

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Crl.R.C.No.1420 of 2016

P.Swamy

... Petitioner

Vs.

1. Nachimuthu

2. M.A.Dhayalan

3. The Inspector of Police,
Town Police Station,
Erode District.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order of the learned Judicial Magistrate No.II, Erode in C.M.P.No.4637 of 2016 dated 27.09.2016 and direct to consider the complaint on merits in the light of the order of this Court in Crl.O.P.No.19037 of 2015.

For Petitioner : Mr.A.Thiyagarajan.

For Respondents : Mr.R.Sekar
Government Advocate (Crl.Side) for R3

No Appearance for R1 and R2

सत्यमेव जयते
O R D E R

This Criminal Revision Case has been filed against the order passed in C.M.P.No.4637 of 2016 on the file of the learned Judicial Magistrate No.II, Erode, dated 27.09.2016.

The short facts which are required to be noticed for disposal of this revision case are as follows:

2.The petitioner had filed a complaint before the respondent police against the private respondents for taking action on the alleged offences punishable under Sections 324 and 341 of IPC. An FIR was registered on 30.03.2011. Pursuant to which, after investigation, the respondent police has sent a report in R.C.S.No.8 of 2011 stating that no crime has been made

out and therefore, the reference report has been sent to the concerned Magistrate Court.

3. However, since no notice or information given to the defacto complainant before sending RCS to the learned Magistrate, the petitioner/defacto complainant had approached this Court by filing Crl.O.P.No.19037 of 2015, wherein this Court directed the respondent police to give notice to the defacto complainant and thereafter, proceed the matter. Accordingly, notice was given to the petitioner/defacto complainant, which triggered the petitioner to file a protest petition by way of private complaint before the learned Magistrate in Crl.M.P.No.4637 of 2016. This protest petition/private complaint having been taken cognizance by the learned Magistrate, Sworn Statements of PW 1 to PW3 had been taken. After taking Sworn Statements from the petitioner's side, instead of proceed the matter to decide the issue, the learned Magistrate seems to have taken a route, in view of the bar under Section 468 of Cr.P.C, where some time limit has been prescribed, in which cognizance should have been taken by the concerned Judicial Magistrate depending upon the offence/punishment and ultimately, has dismissed the said protest petition/private complaint of the petitioner through the impugned order dated 27.09.2016. Against which, the present revision has been filed.

4. I have heard Mr.A.Thiyagarajan, learned counsel appearing for the petitioner.

5. In spite of notices have been served and their names also printed in the cause list, none of the private respondents have appeared before this Court.

6. I have also heard Mr.R.Sekar, learned Government Advocate (Criminal Side) appearing for the 3rd respondent.

7. The learned counsel appearing for the petitioner would state that no doubt, there is a time limit prescribed under Section 468 of CrPC. Since the offences alleged against the private respondents accused persons are punishable under Sections 324 and 341 of IPC for a punishment of two years period. Therefore, the limitation for taking cognizance of the offences, shall be three years, from the date of occurrence, within the meaning of Section 468(2)(c) of the Code. However, the learned counsel appearing for the petitioner would state that there is no hard and fast rule that the said period has to be strictly construed, in view of the provision under Section 473 of the Code, which empowers the Magistrate to take cognizance even beyond the period as prescribed under Section 468 of the code.

8. In this regard, the learned counsel appearing for the petitioner would state that after the complaint having been taken by the respondent police, after investigation, before sending the RCS to the concerned Magistrate, no notice has been given to the defacto complainant. Though it is mandatory on the part of the respondent police to inform the defacto complainant the same has not been done. Hence, the petitioner had filed Criminal Original Petition before this Court, and only after getting directions from this Court, the respondent police has given notice to the petitioner and thereafter, the petitioner has filed this protest petition/private complaint.

9. Therefore, the learned counsel appearing for the petitioner would state that the prescribed period of limitation as contemplated under Section 468(2)(c) of the Code, insofar as the present case is concerned, cannot be strictly followed or construed and in these circumstances, the extension period under Section 473 of the Code, can very well be invoked in these type of cases as there are reasons for such delay. The learned counsel appearing for the petitioner would also state that the learned Magistrate has failed to take into account these aspects and had dismissed the same under Section 468(2)(C) of the Code. Hence, the impugned order is liable to be interfered with.

10. However, the learned Government Advocate (Criminal Side) appearing for the 3rd respondent would state that pursuant to the complaint given by the petitioner, investigation was made and after completion of investigation, the police came to the conclusion that no cognizable offence has been made out or commissioned by the respondent/accused persons and therefore, report to that effect in RCS was filed before the Magistrate Court. Once the RCS Report having been filed and the same has been taken into account and taking cognizance having been accepted by the Magistrate Court, for the very same offence, the petitioner cannot seek indulgence from the concerned Magistrate Court, even under the protest petition or by way of private complaints, as has been done in this case.

