IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMMO No. 265 of 2019

Reserved on : October 7, 2020

Date of Decision : November 23, 2020

Shikhil Katoch ....Petitioner

Versus

State of Himachal Pradesh ....Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. N.S. Chandel, Senior Advocate, with Mr. Vinod Kumar Gupta, Advocate.

For the respondent : Mr. Desh Raj Thakur, Additional Advocate General.

Vivek Singh Thakur, Judge

Petitioner, alongwith two others, is an accused in Criminal Case bearing registration No.14 of 2018, titled as *State v. Prashant Prabhakar*, plending before Judicial Magistrate 1st Class, Court No.II, Una, in case FIR No.304/2016, dated 16.11.2016, registered in Police Station Una, District Una, Himachal Pradesh, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as 'NDPS Act').

2. Present petition has been preferred against impugned order dated 4.6.2018, passed by Judicial Magistrate, whereby the learned Magistrate has taken

cognizance for commission of offence referred supra. Challenge to impugned order has been laid on the ground that the prosecution launched against the petitioner and other accused is time barred.

3. According to the prosecution case, accused persons were apprehended, on 16.11.2016, for having conscious and exclusive possession of 2.80g + 1.80g = 4.60g heroin and FIR was also registered on the same day.

4. It is submitted on behalf of the petitioner that and for alleged commission of offence, as provided under Section 21(a) NDPS Act, maximum sentence is one year imprisonment or with fine, which may extend to ten thousand rupees, or with both. Referring Section 468(2)(b) of Code of Criminal Procedure (herein after referred to as 'Cr.P.C.'), it is contended that for an offence punishable with imprisonment for a term not exceeding one year, the period of limitation for taking cognizance is one year and as such in present case, the said period has elapsed on 15.11.2017, whereas challan/final report, under Section 173 Cr.P.C., has been presented in the Court on 24.5.2018 and the Court has taken cognizance of the alleged offence on 4.6.2018 erroneously.

5. In the aforesaid circumstances, it is contended that proceedings of the criminal trial pending before the trial Court are liable to be quashed and, thus, present petition.

6. In response to the petition, it is case of respondent-State that final report, under Section 173 Cr.P.C., in present case, was presented in Court on 24.5.2018 by SHO, Police Station Una, after 18 months, for the reason that investigation in this case was carried out by the then Incharge, Special Investigation Unit, Sub Inspector Ankush Dogra, who vide order dated 15.9.2017, prior to lapse of one year limitation period, was transferred from District Una to District Kinnaur and in compliance thereof was relieved on 26.9.2017, and at that time he did not hand over the charge of case file of this case and, therefore, the SHO, Police Station Una, had sent various wireless messages and emails, dated 21.11.2017, 28.11.2017, 17.2.2018 and 12.3.2018, directing the said Sub Inspector Ankush Dogra to hand over the pending case files, but the said Officer did not respond, whereupon FIR No.147/2018, dated 22.3.2018, was registered under Section 406 of the Indian Penal Code in Police Station Una, District Una, Himachal Pradesh against said Ankush Dogra. Copies of

Transfer Order dated 15.9.2017 and FIR have also been placed on record with the reply.

7. It is further case of respondent-State that during the course of investigation of the aforesaid FIR No.147 of 2018 conducted by Sub Divisional Police Officer (SDPO), Haroli, Sub Inspector Ankush Dogra had joined investigation on 9.4.2018 and during that he had disclosed that after his relieving from District Una, his health was not good and he was not in District Kinnaur as he had proceeded for attending course with effect from 8th December to 24th December, 2017 in CBI Academy, Ghaziabad and further that with effect from 27.1.2018 to 24.7.2018 he was on medical rest and on earned leave due to health problem. It is claim of respondent-State that during investigation, on 9.4.2018, the said Ankush Dogra had handed over five case files, pertaining to case FIRs No.202/2016, 304/2016, 16/2017 of Police Station Sadar, Una, and 222/2017 and 272/2017 of Police Station Haroli, District Una to SDPO, Haroli, District Una, who transferred these files to concerned Police Stations and thereafter case file of present case (FIR No.304/2016 of Police Station Una) was handed over to another Investigating Officer and without wasting any further time final report in the present case was

presented in the Court on 24.5.2018. Therefore, it is contended that there is justifiable and valid explanation for delay and, thus, petition deserves to be dismissed.

