission of India felt that introducing a provision of limitation for prosecution of certain type of criminal offences would be good for the criminal justice system. The reasons given to justify introduction of provisions prescribing period of limitation for criminal cases were likelihood of evidence being curtailed, failing memories of witnesses and disappearance of witnesses. Such a provision will quicken diligence, prevent oppression and in the general public interest would bring an end to litigation and that the court would be relieved of the burden of adjudicating inconsequential or tenuous claims.

The Law Commission of India in its 42nd Report (1971), therefore, recommended that the provision of limitation should be introduced for less serious offences under the Code and that the offences punishable with fine only or with imprisonment upto three years should be made subject to the law of limitation. The Parliament acted upon the recommendation of the Commission and introduced provisions of limitation in the new code of 1973.

Chapter XXXVI (Ss. 467 to 473) of Cr.PC, 1973

Chapter XXXVI consisting of Sections 467 to 473 of the Code of Criminal Procedure, 1973 is a complete code in itself which deals with limitation for taking cognizance of certain offences. Section 468 of Cr.PC reads as under:

“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 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."

Further, Section 473 of Cr.PC has a non obstante clause which means that this provision has an overriding effect on Section 468 of Cr.PC. As per Section 473 of Cr.PC, the Court is empowered to take cognizance of an offence after the expiry of the period of limitation, if the court is satisfied on the facts and in the circumstances of a case that the delay has been properly explained or that it is necessary to do so in the interests of justice.

Computation of period of limitation for the purpose of taking cognizance of an offence by the Magistrate

There was a conflict on the question whether for the purpose of computing the period of limitation under Section 468 of Cr.PC in respect of a criminal complaint, the relevant date is the date of filing of the complaint/ the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance. This issue is no longer res-integra, being settled by the Constitution Bench of Supreme Court of India in the matter of *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director and others (2014) 2 SCC 62* wherein, after considering its previous pronouncements, the Supreme Court held that for the purpose of computing the period of limitation under Section 468 of Cr.PC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.

Date of institution of prosecution

Now, question arises, what is the date of institution of prosecution. The word "prosecution" has not been defined under the Code of Criminal Procedure, 1973. The expression 'institution of prosecution' would be wide enough to include within its ambit institution of prosecution- either by filing of a complaint under Section 200 of Cr.PC or by giving of information relating to commission of a cognizable offence under Section 154 of Cr.PC.

The High Court Lucknow Bench in Criminal Misc. Application No.22715 of 2019 and Criminal Appeal No.724 of 2017 "decided on 18.02.2019" in case of *Suneel Kumar Singh v. State of U.P.* in paragraph no. 42 observed as:

"42....So the prosecution starts with giving information of commission of crime and continued during investigation or inquiry, trial of offender and if any appeal is filed finally end by an order passed in Appeal....."

The Allahabad High Court in case of *Rajitram Shukla and Ors. v. State of U.P. and Ors. 2022 (118) ACC 183*, after discussing the Apex Court judgments of *Darshan Singh Saini v. Sohan Singh and another (2015) 14 SCC 570* & *Johnson Alexander v. State by C.B.I. MANU/SC/0443/2015* observed in paragraph no.19 as:

"19. The aforementioned authorities in the case of Darshan Singh Saini and Johnson Alexander, would go to show that 'institution of prosecution' would refer to the date of filing of the complaint or registering of the FIR, and in a case where the same is within the period of limitation, proceedings cannot be held to be barred by Section 468 merely for the reason that the order of cognizance or issuance of process is made on a subsequent date."

The view taken in the matter of *Sarah Mathew (supra)* is primarily for the reason that so far as the complainant is concerned, as soon as he files a complaint, he has done everything which is required to be done by him and thereafter he has no control over the proceedings or the delay in taking cognizance. The said reason, would also be applicable where the case is instituted with the lodging of an FIR by the informant diligently and within the period of limitation. In such situation, the informant cannot be non-suited for any subsequent delay in the investigation, taking cognizance or any other action contemplated under law, for which the informant has no control. Meaning thereby that for the purpose of computing the period of limitation for taking cognizance of an offence, what the Court has to see is 'whether the first information given to the police was well within the period of limitation as prescribed under Section 468 of Cr.PC or not'. The Court is not required to see the date on which the police has submitted charge-sheet in the Court. Thus, Section 473 Cr.PC postulates condonation of delay caused by the complainant in filing the complaint or giving the information and it is the date of filing of complaint or giving the information which is material for calculating the period of limitation.

