IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.10.2018

CORAM
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.26685 of 2014
and
Crl.M.P.Nos.1 and 2 of 2014

A.Marimuthu ... Petitioner/Accused-2

Vs.

1.State, represented by,
The Inspector of Police,
District Crime Branch,
Coimbatore.
(Ref. Crime No.9 of 2001
dated 20.12.2001) ... 1st respondent /Complainant

2.P.Elango, S/o. Poilon,
Assistant Manager,
Field Office (9),
T.N.I.I.C. Ltd.,
Tirupur. ...2nd Respondent/De-facto Complainant

(De-facto Complainant / 2nd respondent is impleaded as per order in Crl.M.P.No.3 of 2014 in Crl.O.P.No.26685 of 2014, dated 21.08.2018)

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.32 of 2004 on the file of the Judicial Magistrate-II, Tirupur and quash the same as against the petitioner.

For Petitioner : Mr.S.Sithirai Anandam

For Respondents: Mr.T.Shanmugarajeswaran
Government Advocate for R1

: Mr.K.Magesh for R.2

O R D E R

This petition has been filed by the accused No.2, to quash the proceedings against him in C.C.No.32 of 2004, on the file of the Judicial Magistrate, No.II, Tirupur.

2. The brief facts are as follows:-

The accused No.1 had borrowed a sum of Rs.92.66/- lakhs from the TIIC, Tirupur, for purchasing Knitting Machines. Subsequently, the said machineries were hypothecated with the said TIIC and in the said Knitting Company, the petitioner herein was working as a Manager. The first accused had removed the said machineries without the knowledge of the TIIC. The officials of the TIIC inspected the factory premises of the first accused on 18.09.2000 and found that one machinery was missing and hence, a show cause notice was issued on 17.10.2000. The first accused, after the receipt of the said notice has sent a reply dated 25.10.2000 stating that the said machinery is very much available in his factory. Hence, the officials of the TIIC again inspected the said premises on 22.01.2001 and found that the said machinery was not available and hence, the second respondent has lodged a complaint before the first respondent on 20.12.2001. Based on the said complaint, the first respondent has registered a case in crime No.9 of 2001 under Sections 406 and 420 of IPC. After investigation, the first respondent has filed a charge sheet before the Judicial Magistrate No.II, Tirupur and based on the same, the learned Judicial Magistrate No.II, Tirupur has taken the case on file in C.C.No.32 of 2004 and issued summons to the accused persons. After receipt of the summons, the second accused has filed the present petition to quash the proceedings against him.

3. The learned counsel for the petitioner has submitted that as per the FIR, the offences are said to have been committed between 04.05.2000 to 18.09.2000, but, the charge sheet was filed only on 18.12.2003, i.e., after three years and as such the case is barred by the limitation. He further submitted that since the case is barred by limitation, the Judicial Magistrate ought not to have taken the case on file and therefore he prayed to quash the proceedings against the petitioner.

4. The learned Government Advocate (Crl.Side), who is appearing for the first respondent has submitted that in the FIR, it is clearly stated that only on 22.01.2001 finally the de-facto complainant came to know that the machinery was removed from the premises of the first accused and if it is computed from that date, the limitation for filing charge sheet will expire on 21.01.2004, whereas, in this case, the charge sheet was filed on 18.12.2003 and therefore, the case was filed within the limitation and therefore, he prayed to dismiss the petition.

5. The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Crl. Side).

6. The learned counsel for the petitioner by way of reply relying upon the decision of this Court in M.Sathianathan Vs. The State of Tamil Nadu and another (Crl.O.P.(MD).No.6457 of 2008, dated 03.09.2010) has submitted that the limitation has to be computed from the date of commission of offence. He further submitted that, in this case, in the first page of the FIR, it is clearly stated that the offence was committed between 04.05.2000 to 18.09.2000 and as such, the limitation for taking cognizance of the offence under Section 406 IPC would expire on 18.09.2003 itself, but, in this case, cognizance was taken only in the year 2004 and therefore it is clearly barred by limitation.

7.In M.Sathianathan Vs. The State of Tamil Nadu (Supra), on 06.05.2004, the defacto complainant lodged a complaint before the police stating that his sixteen goats were missing on 07.01.2004. Based on the said complaint, a case was registered in crime No.119 of 2004, for the offence punishable under Section 379 I.P.C against the petitioner thereon. After investigation, the police had filed a charge sheet on 28.04.2008, i.e., after four years from the date of alleged offence. Considering the said fact, this court has quashed the proceedings against the petitioner therein, as the case was barred by limitation under Section 468 Cr.P.C., whereas, in this case, in the FIR it is clearly stated that the officials of the TIIC have inspected the premises of the first accused on 18.09.2000 and found that one machinery was missing and with regard to the said fact, a show cause notice was issued on 17.10.2010, calling for explanation from the accused No.1. After receipt of the said notice, he had sent a reply dated 25.10.2000, stating that the said machinery is very much available in his premises. Based on the said reply, the officials of the TIIC have again inspected the premises of the first accused on 22.01.2001 and found that the said machinery was not available. So it is clear that only on 22.01.2001, the officials of the TIIC have finally came to know that the said machinery was illegally removed by the accused.

8. As per Section 469 of Cr.P.C., the period of limitation, shall commence, where the commission of the offence was not known to the person aggrieved by the offence, the first day on which such offence comes to his knowledge. In this case as already pointed out that only on 22.01.2001, the officials of the TIIC finally came to know that the said machinery was removed and therefore, only on 22.01.2001, the officials of the TIIC had knowledge about the commission of the offence and only from that date, limitation has to be computed. If limitation is computed from that date, the limitation will expire only on 21.01.2004.

9. In Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherian and others, (2014) 2 SCC 62, a Constitution Bench of the Hon'ble Supreme Court has held that for the purpose of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. In this case, the typed set of papers filed by the petitioner contains a xerox copy of the charge sheet in which the date seal of trial Court has been affixed on 18.12.2003. So, it is clear that on 18.12.2003 itself, the charge sheet has been filed and therefore this case is not barred by limitation.

10.For the aforesaid reasons, this petition is liable to be dismissed. Accordingly, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsp/vsa

To

1.The Judicial Magistrate-II,
Tirupur.

2.The Inspector of Police,
District Crime Branch,
Coimbatore.
Crime No.9 of 2001 dated 20/12/2001

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Chithirai Anandam, Advocate, S.R.No.68577
+1cc to Mr.K.Magesh, Advocate, S.R.No.68312

Crl.O.P.No.26685 of 2014
and
Crl.M.P.Nos.1 and 2 of 2014

SPD(CO)

rrs 22/11/2018