8. Learned Arguing Counsel for the petitioner and learned Additional Advocate General have relied upon pronouncements of the Apex Court in ***Assistant Collector of Customs Bombay & another v. L.R. Melwani & Another,*** **AIR 1970 SC 962;** ***Surinder Mohan Vikal V. Ascharaj Lal Chopra,*** **(1978) 2 SCC 403);** ***State of Punjab v. Sarwan Singh,*** **(1981) 3 SCC 34;** ***Srinivas Pal v. Union Territory of Arunachal Pradesh (Now State),*** **AIR 1988 SC 1729;** ***Zandu Pharmaceutical Works Ltd. and others v. Mohd. Sharaful Haque and another,*** **(2005) 1 SCC 122;** ***Japani Sahoo v. Chandra Sekhar Mohanty*****, (2007) 7 SCC 394*;*** and ***Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & others,*** **reported in (2014) 2 SCC 62,** to substantiate their respective contentions.

9. Provisions of Section 468 Cr.P.C. and 473 Cr.P.C. read as under:

> **"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."

"473. Extension of period of limitation in certain cases:-

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

10. In present case, petitioner has assailed impugned order dated 4.6.2018, on which date learned Magistrate has taken cognizance. In the arguments canvassed on behalf of the petitioner, relevant date, for calculating expiry of the limitation period, has been taken the date of taking of cognizance by the Magistrate, whereas prosecution in present case has been instituted by submitting final report under Section 173 Cr.P.C. on 24.5.2018. Though filing of final report on 24.5.2018 is also beyond the prescribed period of one year, under Section

468(2)(b) Cr.P.C., but for avoiding any confusion, it is necessary to clarify which of the date would be relevant for computing the period of limitation under Section 468 Cr.P.C. Would it be filing of complaint/date of institution of prosecution?

11. This issue is no longer res-integra, being settled by the five-Judges Bench of Supreme Court in pronouncement in case ***Sarah Mathew's*** case **[(2014) 2 SCC 62]**, wherein, after considering its previous pronouncements, it has been held that the judgment in ***Bharat Damodar Kale & another v. State of A.P.,*** **(2003) 8 SCC 559**, followed in ***Japani Sahoo's*** case **(2007) 7 SCC 394**, lays down the correct law for the purpose of computing the period of limitation under Section 468 Cr.P.C. and endorsing observations made in ***Vanka Radhamanohari (Smt.) v. Vanka Venkata Reddy & others,*** **(1993) 3 SCC 4,** and examining it in the light of legislative intent and meaning ascribed to the term "cognizance" by the Apex Court, it is made clear that Section 473 Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint and it is the date of filing of complaint which is material for calculating the limitation period. Thus, 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.

12. Prior to insertion of Chapter XXXVI in Cr.P.C., by way of amendment in 1973, a Five-Judges Bench of the Apex Court in ***L.R. Melwani's*** case **[AIR 1970 SC 962]** has held that the question of delay in filing a complaint may be a circumstance to be taken into consideration for arriving at the final verdict, but by itself it affords no ground for dismissing the complaint/prosecution. However now, as also clarified in ***Sarah Mathew's*** case **[(2014) 2 SCC 62]**, the Court is empowered to dismiss the complaint or prosecution by refusing to entertain it or by refusing to take cognizance, in case filing/institution of complaint/prosecution is not permissible under Chapter XXXVI of Cr.P.C.

13. After inclusion of Chapter XXXVI in Cr.P.C., dealing with limitation for taking cognizance of certain offences, the Supreme Court, in ***Ascharaj Lal Chopra's*** case **[(1978) 2 SCC 403]**, has stated that statutes of limitation have legislative policy behind them, for instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment and they also save the accused from risk of having to face trial at a time when

his evidence might have been lost because of the delay on the part of the prosecutor.

14. The Supreme Court in ***Sarwan Singh's*** case **[(1981) 3 SCC 34]** has stated the object of putting a bar of limitation in the Cr.P.C. on prosecution, observing that it is 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 process of the Court by filing vexatious and delayed prosecution long after the date of offence and this object is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India and, therefore, it is of 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.

