



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.05.2017

DELIVERED ON: 09.06.2017

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

Crl.O.P. (MD) No.3865 of 2017 & Crl.M.P. (MD) Nos.2834 & 2835 of 2017

Pasupathi

...Petitioner

vs.

1 State represented by  
the Inspector of Police  
Sanarpatti Police Station  
Dindigul District  
Cr. No.38 of 2011

...Respondent 1/  
Complainants

2 Jeyaraj

...Respondent 2/  
Defacto Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to quash C.C. No.32 of 2014 on the file of the Judicial Magistrate No.III, Dindigul, as illegal.

For petitioner : Mr. K. Baalasundharam  
For R1 Mr. K. Anbarasan  
Government Advocate (Crl. Side)

### ORDER

It is said that, for some, adversity visits in geometric progression and Jeyaraj (de facto complainant/second respondent herein) is one such unfortunate human being, as could be seen from the facts that would be unfolded hereinafter.

2 Jeyaraj was working as a Police Constable and he had purchased a new TVS Star City motorbike. On 17.01.2011, he went in his new motorbike with his wife and son to worship in a nearby temple and was returning home. Since he wanted to attend to the nature's call, he parked his motorbike on the roadside and his wife and son were standing beside the motorbike while he was easing himself in a nearby bush. At that time, a Maruti car driven by Pasupathi, the accused, mowed Jeyaraj's wife and son to death.



3 On the complaint of Jeyaraj, the first respondent police registered a case in Cr. No.38 of 2011 on 17.01.2011 and arrested Pasupathy on the same day. Pasupathy was released on bail pending investigation. After completing the investigation, the police filed charge sheet before the Judicial Magistrate Court No.III, Dindigul, which was taken on file as C.C.No.32 of 2014 and cognizance was taken by the said Court on 07.02.2014 for offences under Section 304-A, IPC (2 counts) against Pasupathy.

4 Pasupathy appeared before the Trial Court and he was served with the copies of the charge sheet and relied upon documents under Section 207, Cr.P.C. Pasupathi filed Crl. M.P. No.2166 of 2016 in C.C. No.32 of 2014 under Section 239, Cr.P.C. for discharging him from the prosecution on the ground that the charge sheet has been filed beyond the limitation period. It was his specific contention that the offence took place on 17.01.2011 and the charge sheet should have been filed within three years, i.e., on or before 17.01.2014, whereas, the charge sheet in the instant case has been filed only on 05.02.2014, without there being any petition for condonation of delay under Section 473, Cr.P.C. and therefore, the same is barred by limitation.

5 The Judicial Magistrate Court No.III, Dindigul dismissed Crl.M.P. No.2166 of 2016 in C.C. No.32 of 2014 on 31.08.2016 on the ground that, once he had taken cognizance of the offences rightly or wrongly, he has no power to recall the order, in the light of the 3 Judge Bench judgment of the Supreme Court in **Adalat Prasad vs. Rooplal Jindal and others [(2004) 7 SCC 338]**. Challenging the said order, Pasupathi filed C.R.P.No.10 of 2016 before the Principal Sessions Court, Dindigul, under Sections 397 and 399, Cr.P.C., which was dismissed on 18.02.2017, aggrieved by which, Pasupathy is before this Court invoking the inherent jurisdiction under Section 482, Cr.P.C.

6 Heard Mr. K. Baalasundharam, learned counsel for the petitioner/accused and Mr.K.Anbarasan, learned Government Advocate (Crl. Side) appearing for the first respondent.

7 Mr. K. Baalasundharam, learned counsel for the petitioner/accused made the following two fold submissions:

- that a case under Section 304-A, IPC is a summons case and therefore, the investigation should have been completed by the police within six months from the date of arrest of the accused, failing which, the Magistrate should have stopped the investigation under Section 167(5), Cr.P.C., whereas, the investigation has proceeded even after the period of six months and therefore, the charge sheet filed against the petitioner/accused has to be quashed.



- that the charge sheet has been filed beyond the period of three years from the date of the offence, in violation of the period of limitation fixed by Section 468, Cr.P.C., without a petition for condonation of delay under Section 473, Cr.P.C. and therefore, the prosecution requires to be quashed.

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8 In support of his first submission, he placed strong reliance upon the following judgments of this Court:

i. **Jagannathan and others. vs. the State [1983 Crl. LJ 1748];** and

ii. **Azalea Veronica vs. State represented by the Inspector of Police, Airport Police Station, Chennai [(2007) 1 MLJ (Crl.) 1046].**

9 In support of his second submission, he placed strong reliance upon the following judgments of this Court and Supreme Court:

i **Vivekanandan vs. The Inspector of Police, Central Crime Branch, Egmore, Chennai [2009-2-L.W. (Crl.) 1099;**

ii **V. Prakash vs. State represented by the Sub Inspector of Police, Salawakkam Police Station, Kancheepuram District [2014-1-L.W. (Crl.) 527];** and

iii **Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director Dr.K.M.Chcrian and others [(2014) 2 SCC 62]**

10 Per contra, the learned Additional Public Prosecutor submitted that the investigation in the case was completed by the police as early as 10.12.2013 and the charge sheet was submitted to the Assistant Public Prosecutor attached to the Judicial Magistrate Court No.III, Dindigul, who had verified, approved and filed it on the same day, i.e., 10.12.2013, before the Judicial Magistrate Court No.III, Dindigul, but, the ministerial staff of the said Court had affixed the seal only on 05.02.2014 by placing the final report/charge sheet before the Judicial Officer for the purpose of taking cognizance.

11 This Court gave its anxious consideration to the rival submissions.

12 In view of the aforesaid assertion made by the State, this Court called for original records from the Judicial Magistrate Court No.III, Dindigul. On a perusal of the records, it is beyond cavil that investigation was completed and the



approval of the Assistant Public Prosecutor attached to the Judicial Magistrate Court No.III, Dindigul, was obtained on 10.12.2013, as could be seen from the signature, date and seal affixed on the charge sheet. However, on the charge sheet, the date seal of the Court shows the date as 05.02.2014.

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13 The learned counsel for the petitioner/accused placed strong reliance on the date seal of the Court affixed on the charge sheet and contended that the charge sheet was filed only on 05.02.2014 and not on 10.12.2013, as contended by the State.

14 In view of the aforesaid stand taken by the learned counsel for the petitioner/accused, this Court directed the concerned Assistant Public Prosecutor to appear before this Court and explain this anomaly.

15 Accordingly, Mr. M. Akbar Raja, B.A.,B.L., who was the Assistant Public Prosecutor attached to the Judicial Magistrate Court No.III, Dindigul, at the relevant point of time, appeared before this Court and filed an affidavit asserting that he scrutinised and approved the charge sheet in this case on 10.12.2013 and the same was also submitted on the same day to the Judicial Magistrate Court No.III, Dindigul, whereas, it was taken on file only on 05.02.2014. He has stated in the affidavit that there is no separate register in the Magistrate Courts for making entry for the filing of charge sheets by the police and that has resulted in this anomaly. He has further averred in the affidavit that the Magistrate would take on file, only 20 to 30 cases per month and neither the Assistant Public Prosecutor nor the police will be made known as to the date on which cognizance was taken in a particular case.

16 This Court is now placed in a precarious predicament since this Court has to decide whether to accept the assertion of Mr. M. Akbar Raja, Assistant Public Prosecutor or to go by the date seal affixed on the charge sheet and hold that the charge sheet has been filed with a delay of 17 days.

17 Howsoever unpalatable it may be, this Court cannot ignore certain hard facts that obtain at the ground level in the Magistrate Courts. It would be in the fitness of things to state that during my inspection of the Portfolio District, I have noticed a whopping number of charge sheets filed by the police being kept in the loft of the Court without any judicial order being passed thereon. It is also true that patently defective charge sheets are filed by the police and when they are returned to them for compliance, seldom are the defects rectified and the charge sheets re-presented.

<https://hcservices.ecourts.gov.in/hcservices/>

18 A similar issue fell for consideration before me in **Laborate Pharmaceuticals India Ltd. and others vs. State**



represented by the Drugs Inspector, Tondiarpet II Range, Zone I [2016-2-L.W. (Cr1.) 196] and I bemoaned as follows:

"22 In Civil courts, all petitions are filed in the filing section in the Registry, where, they are entered in the Stamp Register and the date seal is affixed on the petition by the Office Assistant manning the counter. There is no such procedure in criminal Courts because criminal matters have to be dealt with alacrity. That is why, Rules of Practice enjoins the complainant to present the complaint directly to the Magistrate in the open court. If the Magistrate merely receives the complaint and stacks it in the shelf without even putting his initials and date thereon, the party cannot be made to suffer. *Actus Curiae Neminem gravabit* is a principle that is applicable in all its fours. The entire judicial system rests on the faith, the common man has in the functioning of the judicial officers. If that faith itself is belied, the edifice of judiciary will crumble like a pack of cards."

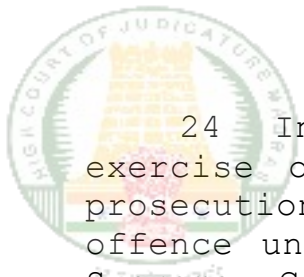
19 I ask this question to myself: "Can the interest of the victim of a crime be sacrificed on the altar of a bureaucratic crossfire between the police and the Court of the Magistrate?"

20 My judicial conscience says that the answer to this question should be an emphatic "No". What satisfactory answer can the judicial system provide for Jeyaraj who has lost his wife and son, right under his nose, in the gruesome accident? How is he bothered about these legal niceties and their jurisprudential arabesques?

21 In this case, the police have taken a stand that they will not file an application under Section 473, Cr.P.C. for condonation of delay, because, it is their case that the charge sheet was submitted on 10.12.2013 within the period of limitation.

22 This Court cannot force the police to invent an imaginary reason for filing a petition under Section 473, Cr.P.C. for condoning the delay of 17 days calculated from 17.01.2014 to 05.02.2014. Why should anyone be asked to speak untruth?

23 A Constitution Bench of the Supreme Court, in **Sarah Mathew** (supra), has held that for computing the period of limitation, the date of presentation of the charge sheet alone is relevant and not the date on which cognizance was taken by the Court. In the same judgment, the Constitution Bench has approved the law laid down in **Vanka Radhamanohari (Smt.) vs. Vanka Venkata Reddy and others [(1993) 3 SCC 4]**.



24 In **Vanka Radhamanohari** (supra), the High Court, in exercise of its powers under Section 482, Cr.P.C., quashed the prosecution launched by the wife against her husband for an offence under Section 498-A IPC on the ground of limitation. The Supreme Court compared the provisions of Section 5 of the Limitation Act and Section 473, Cr.P.C. and held as follows:

"5. . . . . Section 5 of that Act enables any court to entertain any appeal or application after the prescribed period, if the appellant or the applicant satisfies the court that he had "sufficient cause for not preferring the appeal or making the application within such period". So far Section 473 of the Code is concerned, the scope of that section is different. Section 473 of the Code provides:

*"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 limitation, 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."*

In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non-obstante clause which means that said section has an overriding effect on Section 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice.

6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay



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under Section 5 of that Act. There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim : *vigilantibus, et non, dormientibus, jura subveniunt* (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women." (emphasis supplied)

25 Applying the ratio laid down by the Supreme Court in **Vanka Radhamanohari** (supra), even if there is a delay of 17 days as asserted by the learned counsel for the petitioner/accused, this Court, in exercise of its powers under Section 482, Cr.P.C., condones the same in the interests of justice in view of the fact that two lives have been lost and it will be a travesty of justice if the accused is allowed to go scot-free on the ground of limitation.

26 As regards the arguments of the learned counsel for the petitioner/accused by placing reliance on Section 167(5) Cr.P.C., the issue is no more *res integra* in the light of the judgment of **Jagannathan** (supra), wherein, it has been held as follows:



"23 . . . From the decisions of the Supreme Court and the various High Courts referred to above, it is clear that once a case is taken cognizance of by a competent Court and the proceedings of the case has commenced, the mere antecedent illegality or irregularity in the investigation, on the basis of which the final report has been filed will not invalidate or vitiate the proceedings unless it is shown that prejudice has been caused thereby to the accused or any miscarriage of justice has resulted thereby. Hence, with respect, I am unable to share the view taken by the learned Judges of the Calcutta High Court in the three decisions referred to above, viz., that the illegal investigation conducted beyond the prescribed period of six months without the order of the Magistrate would vitiate the taking cognizance of the offence and the subsequent proceedings. Of course if a petition is filed by the accused before the taking cognizance of the offence by the Magistrate, challenging the validity of the investigation conducted beyond the prescribed period of six months without obtaining the permission of the Magistrate, the position would be different."

27 The law laid down in **Jagannathan** (supra) has been approved and followed by a Division Bench of the Kerala High Court in **C. Baskaran Nair vs. State of Kerala and others [1987 CrL. L.J. 170]**. In the instant case, the petitioner/accused has not demonstrated as to how he would stand prejudiced if the delay of 17 days (even assuming for a moment that it is there), is condoned. On the contrary, undue prejudice will be caused to the State and the victim, if the accused is let off scot-free on the ground of limitation without even the trial being conducted.

28 In **Azalea Veronica** (supra), the accused therein raised the plea of limitation under Section 167(5), Cr.P.C. by filing the quash application on 25.10.2006 and during the pendency of the quash application, the charge sheet was filed on 04.01.2007. Only in those circumstances, the prosecution was quashed by this Court. In this case, the petitioner/accused moved neither the Magistrate Court nor this Court under Section 482, Cr.P.C., for quashing the prosecution on the ground of the bar under Section 167(5), Cr.P.C. *pendente* investigation. The plea is being taken only now after the Trial Court had taken cognizance of the offence in C.C. No.32 of 2014. Thus, the judgment of this Court in **Azalea Veronica** (supra) cannot be of any support to the case of the petitioner/accused.



In the result, this Criminal Original Petition is dismissed as being devoid of merits and delay, if any, in filing the charge sheet in C.C. 32 of 2014 before the Judicial Magistrate Court No.III, Dindigul, stands condoned. Connected Crl.M.Ps. are closed.

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Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

- 1 The Inspector of Police  
Sanarpatti Police Station  
Dindigul District
- 2 The Judicial Magistrate No.III  
Dindigul
- 3 The Additional Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai.

+1cc to Mr. K. Baalasundharam, Advocate Sr.No.59301

CAD

VB/KKR/SAR4/16.06.2017/9P/5C

order in  
Crl.O.P. (MD) No.3865 of 2017  
09.06.2017