To give an example in the context of the relevant date for computing the period of limitation for the purpose of taking cognizance of an offence, suppose a theft is committed on 01.01.2021. Here, the offence of theft under Section 379 of IPC is punishable with imprisonment which may extend to three years or with fine or with both. Therefore, under Section 468(2)(c) of Cr.P.C., the limitation period for taking cognizance of the said offence is three years. Therefore, the period of limitation began to run from 01.01.2021 till 31.12.2023. The first information or complaint of the said offence of theft may be given to the police in between 01.01.2021 and 31.12.2023. If the first information is given to the police in between the

aforesaid periods, the case would not be time barred for any subsequent delay in the investigation.

A person filing a complaint well within the limitation period cannot be penalized because the investigating agency has not completed the investigation in time. The act of the sovereign shall prejudice no one. The investigation is an act of the police over which the complainant has no control. It is seen that the Courts make fundamental errors in assuming that the date of filing charge-sheet or the date of taking cognizance is decisive of the matter, while ignoring the fact that the information was indeed given to the police well within the period of limitation with reference to the commission of the crime.

If the delay is caused by the investigating agency by not completing the investigation in time, it is illogical to expect the Investigating Officer to make an application under Section 473 of Cr.PC for condonation of delay because Section 473 Cr.PC postulates condonation of delay caused by the complainant in filing the complaint or giving the information. Such a situation will be anomalous and such a procedure is not known to the law. Similarly, when the crime is reported to the Police after the period of limitation as prescribed under Section 468 of Cr.PC, it is illogical to expect the Investigating Officer to make an application for condonation of delay. The Investigating Officer surely cannot explain the said delay caused by the complainant/informant.

How will Section 473 of the Cr.PC work?

Generally, victims of crime approach the authorities for initiation of prosecution just after the commission of crime or when such offence comes to their knowledge. There are very less cases come before Courts where the information/complaint in respect of crime is reported to the authorities after the prescribed period of limitation as provided under Section 468 of Cr.PC. If that is the case, then, the question is how will Section 473 of Cr.PC work?

The complainant would be interested in having the delay condoned and he must be knowing the reasons for the delay in filing complaint or giving the information. If the complaint is filed after the prescribed period of limitation, the complainant can make an application for condonation of delay under Section 473 of Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. The accused has a right to be heard at the time of condonation of delay in taking cognizance by the Courts. Delay cannot be condoned without notice to the

accused and behind their back and without recording reasons for condonation of delay as propounded by the Supreme Court in the matters of *State of Maharashtra v. S.V. Dongre & Ors. 1995 AIR 231, P.K. Choudhary v. Commander, 48 BRTF, (2008) 13 SCC 229* and *Krishna Sanghai v. State of M.P. 1997 Cr.L.J 90 (MP)*.

Limitation for filing charge-sheet before Courts

There is no time limit prescribed under the Cr.PC for completing the investigation of an offence and filing of charge-sheet before Courts except in rape cases. Section 173(1) of Cr.PC provides that every investigation shall be completed without unnecessary delay. However, Section 173 of Cr.PC was amended in 2008 and a new clause (1A) was added to it which provides that the investigation in relation to an offence of rape shall be completed within two months.

Standing Order No. 444 of 2016 issued by Commissioner of Police, Delhi

The High Court of Delhi in the matter of *Kanwar Sain Gupta v. NCT of Delhi (Crl. M.C. 2621/2012)* has observed that investigations of cases are not concluded in expeditious manner. In order to streamline the investigation and conclude the same in an expeditious manner, the Commissioner of Police, Delhi issued certain instructions vide Standing Order No.444/2016. The said instructions are an inherent reminder to the police department to carry out investigations in a swift manner. The instructions under the above said Standing Order starts with the registration of the FIR and will put to end upon filing of the charge-sheet. The instructions show as to how to make checks and counter checks by the superior police authority to the act of the investigating officer in the matter. In fact, this step is administrative arrangement of the Delhi Police to ensure speedy investigation of cases. The relevant instructions under the Standing Order are reproduced as under:

- *In case the accused persons are arrested and are in judicial custody, the Investigating Officers and ACP shall ensure that investigation of the case is completed expeditiously and chargesheets are filed within 60/90 days of arrest, as per the requirements of Section 167(2)(a) of Cr.PC.*
- *In case investigation of a case relating to economic offences cannot be completed within one year, the Investigating Officer/SHO shall seek further time for investigation from the DCP concerned alongwith reasons of delay, whereas in cases*

relating to other than economic offences, the Investigating Officer/ SHO shall seek further time for investigation from the ACP concerned alongwith reasons of delay. The concerned Supervisory Officer (DCP/ACP), shall examine the reason of delay as well as the case file and after satisfying himself that sufficient steps are taken by the I.O. to complete the investigation, shall accord the same or take necessary corrective steps. In case there is undue delay in completion of investigation, the DCP/ACP concerned shall fix the responsibility of concerned and initiate appropriate action.

