

**(Subhash Bohat vs. State of M.P. & Anr.)**

**30.1.2017**

Shri J.P. Mishra, counsel for the applicant.

Shri R.D. Agarwal, Panel Lawyer for the respondents/State.

This is a petition under Section 482 of Cr.P.C. for quashing the criminal proceedings pending before the J.M.F.C. Kurwai, District Vidisha in connection with the Crime No.175/2011 registered for offence punishable under Section 285, 34 of IPC.

The facts of the present case lies in a narrow compass. A FIR was lodged on 2.6.2011 by the SHO, Police Station Kurwai, District Vidisha that from the news published in the newspaper he came to know that the applicant along with his friends are going to oppose the District Incharge Ministers, State of Madhya Pradesh and his effigy is going to be burnt. On this information the complainant along with the police force reached on the spot at about 3:00 PM and the information was given to the Superintendent of Police, Vidisha, SDOP, Kurwai, SDM, Kurwai. At about 4:15 PM, the applicant alongwith 5 to 6 supporters came in a Tata Sumo Jeep and they had some talk with SDM, and SDO(P). The applicant and his supporters were informed that as no prior information has been given to the local administration as well as no prior permission has been obtained for holding any meeting, therefore, they cannot do anything. The applicant thereafter informed that he has given such information in writing to the officers of the District and he did not feel it appropriate to give such information to the local authorities. Thereafter the applicant and his supporters delivered lectures against the policies of the government, as

a result of which lot of persons had gathered there. At about 5:30 PM, the applicant along with Dharmendra Bhargava approached towards Mehluva square and picked up a bundle of dry grass and set the same on fire. The police personnels immediately extinguished the fire otherwise, some serious incident might have taken place. On this FIR under Section 285, 34 of IPC was registered against the applicant. The police thereafter filed the charge sheet against the applicant under Section 299 of Cr.P.C. showing that he was absconding.

The charge sheet was filed on 24.7.2013. As there was a noting by the APO that the prosecution is barred by limitation, therefore, explanation from the SHO, Police Station-Kurwai, District Vidisha was sought. However, there is nothing on record to show that what explanation was given by the SHO, Police Station Kurwai, District Vidisha. It is also not in dispute that on 24.12.2014 the applicant appeared before the Magistrate and he was released on furnishing personal bond of Rs. 7000/-

An application under Section 468(2) of Cr.P.C. was filed by the applicant challenging his prosecution on the ground that the offence is alleged to have been committed on 2.6.2011 and a case for offence under Section 285 of IPC was registered against the applicant. According to Section 468 of Cr.P.C. the period of limitation would be one year as the maximum punishment provided for offence under Section 285 of IPC is six months or fine of Rs. 1000/-. As the offence is alleged to have been committed on 2.6.2011 and the charge sheet was filed on 24.7.2013, therefore, the Court could not have taken cognizance of the offence beyond the period of limitation. It was further

mentioned in the application that no information whatsoever was given by the police to the applicant till 18.12.2014. Even the applicant was not aware of the fact that any offence has been registered against him. It was further submitted that the applicant is a regular practitioner as an Advocate and was regularly appearing before the District Courts in the capacity of an Advocate and he was not absconding.

In reply to the application filed under Section 468(2) of Cr.P.C. it was mentioned by the prosecution that the applicant was absconding therefore the period during which the applicant had concealed himself is required to be excluded for calculating the period of limitation and thus in the light of Section 470 (4) of Cr.P.C., it is clear that the prosecution is not barred by limitation.

The Trial Court by order dated 14.7.2015 rejected the application filed under Section 468 (2) of Cr.P.C. and held that on 27.5.2014 after considering the delay the cognizance has already been taken. As the applicant was absconding therefore, in the light of Section 470 (4) of Cr.P.C. that period is liable to be excluded.

It is contended by the counsel for the applicant that it is incorrect to say that the applicant had either concealed himself or was absconding. He was regularly appearing and attending the meetings of Zila Panchayat, Vidisha. The copies of the proceedings of the meetings have also been filed along with the petition. It was contended by the counsel for the applicant that in order to bring the case within the period of limitation a false plea was taken by the prosecution that the applicant was absconding.

This Court by order dated 22.8.2016 had observed as

under:-

“On perusal of absconding Panchnama dated 25.12.2012, it transpires that the said Panchnama was prepared by Sub Inspector A.P. Pandey, Police Station Kurwai stating that the petitioner/accused had been absconding for a long period and in near future his whereabouts shall not be traced. Whereas the petitioner/accused has claimed in his petition to the effect that he had regularly appeared in the meeting of Zila Panchayat.

The affidavit be filed in detail within three weeks.”

The respondent had filed its reply on 9.3.2016 in which it was mentioned that as the applicant was absconding therefore, the charge sheet could not be filed within the period of limitation and considering the fact that the applicant was absconding, therefore, the Trial Court had condoned the delay.

