

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Cr1.O.P.No.13065 of 2015

G.Venkatnarayanan

... Petitioner/Accused

Vs.

State represented by
The Sub Inspector of Police,
Law and Order,
R-9, Valasaravakkam Police Station,
Chennai - 600 087.
(Ref Crime No.230/2013 dated 12.02.2013)

...Respondent/complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings pending in S.T.C.No:16/2015 pending on the file of the Judicial Magistrate No-I, Poonamallee for an offence under Section 4 (1) (a) of Tamil Nadu Prohibition Act, 1937.

For Petitioner : Mr.C.Arun Kumar

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate

O R D E R

This petition has been filed by the accused to quash the proceedings in S.T.C.No.16 of 2015 on the ground that the case has been taken on file after expiry of limitation prescribed under Section 468 Cr.P.C.

2. The learned counsel for the petitioner has submitted that the Inspector of Police, CBI:ACB:Chennai has lodged a complaint before the Sub-Inspector of Police, R9, Valasaravakkam Police Station on 12.02.2013 and based on the said complaint, the case was registered on the same day in the Valasaravakkam Police Station in Crime No.230 of 2013 under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937. He further submitted that the punishment prescribed for the offence punishable under Section 4 (1) (a) of the Tamil Nadu Prohibition Act is with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees. He further submitted that as

per Section 468 of Cr.P.C, no Court shall take cognizance after expiry of one year, if offence is punishable with imprisonment for a term not exceeding one year. He further submitted that in this case, the charge sheet was filed on 08.05.2015 before the Jurisdictional Magistrate and cognizance was taken on 19.05.2015 and hence, the case is clearly barred by limitation and therefore, he requested to quash the proceedings in S.T.C.No.16 of 2015 on the ground of limitation.

3. The learned Government Advocate (Criminal side) has submitted that under Section 473 of Cr.P.C., the Judicial Magistrate is having power to condone the delay and since he already took the cognizance of the case, it has to be presumed that the learned Judicial Magistrate has impliedly condoned the delay. He further relying upon the decision of this Court in A.Marimuthu and another vs. The Sub Inspector of Police, District Crime Branch, Coimbatore District. And another (Crl.OP.Nos.12128 of 2016 and 19471 of 2014) submitted that the limitation is a question of fact and the same cannot be decided by this Court under Section 482 of Cr.P.C., based on the assertion of the parties and hence he requested to dismiss this petition.

4. It is an admitted fact that the complaint was lodged on 12.02.2013 and FIR was registered on the same day under Section 4 (1) (a) Tamil Nadu Prohibition Act, against the petitioner herein. It is seen from the typed set of papers filed by the petitioner that the Inspector of Police, Valasaravakkam, has prepared the charge sheet and signed on 30.04.2015 and filed before the Judicial Magistrate No-I, Poonamallee on 08.05.2015. As per Section 468 Cr.P.C., no Court shall take cognizance of an offence after expiry of the period of one year, if the offence is punishable with imprisonment for a term not exceeding one year. The punishment prescribed for the offence punishable under Section 4(1)(a) of the Tamil Nadu Prohibition Act is with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees. Since in this case, the charge sheet has been filed after two years from the date of offence, the case is clearly barred by limitation.

5. In A.Marimuthu and another vs. The Sub Inspector of Police, District Crime Branch, Coimbatore District And another (supra), the learned Additional Public Prosecutor, based on the date found below the signature of the Investigating officer, has contended that the final report was presented as early as on 26.11.2003. Per contra, the learned senior counsel appearing for the petitioner has submitted that the said date cannot be accepted as gospel truth. Since there was a dispute with regard to the date of presenting the charge sheet before the Court, this Court has taken a view that the said dispute cannot be decided in the application filed under Section 482 Cr.P.C.

Whereas in this case, even if it is assumed that the charge sheet was filed on the date which was signed by the Inspector of Police in the charge sheet i.e., on 30.04.2015, even then the case is barred by limitation. So the aforesaid decision will not be applicable to the facts of this case.

6. In Sarah Mathew and Ors .Vs. Institute of Cardio Vascular Diseases by its Director K.M.Cherian and Ors. MANU/Sc/1210/2013:AIR 2014 Sc 448 a Constitution Bench of the Hon'ble Supreme Court in para 26 has observed as follows:-

''26.In this connection, our attention is drawn to the judgement of this Court in Sharadchandra Dongre. It is urged on the basis of this judgement that by condoning the delay, the Court takes away a valuable right which accrues to the accused. Hence, the accused has a right to be heard when an application for condonation of delay under Section 473 of the Code of Criminal Procedure is presented before the Court. Keeping this argument in mind, let us examine both the view points i.e. Whether the date of taking cognizance or the date of filing complaint is material for computing limitation. 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 complaint can make an application for condonation of delay under Section 473 of the Code of Criminal Procedure. 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 of the Code of Criminal Procedure is that the Magistrate can take cognizance of an offence only if the complaint in respect of it is filed within the prescribed limitation period. He would, however, be entitled to exclude such time as is legally excludable.''

7. From the aforesaid decision, it is clear that if the date on which complaint 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 Cr.P.C. In such a case, the Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether the delay has to be condoned or not. In case, the delay is condoned, then only the Court can take cognizance of the case. If the delay is not condoned then the Court cannot take cognizance. In this case admittedly no such application has been filed under Section 473 of Cr.P.C. to condone the delay. Hence this case is clearly barred by limitation.

8. In the result, this petition is allowed the proceedings in S.T.C.No.16 of 2015 on the file of Judicial Magistrate, No-I, Poonamallee is quashed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

msrm

To

1. The Judicial Magistrate No-I,
Poonamallee.
2. The Sub Inspector of Police,
Law and Order,
R-9, Valasaravakkam Police Station,
Chennai - 600 087.
(Ref Crime No.230/2013 dated 12.02.2013)
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Arun Kumar, Advocate, S.R.No.57305.

Crl.O.P.No.13065 of 2015

rrs 26/09/2018.

सत्यमेव जयते

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