15. The Apex Court in ***Vanka Radhamanohari's,*** **[(1993) 3 SCC 4]** case, has explained insertion of Chapter XXXVI in Cr.P.C. and differentiated the provisions of Section 5 of the Limitation Act and that of Section 473 Cr.P.C., and has observed as under:

> "5. Earlier there was no period of limitation for launching a prosecution against the accused. But delay in initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the prosecution story. But, then a court could not throw out a complaint or a police

report solely on the ground of delay. The Code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony of witnesses becomes weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired, if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the Code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The framers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed on a par with the provisions in respect of civil disputes. So far cause of action accruing in connection with civil dispute is concerned, under Section 3 of the Limitation Act, it has been specifically said that subject to the provisions contained in S. 4 to 24, every suit instituted, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Section 5 of that Act enables any court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the court that he had "sufficient cause for not preferring the appeal or making the application within such period". So far Section 473 of the Code is concerned, the scope of that section is different.

.....

In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non-obstante clause which means that said section has an overriding effect on Section 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

> 6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under Section 5 of that Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. ....."

16. In *Sukhdev Raj v. State of Punjab,* 1994 Supp (2) SCC 398, an application was filed by the prosecution for condonation of delay in instituting prosecution, with explanation for delay, at a later stage, almost at the time of conclusion of trial, but before judgment was delivered. The Apex Court has held that in facts and the circumstances of the case, if the delay has been properly explained or it is necessary to do so in the interest of justice, the Court can take cognizance, with further observation that Section 473 Cr.P.C. does not, in any clear terms, lay down that the application should be filed at the time of filing the challan

itself and further that the words "so to do in the interest of justice" are wide enough.

17. Dealing with the object of Chapter XXXVI of the Cr.P.C. and Section 473 contained therein, the Apex Court in *Arun Vyas & another v. Anita Vyas,* (1999) 4 SCC 690, has observed as under:

> **"**10. It may be noted here that the object of having Chapter XXXVI in Cr.P.C. is to protect persons from prosecution based on stale grievances and complaints which may turn out to be vexatious. The reason for engrafting rule of limitation is that due to long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenceless position. It will cause great mental anguish and hardship to them and may even result in miscarriage of justice. At the same time it is necessary to ensure that due to delays on the part of the investigating and prosecuting agencies and the application of rules of limitation the criminal justice system is not rendered toothless and ineffective and perpetrators of crime are not placed in advantageous position. The Parliament obviously taking note of various aspects, classified offences into two categories, having regard to the gravity of offences, on the basis of the punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for offences for which punishment specified is imprisonment for a term not exceeding three years and even in such cases wide discretion is given to the Court in the matter of taking cognizance of an offence after the expiry of the period of limitation. Section 473 provides that if any Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice, it may take cognizance of an offence after the expiry of the period of limitation. This section opens with a non obstante clause and gives overriding effect to it over all the other provisions of Chapter XXXVI.**"**

.....

"14. It may be noted here that section 473 Cr.P.C. which extends the period of limitation is in two parts. The first part contains non obstante clause and gives overriding effect to that section over sections 468 to 472. The second part has two limbs. 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 it 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. ....."

18. A three-Judges Bench of the Apex Court in *State of H.P. v. Tara Dutt & another,* (2000)1 SCC 230, has held that Section 473 Cr.P.C. confers power on the Court taking cognizance after the expiry of the period of limitation, if conditions envisaged therein are fulfilled, i.e. where a proper and satisfactory explanation of delay is available and where the Court taking cognizance finds that it would be in the interest of justice, and this discretion conferred upon the Court, has to be exercised judicially and on well-recognized principles and wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court with respect to satisfactory explanation and interest of justice. It is further

observed that in absence of a positive order to that effect, it may not be permissible for the superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence and the matter of taking cognizance of an offence affecting the society, the Magistrate must liberally construe the question of limitation but the circumstances of the case requiring delay to be condoned must be manifest in the order of Magistrate itself. Discretion exercised by the Magistrate on relevant consideration, cannot be faulted with.