- *Similarly, if the investigation of any case (other than economic offences) cannot be completed within two years, the concerned ACP shall seek further time for investigation from the concerned Dy. Commissioner of Police (DCP). The DCP shall then examine the reasons of delay, reports and case file and shall accord permission only after satisfying himself that further investigation is essential and reasonable steps have been taken by the I.O. and other supervisory officers to complete the investigation. In case, there is undue delay in completing the investigation, then the DCP shall fix responsibility for delay by concerned officers and take appropriate action.*
- *In the same way, if the investigation of any case cannot be completed within three years, the concerned DCP shall seek further time for investigation from the concerned Joint Commissioner of Police (Jt. CP). The Jt. CP shall then examine the reasons of delay, reports and case file and shall accord permission only after satisfying himself that further investigation is essential and reasonable steps have been taken by the I.O. and other supervisory officers to complete the investigation. In case there is undue delay in completing the investigation, then the Jt. CP shall fix responsibility for delay by concerned officers and take appropriate action.*

In view of the instructions aforesaid, if the concerned ACP, DCP or Jt. CP, as the case may be, by examining the reasons for delay and after satisfying himself, has extended further time for investigation of a case, then, the investigation can continue even beyond the period of three years. Thus, it is for the concerned ACP, DCP or Jt. CP to examine the reasons of delay and to accord permission that further investigation is essential. In case there is undue delay in completing the investigation, then the concerned ACP, DCP or Jt. CP shall fix responsibility for delay by concerned Investigating Officers and take appropriate disciplinary action against them. Thus, it is not in the domain of the

Courts to examine the reasons of delay in completing the investigation by the investigating agency and, therefore, the Court should not seek application under Section 473 of Cr.PC from the Investigating Officer to explain the delay in completing the investigation. However, the disciplinary action may be recommended against the Investigating Officer of the case when the investigation was continued beyond the period of one year, two years or three years, as the case may be, without seeking further time for investigation from the concerned ACP, DCP or Jt. CP.

Consequences of filing delayed police charge-sheet before Court by the investigating agency

Since, it is settled that the delay in completing the investigation by the investigating agency is no ground for refusing to take cognizance of an offence by the Magistrate, the question arises as to what would be the consequences of filing delayed police charge-sheet before Courts. The following consequences may arise in case of filing delayed police charge-sheet before Courts by the investigating agency:

- As per Section 167(2) of Cr.PC, an accused becomes entitled to an indefeasible right to 'default bail' under proviso to section 167(2) Cr.P.C. if the charge-sheet is not filed within the stipulated period of 90/60 days (90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years, and 60 days where the investigation relates to any other offence).
- As per Section 167(5) of Cr.PC, if the investigation in summons case is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless extended. Section 167(5) of Cr.PC does not apply to a case in which no arrest is made. There is no bar for the Court to take cognizance of an offence on the basis of the evidence already collected during the six months period.
- The question of delay in filing a charge-sheet may be a circumstance to be taken into consideration for quashing the proceedings by the Constitutional Courts, but by itself it affords no ground for refusing to take cognizance of an offence by the Magistrate. In *State of Andhra Pradesh vs. PV Pavithran [1990(2) SCC 340]*, the delay in completing investigation was recognized as a ground for quashing criminal proceedings.

- As per the Standing Order No.444/2016, an appropriate disciplinary action can be initiated against the concerned investigating officers if investigation is not carried out and completed in accordance with the instructions given in the Standing Order.

Conclusion

In view of the statutory provisions and jurisprudential developments discussed above, it is well settled that for the purpose of computing the period of limitation for taking cognizance of an offence, it is the date of filing of complaint in the Court or the date of giving the information to the police which is material and not the date on which charge-sheet is submitted before the Court. The pronouncement made in the matter of *Sarah Mathew (supra)*, would go to show that 'institution of prosecution' would refer to the date of filing of the complaint or registration of an FIR, and in a case where the same is within the period of limitation, proceedings cannot be held to be barred by limitation under Section 468 of Cr.PC merely for the reason that the charge-sheet is filed or the order of cognizance is made on a subsequent date. In case a

complaint is filed in the Court or information is given to the police beyond the prescribed period of limitation as provided under Section 468 of Cr.PC, the complainant/informant has to move an application under Section 473 of Cr.PC to explain the reasons of delay on the basis of his personal knowledge. Hence, the practice of seeking application under Section 473 of Cr.PC for condonation of delay from the Investigating Officers should be deprecated as the same is unknown to the law and is also not in conformity with the law.

References

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