PAPER PRESENTATION ON LIMITATION IN CRIMINAL CASES IN RESPECT OF OFFENCES UNDER IPC/BNS AND OTHER SPECIAL LAWS

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The aspect of placing limitation on any remedy is based on the legal maxim "Interest reipublicae ut sit finis litium" i.e., It is in the interest of the state there must be an end to litigation. Even though the Limitation Act, 1963 is the statute of limitations, it doesn't cover the limitation on the taking of cognizance of offences under different statutes including IPC/BNS. The Limitation Act only prescribes limitations with regards to appeals, revisions and applications from criminal cases to different Courts.

2. Chapter XXXVI (Sections 467 to 473) of the Code of Criminal Procedure/Chapter XXXVIII of the BNSS Act (Sections 513 to 519) are relevant chapters and sections under the title **Limitation for taking cognizance of certain offences**.

Section 513 of the Act defines that period of limitation for taking cognizance is as prescribed under Section 514 of the Act. As per Section 514 (2) of the Act the period of limitations are prescribed as follows:-

(a) six months, if offence is punishable with fine only,

(b) 1 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.

ii. Therefore, as per Section 514 (1) to (3) and explanation of the Act no court can take cognizance of the offences if they are punishable with fine only, one year and three years if no complaint is made within six months, one year and three years respectively, that date of filing complaint under Section 223 or from the date of recording of statement U/s.173 of the Act is the relevant date to be considered and in case of multiple offences tried together as part of same transaction, the period of limitation has to be determined by taking into consideration of the offence with severe punishment.

iii. Sections 515 to 519 of the Act have to be considered while calculating the period of limitation to know the date of commencement and exclusion of time in certain cases. Section 515

(1) & (2) of the Act the period of limitation commences from the date of offence, if not known to the aggrieved person or investigating officer from the date on which the offence known to them respectively or if the identity of the offender is not known from the date of knowing the identity of the offender by the aggrieved person or investigating officer respectively and further the day from which the period of limitation is to be calculated has to be excluded.

iv. Sections 516 & 517 of the Act deals with exclusion of time i.e., the time consumed in prosecuting a case with same facts and with good faith in a Court which due to defect of jurisdiction or cause of like nature unable to grant such relief (2) the period of stay against institution of the prosecution including the date of grant of such stay and the date of withdrawal of such stay, (3) period of notice given for prosecution, (4) period spent in getting previous sanction or consent of Government wherever mandatory including the date of application and date of sanction (5) period of absence of offender from India or absconded/concealed (6) (Sec.517) if the limitation expires on the last date of limitation that day shall be excluded at the time of calculating the period of limitation.

v. As per Section 518 of the Act a fresh cause of action/fresh period of limitation starts at every moment during which the offence continues and Section 519 of the Act gives power to the concerned Court to take cognizance by condoning the delay in launching the prosecution if it is satisfied with the explanation of the delay or in the interest of justice.

vi. Section 4 & 5 of the Act deals with the special laws. As per section 4(2) of the Act the offences under other laws i.e., shall also be investigated, inquired into or dealt with the provisions of the Act but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into or otherwise dealt with such offences. As per Section 5 nothing contained in the Act shall in the absence of a specific provision to the contrary affect any special or local law or special procedure or power conferred.

vii. Therefore generally the provisions of the Act are applicable to the special or local or other laws but subject to the enactment or special procedure or local law governing them. Therefore, if there is no prohibition or specific provision in the concerned enactment the provisions under the Act are applicable and if the special enactment has specific provision or prohibition then the said enactment or provision alone will prevail.

3. Limitations prescribed under some of the special laws:-

Negotiable Instruments Act:-

Section 138 & 142 of Negotiable Instruments Act puts time limits on several actions with regard to cheque bounce cases:- presentation of cheque to be within six months or within its period of validity from the date of drawing, notice to be given within 30 days from the date of dishonor, have to wait for 15 days from the date of service of notice giving time to the drawee to pay the amount, complaint within 30 days thereafter. The proviso to Section 142 (b) gives power to the Court to take cognizance even after prescribed period if the complainant could satisfy the Court that he has sufficient cause.

ii. Police Act:-

Section 42 of Police Act fixes 3 months time for launching action under the provisions of the said Act and one month mandatory prior written notice of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or to the Asst. District Superintendent of the District in which such act was committed.

iii. Factories Act:-

Section 106 of Factories Act mandates that no court can take cognizance unless the complaint is filed within 3 months time from the date of offence punishable under the said Act.

iv. Section 2 of **The Economic Offences (In applicability of Limitation) Act, 1974** makes Chapter XXXVIII of the Act i.e., Chapter XXXVI of Cr.P.C., non applicable to the offences under certain Acts i.e.,

1. The Indian Income Tax Act, 1922 (11 of 1922).
1A. Clause (a) of section 63 of the Copyright Act, 1957 (14 of 1957).
2. The Income Tax Act, 1961 (43 of 1961).
2A. The Interest-tax Act, 1974 (45 of 1974).
2B. The Hotel-Receipts Tax Act, 1980 (54 of 1980).
2C. The Expenditure-tax Act, 1987 (35 of 1987).
3. The Companies (Profits) Surtax Act, 1964 (7 of 1964).
4. The Wealth-Tax Act, 1957 (27 of 1957).
5. The Gift-Tax Act, 1958 (18 of 1958).
6. The Central Sales Tax Act, 1956 (74 of 1956).

