

A

STATE OF RAJASTHAN
v
SANJAY KUMAR AND ORS.

MAY 1, 1998

B

[M.K. MUKHERJEE AND S.S. MOHAMMED QUADRI, JJ.]

Code of Criminal Procedure, 1973:

C

Ss.468(2) (C) and 496(1)—Complaint under SS.27(a) and 27(b) (i) of Drugs and Cosmetics Act—Limitation—Computation of—Held, Limitation would Commence from date of knowledge of commission of offence to officer concerned and not from the date of collection of samples—Drugs and Cosmetics Act, 1940—Ss.27(d) and 27(b)(i).

D

A complaint under ss.27(d) and 27(b)(i) of the drugs and Cosmetics Act, 1940 was filed against the respondents. The Prosecution Case was that on 29.2.1988 the Senior Drugs Inspector (I.B) collected from a Medical Centre samples of some drugs meant for sale. The Government Analyst in his report dated 2.7.1988 opined that the drugs were not of standard quality. The Drug Collector, after due inquiry and investigation, ordered prosecution of the respondents. Accordingly, a complaint was lodged on 28.6.1991. On the same day, the Additional Civil Judge and Chief Judicial Magistrate took cognizance of the complaint and issued summons to the respondents.

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The respondents challenged the order of the Magistrate before the High Court, which accepted the contention of the respondent that the complaint was barred by limitation under s.468(2)(c) of the Code of Criminal procedure, 1973, and quashed the proceedings. Aggrieved, the state filed the present appeal.

G

It was contended for the state that the High Court erred in computing the period of limitation from the date of collection of the samples instead of from the date of report of the Government Analyst. On the other hand, the respondents contended that the date when samples were collected was the date of the offence and starting point of the limitation and counting from that date the complaint was barred by limitation.

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Allowing the appeal, this Court

HELD : 1.1. The limitation for the purpose of s.468(2)(c) of the Code of Criminal procedure, 1973 will commence from July 2, 1988, the date of knowledge of the commission of offence to the concerned officer under s.469(1)(b) but not from February 29,1988 (the date of collection of samples by the Drugs Inspector) and, as the complaint was filed on June 28,1991 which is within three years, the complaint is not barred by Limitation under S.468(2)(c). The High court has missed this germane aspect and erroneously took the date of commencement of the limitation as February 29, 1988, the date on which the samples were collected by the Drug Inspector. The High Court has committed illegality in so computing the period of limitation which results in miscarriage of justice. [137-G-H; 138-A]

1.2. On February 29,1988, the date of collection of samples, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant, on that date. It is only, when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So, on the facts of the case, it cannot be said that clause (a) of s.469(1) is attracted. That the drugs which were offered for sale were sub-standard/adulterated, within the meaning of the Act, came to the knowledge of the Drugs Inspector only on July 2,1988 when the report of the Government Analyst was received by him; and therefore, clause (b) of s.469(1) will be attracted. [136-G-H; 137-A]

R.S. Arora v. The State, (1987) CrI. Law Journal; 1215 *Omprakash Gulabchandji Partani v. Ashok & Anr.*, (1992) CrI. L.J. 2704 and *M/s Satyanarayana General Traders & Ors., v. State*, (1993) 2 Crimes 203, approved.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 532 of 1998.

From the Judgment and Order dated 11.4.96 of the Rajasthan High Court in CrI.M.P. No. 293 of 1996.

Aruneshwar Gupta, Srilok Nath Rath and Ms. Reena Bagga for the Appellant.

K. Janjani for the Respondents.

The Judgment of the Court was delivered by

A **QUADRI, J.** Special leave is granted.

The state of Rajasthan has assailed the validity of the judgment and order of the High Court of Rajasthan in S.B. CrI. Misc. Petition No. 293 of 1996 dated April 11, 1996.

B On February 29, 1988, the Senior Drugs Inspector (I.B.), collected samples of (i) tenokap suspension B. No. 303 and (ii) Tab. Oxyphenbutabne I.P. B. No. 1114 from M/s . Jayshree Medical Centre, Baroda (Gujarat), meant for public sale. He sent those samples for chemicals analysis to Government Analyst, Food and Drugs Laboratory, Baroda on March 2, 1988. In his report of July 2, 1988, the Government Analyst opined that those drugs were not of standard quality. After due enquiry and investigation the Drug Controller ordered prosecution of the respondents on February 3, 1990 and accordingly the Drugs Inspector (IB), Directorate, Medical and Health Services, Rajasthan, Jaipur, filed complaint under Section 18(A) read with Sections 16, 17 and 17A punishable under Sections 27(d) and 27(b)(i) of the Drugs and Cosmetics Act, 1940, on June 28, 1991. On the same day, the learned Additional Civil Judge & C.J.M., Court No.6, Jaipur City jaipur took cognizance on the said complaint as Criminal Case No. 247/91 and issued summons to all the respondents. That order of the learned magistrate was questioned by the respondents before the High Court in S.B.CrI. Misc. Petition No. 293 of 1996, on the ground that the complaint was barred by limitation under Section 468(2)(c) Cr. P.C. By order of April 11, 1996, the learned Single Judge of the High Court who dealt with that petition accepted that contention and quashed the proceeding in the said criminal case initiated by the learned Magistrate on June 28, 1991.

F Shri Aruneshwar Gupta, the learned counsel appearing for the State, contends that the High Court was in error in computing the period of limitation from the date of collecting samples instead of from the date of the report dated July 2, 1988 of the Government Analyst. Learned counsel for the respondents while supporting the order of the High Court argued that the date when the samples were collected was the date of the offence so it was rightly taken as the starting point of limitation and from that date the complaint was clearly barred by limitation.