19. In *Rakesh Kumar Jain v. State through CBI, New Delhi,* (2000) 7 SCC 656, the Magistrate had taken cognizance in the complaint filed after expiry of the period of limitation and had rejected the application of the accused filed under Section 245 Cr.P.C. for discharging him on the ground that the complaint was barred by limitation. The application was not rejected by invoking the provisions of Section 473 Cr.P.C. but excluding the time spent for obtaining the consent or sanction of the appropriate Government, by invoking provisions of Section 473(3) Cr.P.C. The Apex Court had found that no such sanction or

consent was required under Section 13(3) of the Official Secrets Act, 1923 and, thus, period spent in obtaining the order and filing the complaint cannot be excluded under explanation to Section 473(3) Cr.P.C. However, considering the right of complainant, for extension of time under Section 473 Cr.P.C., it was held that on the facts and circumstances, the delay was explainable before the Magistrate which had occasioned on account of bonafide belief to obtain sanction for the purpose of filing the complaint. However, instead of directing the complainant to approach the trial Magistrate for the said purpose, the complainant was held to have explained the delay in filing the complaint and complaint was held to be within time without remanding the matter to the Magistrate, with observation that no useful purpose would be served again by again directing the complainant to approach the trial Magistrate for the purpose of extension of period of limitation.

20. Power of the Magistrate to extend the limitation period, in terms of Section 473 Cr.P.C., has been dealt with by the Apex Court in ***Mohd. Sharaful Haque's*** case **[(2005) 1 SCC 122],** observing that this power can be exercised only when the Court is satisfied on the facts and the

circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice.

21. Similarly, in ***Ramesh and others v. State of T.N.,*** **(2005) 3 SCC 507**, relying upon exposition of law explained in ***Arun Vyas's*** **[(1999) 4 SCC 690]** case supra, benefit of Section 473 Cr.P.C. was extended to the complainant and like ***Rakesh Kumar Jain's*** **[(2000) 7 SCC 656]** case supra, case was not remanded to the Magistrate for reconsideration, with observation that such course would be unnecessary and inexpedient for the reason that entitlement for extension of limitation period was apparent from the facts apparent from the record before the Apex Court.

22. The Supreme Court in ***Udai Shankar Awasthi v. State of Uttar Pradesh & another,*** **(2013) 2 SCC 435**, referring ***Japani Sahoo*** **supra;** ***Sajjan Kumar v. Central Bureau of Investigation,*** **(2010) 9 SCC 368;** and ***NOIDA Entrepreneurs Association v. NOIDA & others,*** **(2011) 6 SCC 508**, has held that question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision, however, the same may not itself be a ground for dismissing the complaint at the

threshold, and moreover the issue of limitation must be examined in light of gravity of the charge in question. In the same judgment, referring ***State of Maharashtra v. Sharadchandra Vinayak Dongre & others,*** (1995) 1 SCC 42; and ***Tara Dutt's*** case supra, it has been reiterated that the Court, while condoning delay has to record the reasons for its satisfaction, and the same must be manifest in the order of the Court itself, and the Court is further required to state in its conclusion, while condoning such delay, that such condonation is required in the interest of justice.

23. Main issue referred before the Larger Bench, in ***Sarah Mathew's*** case **[(2014) 2 SCC 62],** was to determine the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C. However, certain observations made therein after taking into consideration earlier pronouncements, being referred hereinafter, would be relevant for the purpose of present case. In this judgment, the Supreme Court has observed that before introducing Chapter XXXVI in Cr.P.C., approach of the Court, while dealing with cases of delay in launching prosecution, was that in any case prosecution could not have been quashed on the sole ground of delay in filing the same but it may be a circumstance to be taken into consideration in

arriving at final verdict and by itself it affords no ground for dismissing the complaint. It is further observed that this position underwent a change, to some extent, after introduction of Chapter XXXVI was introduced in Cr.P.C. It has also been observed that it is equally clear that law makers did not want cause of justice to suffer in genuine cases and, therefore, in Chapter XXXVI Cr.P.C., provisions of exclusion of time in certain cases (Section 470), for exclusion of date on which the Court is closed (Section 471), for continuing offences (Section 472) and for extension of period of limitation in certain cases (Section 473) have been incorporated, and it is further observed that Section 473 is crucial and it empowers the Court to take cognizance of an offence after the expiry of 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 or it is necessary to do in the interest of justice and, therefore, Chapter XXXVI Cr.P.C. is not loaded against the complainant. Further that it is true that the accused has a right to have a speedy trial which is a facet of Article 21 of the Constitution, but Chapter XXXVI Cr.P.C. does also not undermine this right of accused, and while this Chapter encourages diligence by providing for limitation it does not

want all prosecutions to be thrown overboard on the ground of delay, rather it strikes a balance between interest of the complainant and interest of the accused. It has further been observed that where the Legislature wanted to treat certain offences differently it provided for limitation in the Section itself, for instance, Sections 198(6) and 199(5) Cr.P.C., however, it chose to make general provisions for limitation for certain types of offences for the first time and introduced them in Chapter XXXVI Cr.P.C. The Supreme Court has further observed that the object of criminal law is to punish perpetrators of crime and a crime never dies, but at the same time it is also the policy of law to assist the vigilant and not the sleepy. Chapter XXXVI Cr.P.C. maintains the balance between aforesaid object and policy of Law.

