

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.23271 of 2016 and Crl.M.P. No.10887 & 10888 of 2016

P.M.V. Durai

Petitioner

vs.

State represented by
the Inspector of Police
(Law & Order)
D-2 Anna Salai Police Station
Chennai 600 002

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to C.C. No.234/2016 on the file of the XIII Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For petitioner Mr. K. Srinivasan

For respondent Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to call for the records relating to C.C. No.234/2016 on the file of the XIII Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

2 On 02.04.2014, the Inspector of Police, D2-Anna Salai Police Station, with mahazar witnesses, went on a surprise inspection to Sruthi Palace Hotel run by the petitioner and found that obscene dances were being performed there. A special report was prepared, based on which, a case in Cr. No.325 of 2014 under Section 294, IPC read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, was registered against the petitioner and after completion of the investigation, a final report has now been filed in C.C. No.234 of 2016 before the XIII Metropolitan Magistrate, Egmore, Chennai

- 8, for offences under Section 294, IPC and Section 6 of the Indecent Representation of Women (Prohibition) Act, against Durai, challenging which, Durai is before this Court.

3 Mr. K. Srinivasan, learned counsel for the petitioner, taking this Court through the various provisions of the Indecent Representation of Women (Prohibition) Act, submitted that the provisions of the said Act will not apply even on the facts admitted by the prosecution.

4 The allegation in the final report is that four ill-clad women were found to be dancing showing obscene gestures. The provisions of the special Act relate to depiction of women in a disparaging and denigrating manner in publications of books, advertisements, etc. The Act does not cover live shows as involved in the case at hand. Hence, as rightly argued by the learned counsel for the petitioner, no charge for the said offence can be framed against the petitioner.

5 As regards the charge under Section 294, IPC, the learned counsel for the petitioner contended that the maximum punishment for an offence under the said Section is three months. According to the prosecution, the date of offence is 02.04.2014 and the final report has been filed only on 07.01.2016, which is beyond the period of limitation prescribed by Section 468, Cr.P.C.

6 This Court is of the view that under Section 473, Cr.P.C., the Court has the power to condone the delay in suitable cases. The learned counsel for the petitioner submitted that the order of taking cognizance by the Trial Court has to be set aside, if the prosecution is permitted to file an application under Section 473, Cr.P.C. In support of this contention, he placed reliance upon the judgment of the Supreme Court in P.K. Choudhury vs. Commander, Border Road Task Force (General Reserve Engineer Force) [(2009) 3 SCC (Cri) 531].

7 In Sarah Mathew vs. Institute of Cardio Vascular Diseases, [(2014) 2 SCC 62], a Constitution Bench of the Supreme Court, while clearly settling the issue, has held that it is not the date of cognizance, but, the date of filing of the final report that is material. Ergo, the prosecution should have filed the final report within the period of limitation as prescribed by Section 468, Cr.P.C.

8 Limitation is a question of fact, which has to be determined only by the Trial Court based on materials. In such view of the matter, this Court cannot give a finding as to when the charge sheet was filed by the police before the Trial Court.

In the event of charge sheet having been filed before the Trial Court after the period of limitation, liberty is given to the respondent police to file an application under Section 473, Cr.P.C., if required, and on such application being filed, the Trial Court shall hear the accused and pass orders in accordance with law.

With the above directions, this Criminal Original Petition stands disposed of. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Inspector of Police
(Law & Order)
D-2 Anna Salai Police Station
Chennai 600 002
 - 2 The Public Prosecutor
Madras High Court
Chennai 600 104
 - 3 The XIII Metropolitan Magistrate,
Egmore, Chennai
 - 4 Do thro The Chief Metropolitan Magistrate,
Egmore, Chennai
- +1cc to Mr. K. Srinivasan, Advocate, S.R.No.59934

ks (CO)
md (08/11/2016)

Cr1.O.P. No.23271 of 2016