

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl.R.C.No.1277 of 2009

Ravi

: Petitioner

versus

State by Sub Inspector of Police,
Adhiyer Mankottai Police Station,
Crime No.617/2007
Dharmapuri

: respondent

Revision filed under section 397 and 401 cr.p.c. against the order in Crl.M.P.No.2625 of 2009 in S.T.C. No.344 of 2009 on the file of the learned Judicial Magistrate No.2, Dharmapuri, on 19/10/09 and discharge the petitioner.

For petitioner : Mr.M.Selvam

For respondent : Mr.V.Arul, Government Advocate

O R D E R

This revision is filed against the dismissal of discharge petition filed by the petitioner.

2. The main ground of attack made by the learned counsel for the petitioner was on the ground of limitation. According to the learned counsel, first information report was registered on 9.8.2007. The respondent police filed charge sheet on 7.1.2008. Since there was some discrepancy, the original charge sheet was returned. However, it was re-presented only on 24.4.2009, after a period of more than one year. Therefore, the learned Magistrate ought to have rejected the charge sheet and allowed the petition filed by the petitioner for discharge. But the lower Court has held that since the charge sheet was filed well within the period of limitation, initially, cognizance could be taken and dismissed the petition filed by the petitioner for discharge.

3. The learned counsel for the petitioner would rely on a judgment of this Court reported in 2010(1) MWN (Cr.) 227 (Mari and another vs. The State), for the proposition that the charge sheet, even if re-presented, should be filed within a period of one year. In this case, even though the charge sheet was

originally filed as early as on 7.1.2008, since it was defective, it was returned and it was re-presented only on 24.4.2009. Therefore, he would contend that the revision should be allowed.

4. The learned Government Advocate relied on the very same judgment, in which reference has been made to Supreme Court judgment wherein it is stated "Petition for discharge in a summons case is unknown to the Code of Criminal Procedure and therefore, the Magistrate ought to have dismissed the petition as not maintainable". Therefore, on that ground, the order passed by the lower Court has to be sustained.

5. Heard both parties.

6. Here is a case where the petitioner has passed and failed. The revision petitioner succeeds on the ground of limitation. The charge sheet was initially filed before the Court within time. But as it was a defective one, it was returned. Thereafter, police did not re-present it within the time limit. It was filed again, after a long delay. Without even filing an application for condoning the delay, police have filed the charge sheet and the lower Court has also accepted it. Had the lower court insisted on the police to file a petition explaining the reason for delay and then taken a decision to accept the re-presented charge sheet, with delay, it would have been better. Under similar circumstances, this Court in 2010(1) MWN (Cr.) 227 (Mari and another vs. The State), has held as under ::

3. Indisputably, final report has been submitted against the petitioners only for offences under Section 341, 328 and 506(i) IPC. The maximum punishment prescribed for the above said offences is only two years and therefore, limitation period is admittedly three years from the date of the commission of the alleged offences. Though it is stated that initially a final report was submitted on 3.11.2005, admittedly, the same was returned to the police as the same was found to be defective. The respondent police did not care to re-submit the final report within the period of limitation so as to enable the Court to take cognizance. Instead, the returned final report was re-submitted after three years, i.e. Only on 15.6.2009. Thereafter, cognizance was taken. Therefore, it is crystal clear that the crucial date for calculating period of limitation is only 15.6.2009 and not 3.11.2005. But the learned Magistrate has taken 3.11.2005 as the crucial date. In my

considered opinion, the said view taken by the learned Magistrate is incorrect. If correct approach is made and 15.6.2009 is taken as crucial date, certainly, it goes without saying that the case is barred by limitation under Section 468, Cr.P.C. So I am inclined to quash the entire proceedings.

Therefore, he succeeded on the point of limitation.

7. However, the revision has be dismissed for the simple reason that petition for discharge in a summons case is unknown to the Code of Criminal Procedure. The Supreme Court in 2004 (7) SCC 338 (Adalat Prasad vs. Rooplal Jindal and others), held as under :-

"Petition for discharge in a summons case is unknown to the Code of Criminal Procedure and therefore, the Magistrate ought to have dismissed the petition as not maintainable. Thus, when the petition filed before the lower Court itself is not maintainable, this revision filed before this Court also cannot be entertained. On this ground, the revision deserves only to be dismissed. But at the same time, in order to avoid multiplicity of proceedings, I am inclined to treat this as a original petition and to exercise the power of this Court under sections 482 and 483, Cr.P.C., to quash the entire proceedings.

On that ground, the revision is dismissed.

8. At this stage, the revision petitioner pointed that since there is a palpable wrong, this criminal revision could be converted as an original petition filed under Section 482 Cr.P.C. and quash the charges.

9. This Court sees merits in the submissions of the learned counsel for the petitioner. Hence, this criminal revision is converted as an original petition filed under Section 482 Cr.P.C. and the charges are quashed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

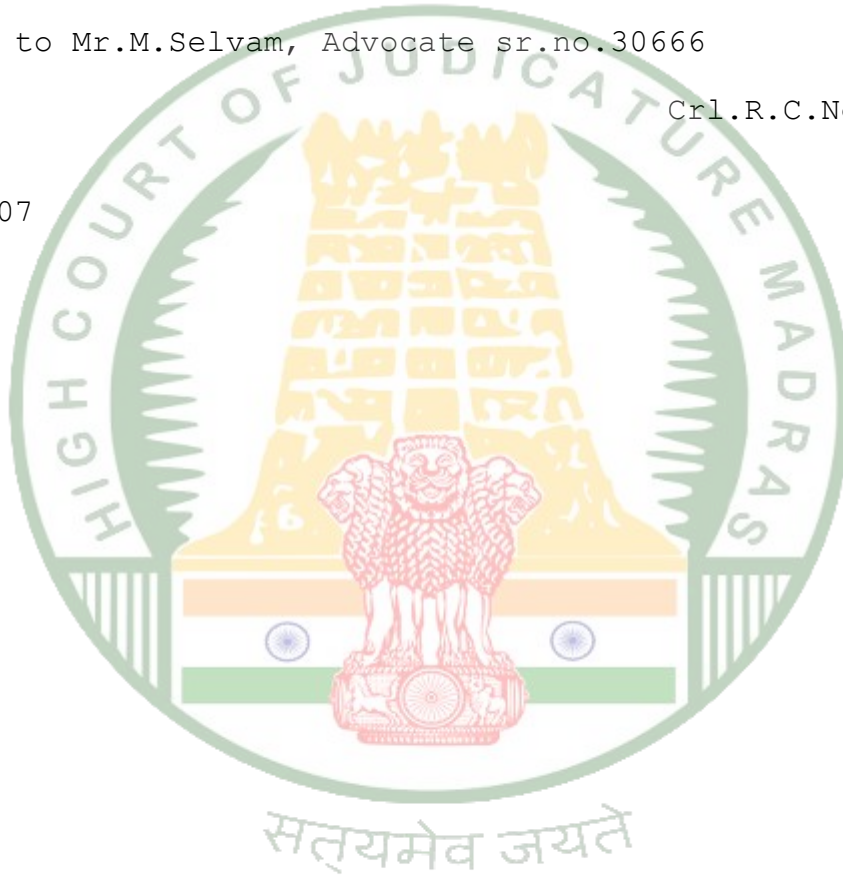
To

1. The Sub Inspector of Police,
Adhiyer Mankottai Police Station,
Dharmapuri.
2. The Judicial Magistrate,
No.2, Dharmapuri.
3. The Public Prosecutor,
Madras High Court.

+lcc to Mr.M.Selvam, Advocate sr.no.30666

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