

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

Crl.MC.No. 4047 of 2015 ()

CC. NO.84/2015 OF CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA.

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PETITIONER/1ST ACCUSED:

**M.J. JOSEPH, S/O.LATE JOSEPH,
AGED 45 YEARS, MANAYANIKAL HOUSE,
THODUPUZHA EAST P.O., THODUPUZHA,
IDUKKI DISTRICT.**

BY ADV. SRI.K.R.SUNIL.

RESPONDENT/COMPLAINANT:

- 1. THE SUB INSPECTOR OF POLICE,
THODUPUZHA POLICE STATION,
THODUPUZHA, IDUKKI DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
- 2. THE AUTHORISED OFFICER,
VIGILANCE BUREAU, THIRUVANANTHAPURAM-695 001.**

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1:-** THE CERTIFIED COPY OF THE FIR REGISTERED BY THE
1ST RESPONDENT DATED 25/08/2010.
- ANNEXURE A2:-** THE CERTIFIED COPY OF THE FINAL REPORT
DATED 30/03/2015 SUBMITTED BEFORE THE HONOURABLE
CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA.
- ANNEXURE A3:-** TRUE COPY OF THE PETITION DATED 19/12/2012 AS
CMP NO. 5077/2012 SUBMITTED BEFORE THE HONOURABLE
CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA.
- ANNEXURE A4:-** THE LETTER ISSUED BY THE TAHSILDAR, THODUPUZHA
DATED 24/09/1997.
- ANNEXURE A5:-** THE LETTER ISSUED BY THE TAHSILDAR, TALUK OFFICE,
THODUPUZHA TO THE COMMISSIONER, LAND REVENUE,
THIRUVANANTHAPURAM DATED 15/12/2014.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C No.4047 of 2015

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Dated this the 30th day of July, 2015

O R D E R

The petitioner is the first accused in the impugned Anx.A1 Crime No.1289 of 2010 of Thodupuzha Police Station registered for offences u/s 406 and 423 of the IPC. It is pointed out that the first respondent, SHO Thodupuzha had registered the impugned Anx.A1 FIR in the impugned crime on 25.8.2010, on the basis of the information conveyed by the Director, Vigilance and Anti Corruption Bureau, Thiruvananthapuram.

2. The gist of the prosecution case is that the accused had bid the arrack shops in Thodupuzha range, during the year 1993-94, and had then furnished certain set of properties as solvency apart from the money security and that thereafter fraudulently mortgaged one such landed property with Federal Bank and transferred another property in the name of a relative with a view to defeat the claim of the State. The police after investigation has filed the impugned Anx.A2 final report on 30.3.2015 in the

impugned Anx.A1 Crime which has led to the pendency of C.C No.84/2015 of the Chief Judicial Magistrate's Court, Thodupuzha. The prayer of the petitioner is to quash these impugned criminal proceedings to extent the same, it is directed against the petitioner alone who is A1.

3. Heard Sri. K.R Sunil, the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. The main ground alleged by Sri.K.R Sunil, learned counsel for the petitioner is that the cognizance has been taken in the instant case as it is hopelessly barred by limitation mandated in Sec. 468 of the Cr.P.C in so far as it is after the lapse of more than long 16 years. In this regard, it will be profitable to refer to some of the the relevant portions of the Code of Criminal Procedure.

Sec. 468 of the Cr.P.C reads as follows:

Sec.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 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.

Sec. 469 of the Cr.P.C reads as follows:

Sec.469-“Commencement of the period of limitation.-(1) The period of limitation, in relation to an offence, 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 or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

Sec. 473 of the Cr.P.C reads as follows:

Sec.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”.