24. Though issue with respect to applicability of Section 473 Cr.P.C. to the offences prescribed in other enactments is not directly involved in present case, however, for clarity it would be relevant to refer that in ***P.P. Unnikrishnan & another v. Puttiyottil Alikutty & another,*** **(2000) 8 SCC 131**, the Apex Court has held that the extension of period contemplated in Section 473 Cr.P.C. is only by way of extension to the period fixed as per the

provisions of Chapter XXXVI of the Cr.P.C. and, therefore, this Section cannot operate in respect of any period of limitation prescribed in any other enactment. Similarly, in *Subodh S. Salaskar v. Jayprakash M. Shah & another,* (2008) 13 SCC 689, it has been observed that provisions of Section 5 of Limitation Act and Section 473 Cr.P.C. are not applicable in cases under Section 138 of the Negotiable Instruments Act.

25. Learned counsel for the petitioner, putting reliance on Para-7 of judgment of Supreme Court in *Srinivas Pal's* case [AIR 1988 SC 1729], has contended that taking of cognizance, without condoning delay, was bad and without jurisdiction. As a matter of fact, in this para the Supreme Court has quoted the aforesaid observations by saying that attention of the Court was also drawn to judgment of Gauhati High Court wherein it is so held. As evident from Para-9 of the judgment; wherein the Apex Court has clearly observed that it was not necessary in the facts and the circumstances of that case to decide the issue whether cognizance was properly taken, whether the extension of period of limitation, under Section 473 Cr.P.C., must precede taking of cognizance of offence, whether cognizance in that case was taken on a particular

date; the case was decided having regard to the nature of offence and enormous of delay of 9½ years in proceeding with the criminal prosecution with respect to a case of rash and negligent driving.

26. From aforesaid discussion, and pronouncements of the Apex Court, it is concluded as under:

(i) For the purpose of calculation of period of limitation, date of filing of complaint or institution of prosecution is relevant and not the date of taking cognizance.

(ii) The Magistrate can discharge an accused after taking cognizance of an offence by him, before the trial of the case. In a case where Magistrate takes cognizance of an offence without taking note of Section 468 Cr.P.C., most appropriate stage at which the accused can plead for his discharge is the state of framing the charge, without waiting for completion of the trial. The Magistrate will be committing no illegality for considering that question and discharging the accused at the stage of framing the charge, if the facts so justify. While doing so, Magistrate shall consider the question of limitation, taking note of Section 473 Cr.P.C., in the light of law laid down by the Supreme Court, discussed supra.

(iii) The Magistrate has jurisdiction to consider the material placed before it and nature and gravity involved in the case for the purpose of extension of limitation period under Section 473 Cr.P.C.

(iv) The Magistrate has jurisdiction to consider the explanation put forth by complainant/ prosecution for the purpose of extension of limitation period under Section 473 Cr.P.C.

(v) The complainant/Investigating Agency has to explain the cause of delay properly to the satisfaction of the Magistrate in the complaint/ challan/final report.

(vi) Power and jurisdiction of the Magistrate to extend the period of limitation is not inhibited for not explaining the circumstances properly but even then the Magistrate has power to extend the period of limitation if he finds it necessary to do so in the interest of justice as the period of limitation can be extended in either case, i.e. either for satisfactory proper explanation of facts and circumstances causing delay or necessity to do so in the interest of justice.

(vii) Filing of application for extension of period of limitation under Section 473 Cr. P.C. is not envisaged under Cr.P.C. but the necessary ingredients required for such extension must be placed on record in complaint/final report under Section 173 Cr.P.C. However, filing of separate application, at any stage, but before final order/judgment, is also permissible.

(viii) When offence is such that applying rule of limitation will give an unfair advantage to the accused resulting into miscarriage of justice, the Court may take cognizance of an offence after the

expiry of period of limitation in the interest of justice.

(ix) At the time of taking cognizance in time barred complaint/institution of prosecution, the Magistrate is required to give weightage and consideration to the provisions of Section 473 Cr.P.C. and to exercise discretion solely on the basis of well recognized principles and pass a speaking, reasoned order, indicating satisfaction or dissatisfaction with respect to proper explanation of circumstances causing the delay and/or cause for considering or not considering it necessary to extend the period of limitation in the interest of justice. Reasons for granting or disallowing extension of period of limitation must be manifest.

(x) At the time of taking cognizance of a time barred complaint or initiation of prosecution, it is not necessary for the Magistrate to call the accused as the Magistrate is empowered to extend the period of limitation on his satisfaction to the ingredients of Section 473 Cr.P.C. for which such extension can be granted. However, respondent/accused has a right to raise the issue of delayed filing of complaint/launching of prosecution at the time of conclusion of trial, more particularly with reference to the prejudice caused to him. Even otherwise calling of respondent/accused at the time of taking cognizance for dealing with issue of extension of time period would unnecessarily delay the taking of cognizance in the matter.

(xi) In case there is lapse on the part of the Investigating Agency/complainant to explain the cause of delay in filing complaint/final report, under Section 173 Cr.P.C, and it is considered by the Magistrate that extension of the limitation period is necessary in the interest of justice, complainant/Investigating Agency may be permitted to place on record the facts and the circumstances, either by filing an application or otherwise, to satisfy the Magistrate with respect to grounds for extension of limitation period. Even otherwise, there are two limbs of Section 473 Cr.P.C., providing two different grounds for extension of time period, i.e. for proper explanation of delay or when it is necessary to do so in the interest of justice. These two grounds are independent of each other. If either of condition is fulfilled, the Court may extend the period of limitation. There may be cases wherein either of the grounds is available for extension of limitation period and there may be cases wherein both grounds exist for doing so.

27. Drug addiction is a menace causing damage to the entire society and illicit drug trafficking and drug abuse are increasing day-by-day at national and international level and to curb this evil, apart from social awareness programmes, stringent provisions for control and regulation of operation relating to the narcotic drugs and psychotropic substances have been enacted by means of NDPS Act. At

the time of adjudication of cases relating to NDPS Act, the object and purpose of enactment is always to be kept in mind particularly at the time of interpretation of provisions of related enactments, and the Court, when dealing with provisions providing period of limitation for instituting prosecution, in cases of this nature, should give due weightage and consideration to the provisions of extension of limitation period, as provided under Section 473 Cr.P.C., which starts with non-abstante clause, providing that notwithstanding anything contained in Chapter XXXVI of the Cr.P.C., may take cognizance of an offence after the expiry of period of limitation, if it is satisfied on the facts and in the circumstances of the case that delay has been properly explained or that it is necessary so to do in the interest of justice.

28. In present case, as brought on record, in reply of the respondent-State, there is satisfactory explanation with respect to the facts and the circumstances in which delay has been caused in launching prosecution against the petitioner and further keeping in view the object and purpose of NDPS Act, it would be necessary to take cognizance of the offence, more particularly, in view of the explanation, now brought on record.

29. Though as held by the Apex Court supra, the Magistrate was under obligation to pass a reasoned, speaking and manifest order at the time of taking cognizance of a time-barred prosecution. But, the Magistrate has omitted to do so. However, In the light of pronouncements of the Apex Court in *Ramesh's* and *Rakesh Kumar Jain's* cases supra, I do not consider it useful to remand the case to the Magistrate to assign reasons for taking cognizance.

30. As discussed supra, in present case, plausible and satisfactory explanation for delay in instituting the prosecution exists and also keeping in view the object and purpose of the enactment of NDPS Act, interest of society is also there in continuing the prosecution, and accordingly the petition is dismissed.

31. It is also noticeable that in present case neither complete facts were brought on record before the Magistrate nor at the time of filing the challan any single word was uttered, explaining the reasons for not filing the challan/final report under Section 173 Cr.P.C. in the Court within limitation period applicable to the present case. There is lapse on the part of the Officer, who has filed the challan, for failure on his part to place the complete facts

and circumstances before the Court to satisfy it on the facts and circumstances causing delay in filing final report.

32. There is one more issue in this case. Though FIR No.147/2018, dated 22.3.2018, was registered against Sub Inspector Ankush Dogra, but, as per copy of final report submitted under Section 173(2) Cr.P.C. that FIR, placed on record with the reply of respondent-State, it is evident that cancellation of the said FIR was proposed, outcome whereof has not been disclosed. Cancellation has been proposed on the basis of explanation put forth by Sub Inspector Ankush Dogra and the said explanation, as reproduced in the reply as well as indicated in the final report under Section 173(2) Cr.P.C., is that at relevant point of time, on his transfer, vide Transfer Order dated 15.9.2017, he was relieved immediately on 26.9.2017 and at that time he was not feeling well, was also having charge of Special Investigating Team and was not present in the Office and, thus, he could not hand over the charge. The said Officer is a responsible Officer working as Sub Inspector. Further, for not responding to the wireless and mail messages of SHO, the explanation given is that since 8.12.2018 to 24.12.2018 (sic: 18.12.2017 to 24.12.2017), he was attending a course in CBI Academy, Ghaziabad and during the period from

27.1.2018 to 24.7.2018 he was on medical and earned leave. The file was requisitioned by the SHO from the said Ankush Dogra on 21.11.2017, 28.11.2017, 17.2.2018 and 12.3.2018. Even if plea of SI Ankush Dogra is considered to be true and correct, then also there is no reason for not responding to the aforesaid communications, as he attended the course w.e.f. 8.12.2017 but messages sent by SHO on 21.11.2017, 28.11.2017 are prior to that. Otherwise also, such a responsible Officer holding the post of a Sub Inspector is supposed to behave in responsible manner and at least to have knowledge that case files pertaining to investigation in five FIRs were not his personal property and he must be well conversant with the consequences of delay in investigation or launching prosecution therein. He is not only liable to face criminal proceedings but also Departmental Enquiry for dereliction in duty. His explanation for not handing over the files at the time of transfer or after relieving and for not responding to the communications of the SHO, not only appears to be false but also is definitely absurd. In case there was no one available in the office, it was incumbent upon the Officer to report to the higher authorities, i.e. Deputy Superintendent of Police or Superintendent of Police for handing over the

case files which were in his possession. He has not only illegally kept the files with him but has also obstructed further investigation and action in those cases for extraneous reasons. It appears that the Officer, proposing cancellation of FIR No.147/2018, has not applied his mind properly or probably he has been influenced by the fact that the delinquent was his colleague in the Department and thus has proposed cancellation of FIR. Concerned authorities have also failed to take departmental action and to register the FIR under proper provisions.

33. The Director General of Police, Himachal Pradesh, is directed to look into the matter personally and, uninfluenced by the observations made above, to take appropriate action(s), in accordance with law, to take the matter to logical end, with respect to (a) retention of files by Sub Inspector Ankush Dogra, (b) the omission and commission of the concerned Police Officer/authority for not taking appropriate action against him, and (c) for submitting a cancellation report in case FIR No.147/2018, registered in Police Station Una, on the basis of illogical explanation put forth by Sub Inspector Ankush Dogra; and also to seek explanation from the Officer who failed to

explain the cause of delay in presenting challan in present case, also be called.

34. The Director General of Police, Himachal Pradesh is also directed to circulate necessary instructions to the Investigating Officers advising them to properly explain the facts and circumstances in the challan/final report which have caused delay, in time barred institution of prosecution so as to satisfy the Magistrate for extension of period of limitation.

35. Conclusion drawn on the basis of pronouncements of the Apex Court in Para-26 may also be circulated to the Investigating Officers and Magistrates by the Director General of Police and Registrar General of this Court, respectively.

36. Affidavit of compliance of Paras-32 to 35 be filed by the Director General of Police, Himachal Pradesh, on or before 31.12.2020.

37. The petitioner is directed to appear before the trial Court on 28.12.2020, either in person or through counsel.

38. The Registry is directed to place a copy of this judgment before the Registrar General of this Court for

compliance and send back the record of the trial Court, immediately.

39. The petition stands disposed of, so also pending application, if any.

Be listed on 5th January, 2021, only for the purpose of compliance report by the Director General of Police, Himachal Pradesh.

(Vivek Singh Thakur)

November 23, 2020(sd) Judge.