

:: ORDER BELOW EXHIBIT 01 :

1. Perused the chargesheet, FIR and the police papers.
2. It is very important to ascertain whether this Court can take the cognizance of offence in question when the chargesheet qua the very offence has been filed by the Investigating Officer without complying with the provisions of sections 468 and 469 of the Code of Criminal Procedure, especially when the offence in question is a summons triable offence, whereby the maximum punishment prescribed is of 03 months.
3. At this stage, it would be appropriate to the relevant provisions of sections 468 and 469 of the CrPC, which 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) xxx xxx xxx

469. Commencement of the period of limitation.—(1) The period of 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 (c) where it is not known by whom the offence was committed ..

..

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”
4. It would also be apposite to refer to and rely upon the decision of the Hon'ble Apex Court in the case of *State of Punjab v. Sarwan Singh*¹, whereby the Hon'ble Apex Court has observed and held as under :

“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.”
5. In the abovesited decision of the Hon'ble Apex Court, the conviction of a person was set aside by the Hon'ble High Court on the ground of limitation,

¹. AIR 1981 SC 1054.

which was confirmed by the Hon'ble Supreme Court. The Hon'ble Supreme Court observed that the object of the 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. It is, of course, true that the case before the Hon'ble Supreme Court was also pertaining to police charge-sheet. The allegation against the accused was that he has committed embezzlement on 22.8.1972, the audit report through which the offence was detected was dated 5.1.1973, and the challan/ chargesheet was presented on 18.10.1976, Considering these dates, the High Court and the Supreme Court considered that the challan presented against the accused was beyond the period of limitation.

6. *Per contra*, learned Assistant Public Prosecutor for the State has urged that this Court may condone the delay in filing the chargesheet and may take cognizance of the offence. It is also urged that this Court even by condoning the delay may take cognizance.
7. Insofar as the present case is concerned, the chargesheet has been presented before this Court in the year 2023 i.e. after more than one year from the date of the offence in question. It is necessary to see that police do not unnecessarily linger on in submission of charge-sheet beyond one year or six months. If they have not submitted the charge-sheet up to six months for summons triable cases, the Court may consider as to why the proceedings should not be stopped for not completing the investigation within a period of six months. Further, the offence in question is a summons triable offence, whereby the maximum punishment prescribed is of 03 months and, therefore, the chargesheet ought to have been filed by the Investigating Officer within a period of maximum one year as per the provisions of section 468 of the CrPC, which has not been done so in the present case. Further, no explanation has been tendered qua late submission of such a chargesheet by the Investigating Officer, which goes to the root of the matter. Thus, once the period of limitation has expired as envisaged under section 468 of the CrPC, the accused is entitled to be released forthwith as otherwise that would be in violation of his fundamental right under Article 21 of the Constitution of India.
8. Thus, in view of aforesaid decision of the Hon'ble Apex Court as well as the discussion made hereinabove, this court cannot take cognizance of the offence in question as the chargesheet is submitted beyond period of limitation. Moreover, this case is summons triable. Hence, provisions of summons triable case are applicable. Upon the discussion of aforesaid provisions of law and the judgment propounded by the Hon'ble Apex Court and various other Hon'ble High Courts, this Court passes the following final order :

:: ORDER ::

The proceeding against the accused arising from the chargesheet in question is hereby dropped without taking cognizance and the criminal case emanating from the very chargesheet is hereby disposed of in view of provisions of section 468 of the CrPC.

Pronounced in the open Court today on this 11th Day of February, 2023 at Surat.

PLACE : SURAT
DATE : 11.02.2023

Atit Maheshkumar Mehta
JUDICIAL MAGISTRATE, FIRST CLASS,
First Court, SURAT
(CODE NO.GJ01521)