5. It is pointed out that the maximum punishment prescribed for the commission of the offences u/s 406 of the IPC is imprisonment for up to 3 years and fine or both and in the case of the offence under Sec.423 is imprisonment for 2 years or fine or both. Therefore it is submitted that by going through Sec. 468 of the Cr.P.C, there is a bar to take cognizance after the lapse of the period of limitation. The first proviso to Sec. 468 mandates that no court shall take cognizance of an offence of the category specified

in subsection (2) after the expiry of the period of limitation. The said conditions are fully attracted in the instant case, in view of the fact that the offences in question are u/S 406 and 423 of the IPC and that therefore the period of limitation prescribed as per the statute for taking cognizance is three years from the date of offence as envisaged u/s 469 of the Code. Moreover, it is the undisputed case that there has been no explanation offered either in the final report or in the separate application referred by the Investigating Officer before the court below, to explain such a long delay so as to appraise the court below to consider those aspects and take an appropriate decision as to whether such delay should be condoned, before taking the impugned cognizance. As directed by this Court, the Court below has given a report dated 15.7.2015, to the registry wherein it is clearly stated that the cognizance in the instant case was taken only on 5.6.2015.

6. In the report dated 8.7.2015, furnished by the court below to the registry, it is stated that the crime was registered on 25.8.2010 and that the case was taken to file calculating the period of limitation from the date of knowledge of the offence by the police officer as per Sec.469(1)(b) of the Cr.P.C.

7. The petitioner has produced documents as Anxs.A4 and A5. The learned counsel for the petitioner has taken the attention of the Court to Anx.A4, which is the proceedings of the Tahasildar, Thodupuzha No.B5-11867/94 (1) dated 24.9.1997 on the transactions in question . which reads as follows:

“An amount of Rs.47,64,076 (Rupees Forty seven lakhs sixty four thousand and seventy six only) was advised for R.R from the above defaulters towards abkari arrears as per revised R.R.C. and letter read as 1st and IInd paper above. Demand notice were issued to all defaulters. But they have not remitted any amount in spite of repeated requests. Out of the above four defaulters (1) Sri. Joseph S/o Joseph, Manayanickal, Karikode and (2) Smt. Mariyamma W/o Kurian, Manayanickal, Karikode have obtained interim stay order from the Hon'ble High Court of Kerala against realisation of Abkari arrears from them.

As per letter No.ID5-2956/94 dated 24.7.1997, the Assistant Excise Commissioner, Idukki has informed that they have served the Demand Notice to the defaulters on 23.4.1994. As per section 44(1) of the K.R.R Act any engagement entered into by the defaulter with any one in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government. Hence the following transfers of land made by the following defaulters after the service of Demand Notice are not binding upon Government u/s 44 of the K.R.R Act.

(1) The third defaulter Sri. Skarias S/o Mathai, Koottakallel, Elamdeom P.O., Alecode has willfully transferred his 2.55 acres of the solvency property comprised in old Sy. No. 959/1/170/286 of Velliyamattom Village of Sri. Varkey, S/o Paulose, Akkiparambil, Alacodu vide sale Deed No. 1837/94 dtd. 28.9.1994 and 66 cents of land comprised in Sy. No.975/1 K of Velliyamattom Village to Sri. Sajan S/o John, Puthiyaveettil, Alecodu vide sale Deed No.1838/94 dtd. 28.9.1994.

(2) The fourth defaulter Sri. Thomas S/o Iype, Puthoor, Ezhumuttom, Karimannoor has willfully transferred his 1 acre 80.500 cents of land comprised in old Sy.Nos. 1514/1/3, 1514/1/3 A, 1518/8/3 and 1519/1 of Karimannoor Village to Sri. Joy S/o Joseph, Plathottathil, Kadavoor vide sale deed No.3531/94 dtd. 26.9.1994.

Hence show cause notice under section 44 of the K.R.R Act were issued and got served on the above 2 transferors and the 3 transferrers on 21.8.1997 for hearing. Notice were served on all the transferors and transferees. All of them have replied to the notices.

None of the defaulters could defeat the allegations raised in this office notice shown as 3rd paper above nor they could produce solid proofs to substantiate their claims that they have affected the transfer before tax liabilities have been fixed on them. So also the transferees argued that they were not aware of the fact that there were liabilities on the properties. Hence the arguments raised by the defaulters and the purchasers of the land cannot be accepted and hence rejected.