7. The Central Excises and Salt Act, 1944 (1 of 1944).

7A. Chapter V of the Finance Act, 1994 (32 of 1994).]

8. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

9. The Customs Act, 1962 (52 of 1962).

10. The Gold (Control) Act, 1968 (45 of 1968).

11. The Imports and Exports (Control) Act, 1947 (18 of 1947).

12. The Foreign Exchange Regulation Act, 1947 (7 of 1947).

13. The Foreign Exchange Regulation Act, 1973 (46 of 1973).

14. The Capital Issues (Control) Act, 1947 (29 of 1947).

15. The Indian Stamp Act, 1899 (2 of 1899).

16. The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962).

17. The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962).

18. The Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971).

19. The Emergency Risks (Undertakings) Insurance Act, 1971 (51 of 1971).

20. The General Insurance Business (Nationalisation) Act, 1972 (57 of 1972).

21. The Industries (Development and Regulation) Act, 1951 (65 of 1951).

4. IMPORTANT DECISIONS ON THE ASPECT OF LIMITATION IN CRIMINAL OFFENCES:-

The Hon’ble Supreme Court of India in Sarah Mathew vs Inst., Cardio Vascular Diseases & Ors reported in AIR 2014 SC 448 to the effect that “for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. 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.” The explanation to Section 514 of the Act covers this situation where it categorically gives the date of filing of the complaint or date of recording the statement.

ii. The Hon’ble Supreme Court of India Ramesh and Ors Vs. State of Tamilnadu reported in AIR 2005 SC 1989 to the effect that “14. .....The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that is is necessary so to do in the interests of justice. It is true that the expression "in the interest of justice" in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is "interest of justice". The interest of justice demands that the court should

protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPc in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive."

iii. The Hon'ble Supreme Court of India Atiq Ur Rehman Vs. Municipal Corporation of Delhi and Another reported in 1996 (3) SCC 37 to the effect that ?A conjoint reading of the provisions of Cr.P C. and the Act, therefore, unambiguously suggests that in the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accord with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section 469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a Particular Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye-laws made thereunder is exercisable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law." In that case eventhough no powers of Municipal Magistrate was conferred on the Judicial First Class Magistrate the Hon'ble Supreme Court by taking into consideration of Section 4 & 5 of the Act conferred the jurisdiction on the Judicial Magistrate of First Class.

iv. The Hon'ble Delhi High Court in Chanchal Bhatti v. State (NCT of Delhi) reported in 2011 Cr LJ 1195 (Del) held that Section 468 of the CrPC does not bar investigation of offences by

the police even if the period of limitation for taking cognizance by the Court, prescribed under the said section, has expired.

v. The Hon'ble Supreme Court of India in State of Rajasthan v Sanjay Kumar and Others reported in AIR 1998 SC 1919 that the period of limitation commences not on the date when the sample was taken but commences only on the date of receipt of the Government Analyst's Report within Section 469(1) (b) of the CrPC;

vi. The Hon'ble High Court of Andhra Pradesh in Appu Ramani V. State of Andhra Pradesh reported in 1993 CrLJ 1974 (AP) while holding that the charge-sheet was not barred by limitation and that the cognizance was within time, laid down the following guidelines:

1. if a charge-sheet or complaint is found to be not within limitation, the Court must give opportunity to the police officer who filed the charge-sheet or the complainant should satisfy the Court for condonation of delay;
2. delay should not be condoned as a matter of course, but with exercise of judicial discretion. Section 473 of CrPC should also be liberally construed;
3. accused must be heard before condoning delay under section 473 CrPC.
4. if the complaint or charge-sheet is filed within time, the Court has the power to return it for removal of defects;
5. if it is presented after removal of the defects within the time granted by the Court, and that day falls beyond the period of limitation, still the Court has to take cognizance of the case by duly taking into account the original date of filing the complaint or charge-sheet at the first instance;
6. limitation prescribed u/s 468 CrPC is to be reckoned with the date of filing the complaint/charge-sheet at first instance and not with reference to the date of taking cognizance;

vii. The Hon'ble Supreme Court of India in State of Punjab v. Sarwan Singh reported in AIR 1981 SC 1054 held that "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 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 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 is non est."

viii. In Maya Rani Punj v. CIT reported in 157 IT 330 (SC), the Hon’ble Supreme Court observed that if a duty continued from day to day, then its non-performance from day to day was a continuing wrong.

ix. The Hon’bel High Court of Madras in C. K. Ranganthan v. ROC reported in 45 SCL 500 (Mad.) has held that an offence u/s.211(7) of the Companies Act, 1956, i.e., relating to non-compliance of the balance sheet and profit loss account with the requirements of S. 211 and Schedule VI, is not a continuing offence. It is a one-time offence and there is a period of limitation which must be filed within one year as per S. 468(2)(b) of the Code.

x. In Bhagirath Kanoria v. State of M.P reported in AIR 1984 SC 1688 the Hon’ble Supreme Court laid the following guidelines to know whether a particular offence is a continuing offence or not:-

(i) the language of the statute which creates the offence;

(ii) the nature of offence; and

(iii) the purposes intended to be achieved by constituting the particular act as an offence.

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