G The only question that arises for consideration is: whether the complaint in question is barred by limitation under Section 468 Cr. P.C.

H In the Code of Criminal Procedure, 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a

view to expedite the process of detection and investigation of crimes and also to ensure observances of the principle of fairness in the trial of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword hanging on the heads of accused persons and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12 of 1974 or any State Acts. It contains seven sections (467-473). Section 467 defines the expression 'period of limitation' used in the chapter. Section 468 creates bar to taking cognizance of offences after lapse of period of limitation. Sections 469 to 473 deal with various aspects of computation of limitation. Of the aforementioned provisions, we are concerned with Sections 468 and 469. Sub-section (1) of Section 468 ordains that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the 'period of limitation' prescribed thereunder. This, however, is subject to the other provisions of the Code. Sub-section (2) postulates different period of limitation for offences with reference to the punishment provided for them; if the punishment provided for an offence in any Act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years. And sub-section (3) spells out the rule of limitation in cases of joinder of charges; if a person is tried for more offences than one, then the period of limitation will 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; for example, if a person is tried for various offences and some of them are punishable with fine and some with imprisonment for a term less than a year and some for which the punishment is provided upto three years, then the period of limitation for all the offences, if they are tried together, will be three years.

Section 469 deals with commencement of the period of limitation and it reads thus:-

"469. Commencement of the period of limitation - (1) The period of

- A limitation, in relation to an offender, shall commence -
- (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; or
 - (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.”

A plain reading of the provision extracted above shows that in sub-section (1) three alternative starting points of limitation have been specified - (a) the date of the offence; (b) the first day on which an offence came to the knowledge of the person aggrieved by the offence or to any police officer, whichever is earlier, in a case where the commission of the offence was not known to any of them, or (c) the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier, but this can be called in aid in a case where it is not known by whom the offence was committed. basically from the date of the offence the period of limitation will start but there will be cases where the commission of offence or identity of the offender comes to knowledge of those concerned with it long thereafter so in such situations clauses (b) and (c), as the case may be, would be the date of commencement of period of limitation.

Now we shall see which clause of sub-section (1) of Section 469 is attracted to the facts of the case. For this purpose it will be necessary to revert to the facts of this case. The essence of the offences charged is manufacture of adulterated, sub-standard, misbranded, spurious drugs within the meaning of the relevant provisions of the Act and/or storage, distribution and sale of such drugs in contravention of the provisions of the Act. On the date of collection of samples from respondent No.16, on February 29, 1988, it could not have been said that any offence was committed as selling of drugs per se is no offence and the quality of the drugs was not known to the Drugs Inspector, the complainant on that date. It is only, when the report of the Government Analyst was received, that it came to light that the provisions of the Act are violated and offence is committed. So on the facts

A of this case it cannot be said that Clause (a) of Section 469(1) is attracted. A
That the drugs which were offered for sale were sub-standard/adulterated,
within the meaning of the Act, came to the knowledge of the Drugs Inspector
only on July 2, 1988 when the report of the Government Analyst was received
by him; and therefore, clause (b) of Section 469(1) will be attracted.

B Under cognate legislations of different States, similar questions arose B
before the High Courts. In *R.S. Arora v. The State* (1987) CrI. Law Journal
1215, the question which fell for consideration of Delhi High Court was
whether for prosecution under Sections 7, 19 and 16(1) of the Seeds Act, 1966,
the period of limitation of six months would start from the date of collection C
of samples under clause (a) or from the date of Seed Analyst report for
purposes of clause (b) of Section 469(1) Cr.P.C. The learned Single Judge of
the Delhi High Court took the view that the limitation commences from the
date of submission of the report by the Seed Analyst to the Inspector, so
Section 469(1) (b) would apply. The same view was taken by the Bombay High
Court in *Omprakash Gulabchandji Partani v. Ashok & Anr.*, (1992) CrI. L. J. D
2704.

E In *M/s. Satyanarayana General Traders & Ors.; v. State*, (1993) 2
Crimes 203, a learned Single Judge of the Andhra Pradesh high Court held
that for prosecution of offences of mis-branding under Insecticides Act, the E
period of limitation would start from the date on which the report of the
Analyst was received but not from the date of taking samples and thus
Section 469(1) (b) would be attracted.

F We are in entire agreement with the views expressed by the learned F
Judges of the High Courts in the above cases.

G For the above reasons, in the instant case, the limitation for the purpose G
of Section 468(2) (c) will commence from July 2, 1988, the date of knowledge
of the commission of offence to the concerned officer under Section 469(1)
(b) but not from February 29, 1988 (the date of collection of samples by the
Drugs Inspector) and as the complaint was filed on June 28, 1991 which is
within three years so the complaint is not barred by limitation under Section
468(2) (c). The High Court has missed this germane aspect erroneously took
the date of commencement of the limitation as February 29, 1988, the date on
which the samples were collected by the Drugs Inspector from accused No. H

A 16. It is thus clear that the High Court has committed illegality in so computing the period of limitation, which results in miscarriage of justice.

B In the result, we set aside the impugned order of the learned Single Judge of the High Court dated April 11, 1996, allow the appeal and remand the case to the learned Additional Civil Judge and Chief Judicial Magistrate, Court No. 6 Jaipur City Jaipur, for disposal in accordance with law.

R.P.

Appeal allowed.