Another reply was filed on 31.7.2016. In this reply the copy of the register of Zila Panchayat was also filed. However, simply by mentioning that as the Court had sought the copy of the register to show that the applicant was regularly attending the meetings of Zila Panchayat, therefore, after obtaining the copy of the register from the office of Zila Panchayat the same is being filed. The State did not choose to even dispute the genuineness or correctness of the minutes of different meetings of Zila Panchayat. Thus, by beautifully maintaining silence, the prosecution tried to avoid giving answer to the question of this Court that on what basis the prosecution had prepared the absconding panchnama of the applicant. Thereafter, by order dated 22.8.2016, this Court had specifically directed

to file the affidavit.

In compliance of order dated 22.8.2016, an additional affidavit of SHO, Police Station Kurwai, District Vidisha has been filed on 8.9.2016. In this affidavit it is merely mentioned that the applicant was absconding after the incident and thereafter there was no possibility of his apprehension. As the possibility of whereabouts of the applicant in the near future was very weak, therefore, the charge sheet under Section 299 of Cr.P.C. was filed against the applicant. However, with regard to the proceedings of minutes of the Zila Panchayat the following reply has been given in paragraph 7:-

“7. यह कि, मुझ शपथकर्ता द्वारा तत्कालीन प्रकरण के अनुसंधानकर्ता अधिकारी श्री ए.पी.पाण्डे से संपर्क कर जानकारी प्राप्त की गई तब उनके द्वारा बताया गया कि जिला पंचायत द्वारा किसी भी बैठक के संबंध में जानकारी संबंधित थाना पर प्रस्तुत नहीं की गई और उक्त बैठकों से संबंधित जानकारी याचिकाकर्ता द्वारा भी थाना पर उपलब्ध नहीं कराई गई, इस कारण से उक्त अभियुक्त को गिरफ्तार नहीं किया जा सका और उसके संबंध में फरारी पंचनामा बनाया गया।”

Thus, from the plain reading of the affidavit it is clear that in this affidavit also the SHO, Police Station Kurwai, District Vidisha has not denied/disputed the correctness and genuineness of the minutes of the meetings of the Zila Panchayat. The applicant is the member of Zila Panchayat. He was regularly attending the meetings and if the prosecution says that they were not made known about the fact of attending the meeting by the applicant then it cannot be said that the applicant was concealing himself. He was not only attending the meetings of the Zila Panchayat but according to him he was regularly appearing before the Courts as an Advocate. If the applicant is moving around in the society freely attending the meetings of the Zila Panchayat, appearing for his clients before the Court then it

cannot be said that the applicant was absconding. Further, the prosecution for the reasons best known to them has chosen not to place on record the panchnamas which might have been prepared by the prosecution from time to time with regard to the fact that he is absconding. If the police is not making such an efforts to search the accused and the accused is publically moving in the society and he is attending the political meetings as a member of Zila Panchayat then it cannot be said that the applicant was absconding. In fact it is the police who did not arrest the applicant in spite of his availability. Under these circumstances, the benefit of Section 470(4) of Cr.P.C. cannot be stretched to such an extent where the police can get the benefit of exclusion of time during the period in which the accused was absconding. It is well established principle of law that anybody cannot be allowed to take advantage of his own wrong. If the police personnels were not interested in arresting the applicant then certainly they cannot get the benefit of Section 470(4) of Cr.P.C.

Undisputedly, the offence is alleged to have taken place on 2.6.2011 whereas the charge sheet was filed on 24.7.2013. Thus, it is clear that the charge sheet itself was filed beyond the period of limitation as provided under Section 468 of Cr.P.C. By order dated 27.5.2014 passed by Magistrate the delay was condoned on the ground that the applicant is absconding and the cognizance of the offence was taken. However, the applicant has not challenged the order dated 27.5.2014, but has placed the same on record. Once, this Court has come to a conclusion that in fact the applicant was not absconding but it is the police who did not arrest the applicant inspite of his availability, it cannot be

said that the delay has been properly explained by the police for not filing the charge sheet within the period of one year from the date of commission of offence, therefore, the Magistrate in the considered opinion of this Court committed a material illegality by condoning the delay and by taking cognizance of the offence.

Accordingly, it is held that as the charge sheet was filed beyond the period of limitation, therefore, the Magistrate could not have taken the cognizance of the same and the explanation which has been given by the prosecution for condonation of delay has been found to be incorrect, therefore, under these circumstances even the delay cannot be condoned in exercise of powers under Section 473 of Cr.P.C.

Consequently, criminal proceedings pending against the applicant before the Court of JMFC, Kurwai, District Vidisha are hereby quashed on the ground that as the charge sheet was filed beyond the period of limitation and since the delay in filing the charge sheet was not properly explained and the applicant cannot be said to be absconding, therefore even by exercising powers under Section 473 of Cr.P.C. the Magistrate could not have condoned the delay and could not have taken cognizance of the offence beyond the period of limitation.

Accordingly, this petition succeeds and is hereby **allowed.**

**(G.S. Ahluwalia)**  
**Judge**

(alok)