IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.12128 of 2016 and 19471 of 2014
and
Crl.M.P.Nos.6224 of 2016 and M.P.No.1 of 2014

A.Marimuthu ..Petitioner in Crl.O.P.No.12128/2016
S.Ruban ..Petitioner in Crl.O.P.No.19471/2014

Vs

1.The State of Tamil Nadu
Rep by the Sub Inspector of Police
District Crime Branch
Coimbatore District
(Crime No.11/2001)

2.P.Elango .. Respondents in both Crl.O.Ps.

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records and quash the charge sheet in C.C.No.174 of 2007 pending on the file of the Judicial Magistrate II, Tiruppur.

For Petitioners : Mr.Yashod Vardhan
Senior Counsel
for Mr.S.Sithirai Anandam
For R1 : Mr.C.Emalias
Addl.Public Prosecutor
For R2 : Mr.K.Magesh

O R D E R

These petitions have been filed to call for the records and quash the charge sheet in C.C.No.174 of 2007 pending on the file of the Judicial Magistrate II, Tiruppur.

2. Heard the learned Senior Counsel for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. On the complaint lodged by the Tamil Nadu Industrial Investment Corporation Ltd., the respondent registered a case in Cr.No.11/2001 and after completing the investigation has filed a Final Report in C.C.No.174/2007 against the petitioners herein for offences u/s 406 and 120B IPC. The case

of the prosecution is best stated in the Final Report, which reads as under:

"Tamil Nadu Industrial Investment Corporation, a corporation incorporated under the Companies of Act during 1949 is a Tamil Nadu Government Organization. It is engaged in the activities of lending financial assistance to small scale and medium scale industrial units in the state of Tamil Nadu. The Government of Tamil Nadu under the Adi-Dravidar and Tribal Welfare Department established Knit-wear Industrial Estate for SC/ST beneficiaries of the said Estate were selected by the TAHDCO. TAHDCO constructed 100 sheds for this purpose at Mudalipalayam.

A1 V.Raju, resident of Pudukottai, became a member of this scheme in 1996 and he was sanctioned with a term loan of Rs.81 lakhs from the TIIC. Out of the said loan amount A1 purchased shed No.33. TAHDCO Industrial Estate, Mudalipalayam, Tiruppur and purchased two circular knitting machines one is OR 1210 Paolo, Italy machine, m/c No.1023 468 at a Saang Yong Machine from Korea, Serial No.98055026 at a cost of Rs.41.05 lakhs and installed at Valli Fabs at Shed No.33. A2 S.Ruban was partner of the said company with A1 V.Raju and A3 Marimuthu was working as Manager of Valli Fabs of A1. Thus A1 entrusted with the said circular knitting machine worth Rs.90.81 lakhs under the above said scheme under hypothecation to TIIC with a condition that A1 could not remove or tamper the said machines at the said place of installation until the term loan was discharged by remitting the entire loan amount with interest.

A2, S.Ruban, a resident of Avinashi and A3, A.Marimuthu, a resident of Tiruppur, soon after between 28.12.1998 and 19.04.2000 the three accused admitted criminal conspiracy at Tiruppur and other places by agreeing to do certain acts of offences of criminal breach of trust by dishonestly removing the said circular knitting machines from the said premises at Mudalipalayam.

There upon in pursuance of the said conspiracy, during the period between 28.12.1998 and 19.04.2000, A1 & A2 committed criminal breach of trust with the abetment of A3, by dishonestly removing both the said circular knitting machines worth Rs.90.81 lakhs from the shed No.33 TAHDCO Industrial Estate, Mudalipalayam in Tiruppur Rural PS limits without remitting the said term loan amount with interest and getting the said machines discharged from the hypothecation."