11. Heard learned counsel appearing for both sides.

12. As has been rightly pointed out by the learned counsel appearing for the petitioner, once the protest petition/private complaint having been taken on file, by taking Sworn Statements of PW1 to PW3, the Magistrate should have proceeded to consider the matter on merits and disposed of the same, after examining the witnesses by issuing summons to the respondents. But, the learned Magistrate has taken a route of Section 468 of CrPC by saying that under Section 468(2)(c) of the Code, when the prescribed limitation period was three years,

and the same was over as early as on 30.03.2014, within which since the charge has not been taken on file, it cannot be further taken in view of the limitation prescribed therein.

13.In this regard, the learned Magistrate also missed to take into account the extended period of limitation under Section 473 of the Code, as has been rightly contended by the learned counsel appearing for the petitioner.

14.In view of the fact that at the time of referring the matter by sending RCS to the Magistrate Court, no notice admittedly has been sent to the defacto complainant, only at his insistence that too pursuant to the direction given by this Court, such a notice has been given to the defacto complainant. Therefore, the defacto complainant cannot be blamed for approaching the Court by filing private complaint belatedly. Only to meet out such eventuality, provision under Section 473 of the Code has been contemplated and the said provision ought to have been followed and, in the considered opinion of this Court, the learned Magistrate has failed to adhere to.

15.In view of the above said facts and circumstances of the case, this Court is inclined to pass the following orders:

That the impugned order is set aside. The matter is remitted back to the learned Magistrate to proceed further by invoking Section 473 of the Code and accordingly, issue summons to the respondents and decide the case on merits, within the meaning of the procedure established under the Code.

With these directions, this Criminal Revision Case is ordered.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Judicial Magistrate No.II,
Erode.

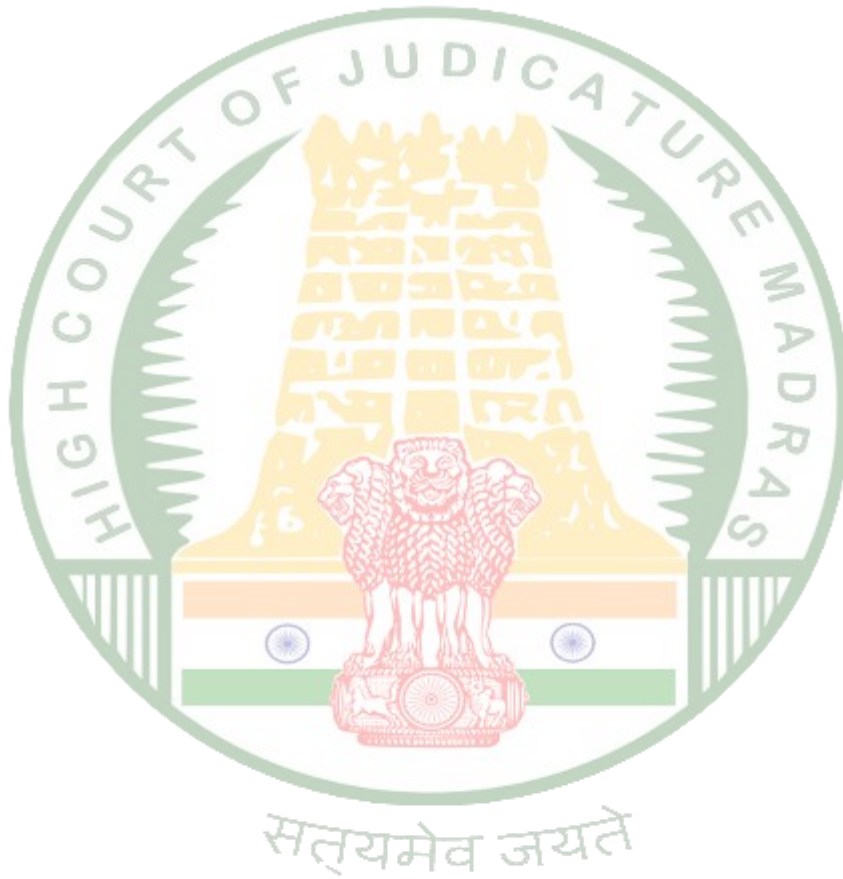
2.The Inspector of Police,
Town Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.65767

Cr1.R.C.No.1420 of 2016

RR(CO)
CA(13/11/2017)



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