

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 2382/2017

Rambabu S/o Shri Ramkishan, R/o Kanwre Ka Pura, Police Station Kotwali, Tehsil And Distt. Dholpur Raj.

-----Petitioner

Versus

1. State of Rajasthan Through PP
2. Kanhaiyalal S/o Shri Durjan Singh, R/o Kanwre Ka Pura, Police Station Kotwali, Tehsil And Distt. Dholpur Raj.

-----Respondents

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For Petitioner(s) : Mr. Udit Sapra for  
Mr. Anil Jain

For Respondent(s) : Mr. Shree Ram Dhakar, PP with  
Mr. Anirudh Singh  
Mr. A.S. Rathore for  
Mr. Dinesh Kumar Garg

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**30/04/2026**

1. By way of filing the instant petition, a challenge has been led to the impugned order dated 03.05.2005, passed by the learned Judicial Magistrate(First Class) No.2, Dholpur, by which cognizance has been taken against the accused-petitioner under Section 406 IPC. Against the aforesaid order, an application was submitted by the accused-petitioner for recall/review of the same, however, the said application was rejected vide impugned order dated 07.06.2006.

2. Aggrieved by the order dated 07.06.2006, the petitioner submitted a revision petition before the Court of District &

Sessions Judge, Dholpur, however, the same was also rejected vide impugned order dated 22.03.2017.

3. Aggrieved by both all the aforesaid orders, the petitioner has approached this Court by way of filing the instant petition.

4. Perusal of the record indicates that FIR No.302/2001, was registered against the accused-petitioner with Police Station Kotwali, District Dholpur, which resulted in Final Report (Negative). Against the aforesaid Final Report, a protest petition was filed by the complainant and thereafter, statements of the complainant were recorded under Section 200 Cr.P.C. and the statements of the other witnesses were recorded under Section 202 Cr.P.C. Accordingly, cognizance was taken against the petitioner under Section 416 IPC vide impugned order dated 03.05.2005.

5. The counsel for the accused-petitioner appeared before the Trial Court and submitted an application for recall of the aforesaid order on the grounds that cognizance is barred by limitation, however, the learned Magistrate rejected the said application on the grounds that the Magistrate has no power to review or recall his own order.

6. Aggrieved by the aforesaid order, a revision petition was submitted by the accused-petitioner before the Court of District & Sessions Judge, Dholpur, however, the same was also rejected vide impugned order dated 22.03.2017.

7. The basic argument which has been raised in the instant petition is that for the incident that occurred in the year 2001, cognizance was taken against the petitioner in 03.05.2005, hence, the same is barred by limitation under Section 468 Cr.P.C. It is settled preposition of law that if a complaint is filed within the

period of limitation from the date of commission of offence, then such cognizance cannot be treated as barred by limitation. It hardly makes any difference whether cognizance was taken at a later stage as this view was taken by the Hon'ble Apex Court in the case of **Japani Sahoo Vs. Chandra Sekhar Mohanty** report in **(2007) 7 SCC 394**.

8. In the considered opinion of this Court, the Trial Court has not committed any error in taking cognizance against the petitioner. Cognizance can be taken against any accused if *prima facie* case is there against him. Meticulous examination of the evidence and the defence of the accused cannot be looked into at this initial stage of taking cognizance.

9. It is also the settled preposition of law that once cognizance has been taken, the learned Magistrate has no power to review or recall his own order as per the provisions contained under Section 362 Cr.P.C.

10. For the reasons stated above, this Court finds no merit and substance in the instant petition, accordingly, the same is hereby rejected.

11. Stay application and all pending application(s), if any, stands dismissed.

**(ANOOP KUMAR DHAND),J**