4. Learned Senior Counsel for the accused would submit that the FIR was registered on 20.12.2001, but the Final Report was filed only on 11.04.2007 beyond the period of limitation fixed by Section 468 for offence u/s 406 IPC. He strongly placed reliance on the Constitution Bench judgment of the Supreme Court in Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherian and others, [(2014) 2 SCC 62], where the Supreme Court has very clearly held that the period of limitation should be determined on the date of filing of the charge sheet or complaint before the Court and not on the date of the Court taking cognizance of it. In paragraph 35 of the judgment, the Supreme Court has discussed about the powers u/s 473 Cr.P.C. and has held that the Court has power to condone the delay in a given situation, which reads as under:

> "If the date on which complaint is filed is taken to be material, then if the complaint is filed within the period of limitation, there is no question of it being time barred. If it is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 of the Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not. If the date of taking cognizance is considered to be relevant then, if the Court takes cognizance within the period of limitation, there is no question of the complaint being time barred. If the Court takes cognizance after the period of limitation then, the question is how will Section 473 of the Cr.P.C. work. The complainant will be interested in having the delay condoned. If the delay is caused by the Magistrate by not taking cognizance in time, it is absurd to expect the complainant to make an application for condonation of delay. The complainant surely cannot explain that delay. Then in such a situation, the question is whether the Magistrate has to issue notice to the accused, explain to the accused the reason why delay was caused and then hear the accused and decide whether to condone the delay or not. This would also mean that the

Magistrate can decide whether to condone delay or not, caused by him. Such a situation will be anomalous and such a procedure is not known to law. Mr. Luthra, learned A.S.G. submitted that use of disjunctive 'or' in Section 473 of the Cr.P.C. suggests that for the first part i.e. to find out whether the delay has been explained or not, notice will have to be issued to the accused and for the later part i.e. to decide whether it is necessary to do so in the interest of justice, no notice will have to be issued. This question has not directly arisen before us. Therefore, we do not want to express any opinion whether for the purpose of notice, Section 473 of the Cr.P.C. has to be bifurcated or not. But, we do find this situation absurd. It is absurd to hold that the Court should issue notice to the accused for condonation of delay, explain the delay caused at its end and then pass order condoning or not condoning the delay. Law cannot be reduced to such absurdity."

5. In a case of this nature, it is not expedient for this Court to quash the entire prosecution u/s 482 Cr.P.C. on the ground of limitation. Limitation is a question of fact which cannot be decided by this Court u/s 482 Cr.P.C. based on the assertion of the parties. Whenever a Final Report is made ready by the police, the same is given to the Assistant Public Prosecutor incharge of the Court for his opinion. The Assistant Public Prosecutor is enjoined to maintain a Charge Sheet Register in terms of G.O.Ms.No.2937 Home dated 30.10.71, under which he is required to make an entry in the Register the date on which he cleared the charge sheet for filing. When a charge sheet or a complaint is presented to the Magistrate, unlike the civil Court where there is a filing section which receives petitions and enters the same in the filing register, in criminal Court, the complaints/Final Reports are presented to the Presiding Officer directly, who is required to put his initials on receipt of the same. Therefore, it is for the trial Court to decide as to when the present Final Report was presented by the police.

6. Learned Additional Public Prosecutor submitted that the Final Report was presented as early as 26.11.2003 from the date found below the signature of the Investigating Officer. Per contra, Mr.Yashod Vardhan, learned Senior Counsel submitted that the said date cannot be accepted as gospel truth as there are possibilities of the Investigating Officer putting the date, but not presenting the same to the Court on the said date. As stated above, these are all disputed questions of fact which cannot be decided by this Court in an

application u/s 482 Cr.P.C. Hence, these petitions are dismissed with a direction to the trial Court to determine the date on which the Final Report was presented and if there is delay, it is open to the learned Magistrate to consider the same u/s 473 Cr.P.C. bearing in mind the law laid down by the Supreme Court in Sarah Mathew case (cited supra). Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gms

To

1.Judicial Magistrate II, Tiruppur.

2. The Chief Judicial Magistrate,
(for information), Tiruppur.

3.The Sub Inspector of Police
District Crime Branch
Coimbatore District.

4.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.S. Sithirai Anandam, Advocate Sr.36795
+ 1 cc to Mr.K. Magesh, Advocate Sr.36729

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CTK(CO)
EU 22.07.16