In the above circumstances, I hold that the transfer of lands made were willful and with an intention to defeat the R.R steps, I hereby order to proceed on the above said landed properties under Section 44(1), (2) and (3) of the K.R.R Act, to realise the arrears due from the above defaulters treating the transfers to be null and void. Action for attachment and sale of the immovable properties will be taken in due course."

8. The main subject therein is willful transfer of landed properties in question. Moreover, the first reference of Anx.A4 is a Revenue Recovery requisition dated 29.12.1994 of the Assistant Excise Commissioner, Idukki. Anx.A5 is the subsequent communications in this regard dated 15.12.2014 by the Tahasildar, Taluk Office, Thodupuzha to the Commissioner, Land Revenue Thiruvananthapuram. It is clear from a mere reading of Anx.A4 itself that the fact of these matters regarding the alleged willful transfer of the properties in question was fully known through the State authorities concerned at least as on 24.9.1997, (the date of issuance of Anx.A4) or even earlier as he filed number relating to Anx.A4 is of the year 1994 (viz. No.B5-11867/94(1)) and moreover the first reference in Anx.A4 is nothing but Revenue Recovery Requisition dated 29.12.1994 of none other than the Assistant

Excise Commissioner, Idukki addressed to the Revenue Recovery Authorities. Therefore even the parent department viz., the Excise department was fully aware about the facts relating to the alleged property in question as early as in 1994 or at least prior to 29.12.1994 on which date the Assistant Excise Commissioner had sent the formal Revenue Recovery requisition addressed to the Revenue Officers concerned. Therefore the delay in question should be computed at least from 1994 or the year 1997. Therefore the contention of the petitioner that taking of the impugned cognizance has hopelessly barred by limitation is tenable.

9. There is yet another perspective to look into the matter. Even it is assumed that the entire matters were being examined by the Vigilance Department and that therefore there was some internal confusion as to who should take responsible action etc is to be taken into account, still it is the indisputable fact that pursuant to the recommendations of the Vigilance and Anti Corruption Bureau, the impugned Anx.A1 crime was registered as early as on 25.8.2010. Even the date on which the Vigilance and Anti Corruption Bureau has made its recommendations etc are not forthcoming and prima facie the same appears not to have been

appraised before the court below. Be that as it may, if the date of knowledge is assumed to be 25.8.2010 (date of registration of Anx.A1 Crime), still the prescribed period of limitation as per the statute in the instant case is three years and therefore the same would have expired on 25.8.2013. It is the indisputable case that the impugned cognizance has taken thereafter as late as on 5.6.2015. Since no materials were placed by the Investigating Agency before the court below to appraise itself about all these relevant aspects to enable the court below to equip itself to take a proper decision of as to whether the power to condone delay need be exercised or not, it cannot be said that the taking of cognizance is lawful. It appears that the court below has proceeded on the premise that there is no delay going by the date of knowledge. The date of knowledge can never be shifted after the period of 25.8.2010 (date of registration of the impugned Anx.A1). Therefore, it was incumbent upon the Investigating Officer to appraise the court below about the materials to justify such long delay in order to enable the court below to decide whether or not the same should be condoned. Having not done so, and the court below was totally illequipped_to take any decision on the matter of cognizance in the

manner it was taken. Moreover, there are no materials to show that the court below had any such materials. Therefore it is only to be held that taking of the impugned cognizance in the instant case by the court below is ultra vires and illegal. In this view of the matter the impugned criminal proceedings at Anx.A2 final report/charge sheet filed in the impugned Anx.A1 Crime No.1289/2010 of Thodupuzha Police Station which has led to the institution of C.C No.84 of 2015 of Chief judicial Magistrate Court, Thodupuzha to the extent it is directed against the petitioner (A1) and all further proceedings arising therefrom pending against the petitioner (A1) will stand quashed. The petitioner shall produce a certified copy of this judgment before the Investigating Officer concerned and the Chief Judicial Magistrate's Court, Thodupuzha.

With these observations and directions the Crl.M.C stands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE