

## STATE OF PUNJAB

v.

SARWAN SINGH

*April 2, 1981*

[ S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ. ]

*Bar of limitation Under the statute—Whether the entire proceedings instituted after period of limitation including the conviction and sentence becomes non-est—Criminal Procedure Code 1973 (Act II of 1974) Scope of—Section 468, explained.*

Based on the audit report dated January 5, 1973 revealing an embezzlement having been committed by the Respondent on 22.8.1972, a challan was presented against him on the 13th October, 1976 under Sec. 406 Penal Code for misappropriating the amounts deposited with him as a Cashier of the Tanda Badha Co-operative Society, district Patiala. The Trial Court convicted the respondent under section 406 Penal Code and sentenced him to rigorous imprisonment for one year and to pay a fine of Rupees one thousand. The respondents' appeal to the High Court was allowed accepting the plea of bar of limitation under section 468 of the Criminal Procedure Code. Hence the State appeal after obtaining special leave of the Court.

Dismissing the appeal, the Court,

HELD : (i) Taking any of these dates, namely, 22nd August 1972, (Commission of embezzlement), and 5th January 1973 (date of detection of embezzlement) the prosecution was barred by limitation under sections 468(2) (a) and 469(b) of the Code of Criminal Procedure. Therefore, the conviction and the sentence of the respondent as also the entire proceedings culminating in his conviction became non-est. [350 F, 351 G]

(ii) The object of the Criminal Procedure Code in putting a bar of limitation on prosecution 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 abuse of the process of the court by filing vexatious and belated prosecutions 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 of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private party must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. [351 E-F]

**A** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 60 of 1981.

Appeal by Special Leave from the Judgment and Order dated 8-4-1980 of the Punjab and Haryana High Court in Criminal Revision No. 342 of 1980.

**B** *M. S. Dhillon* for the Appellant.

*T. S. Arora* for the Respondent.

The Judgment of the Court was delivered by

**C** FAZAL ALI, J. This appeal by special leave is directed against the Judgment of the Punjab and Haryana High Court dated 8th April, 1980 by which the respondent Sarwan Singh was acquitted of the charge under s. 406 of the Indian Penal Code. It appears that the respondent-accused was charged under s. 406 of the Penal Code for misappropriating the amounts deposited with him as a cashier of the Tanda Badha Co-operative Society, District Patiala. The challan was presented against the accused on the 13th October, 1976. The trial court after recording the evidence acquitted the respondent of the charge under s. 408 but convicted the respondent of the charge under s. 406 and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-. The respondent then filed the appeal to the High Court which allowed the appeal and acquitted the respondent mainly on the ground that the prosecution launched against the respondent was clearly barred by limitation under ss. 468 and 469 of the Code of Criminal Procedure. The High Court was of the view that the charge-sheet clearly shows that the embezzlement is said to have been committed on 22nd August, 1972 and the audit report, through which the offence was detected is dated 5th January, 1973. Taking any of these dates, the prosecution was barred by limitation under s. 468 (2) (c) of the Code. In our opinion, the High Court has taken the correct view of the law.

**G** Section 468(2) (c) may be extracted thus :

*Sec. 468 (2) (c) :*

**H** "three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

Section 469 (1) (a) and (6) may be extracted thus :

- “(a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier;”

In the instant case as the charge-sheet clearly mentions that the offence was committed on the 22nd August, 1972, the bar of limitation contained in s. 468 (2) (c) clearly applies and the prosecution therefore, is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would be so according to charge-sheet on January 5, 1973, the date when the audit report was made. Even if this extreme position be accepted, the prosecution would still be barred by limitation under s. 469(b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab was unable to assail the point of law derived by the High Court regarding the interpretation of s. 468. The object of the Criminal Procedure Code 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 abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 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. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non-est. For these reasons given above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds.

S.R.

*Appeal dismissed.*