IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2018

CORAM

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

Crl.O.P.No.7426 of 2016
in
Crl.M.P.Nos.3899 & 3900 of 2016

1. N. Ravichandran
2. Ramnath
3. A. Marimuthu .. Petitioners/Accused 2, 3 & 5

Vs

1. The State of Tamilnadu,
Rep. By The Sup-Inspector of Police,
District Crime Branch,
Coimbatore District.
(Crime No.12/2001) .. 1st Respondent/Complainant

2. P. Elango,
Assistant Manager,
Tamilnadu Industrial,
Investment Corporation Ltd.,
Tiruppur. .. 2nd Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the charge sheet in C.C.No.192 of 2007 pending on the file of Judicial Magistrate II, Tiruppur.

For Petitioners : Mr.S.Sithirai Anandam
For 1st Respondent : Mr.T.Shunmugarajeshwaran
For 2nd Respondent : Mr.K.Magesh

O R D E R

The petitioners are Accused 2, 3 and 5 in C.C.No.192 of 2007, on the file of the the learned Judicial Magistrate II, Tiruppur.

2. The Sub-Inspector of Police, District Crime Branch, Coimbatore District registered FIR in Crime No.12 of 2001 on the basis of the complaint dated 20.12.2001 preferred by the defacto Complainant/the 2nd Respondent against the present petitioners as well as one S.C.Sabapathy for the alleged offences punishable

under Sections 120(b), 406 and 109 IPC. On conclusion of the investigation, the Sub-Inspector of Police, District Crime Branch, Coimbatore District filed a final report before the Judicial Magistrate II, Tiruppur in C.C.No.192 of 2007 for the offences punishable under Sections 120(b), 406 and 109 of IPC.

3. The present petition has been filed by accused 2, 3 and 5 to quash the entire proceedings in C.C.No.192 of 2007 on the file of the Judicial Magitrate, No.II, Tiruppur on the ground that the final report has been filed after a lapse of three years.

4. M/s.S.Sithirai Anandam, learned counsel for the petitioners would contend that the final report in C.C.No.192/2007 is barred by limitation under Section 468 of the code of Criminal Procedure. At this juncture, it is relevant to extract Section 468 Cr.P.C, which reads as follows:-

> "468. Bar to taking cognizance after lapse of the period of limitation:-
> (1) Except as otherwise provided elsewhere in this Code, no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
> (2) The period of limitation shall be-
> (a) Six months, if the offense is punishable with fine only;
> (b) One year, if the offense is punishable with imprisonment for a term not exceeding one year;
> (c) three years, if the offense is punishable with imprisonment for a term exceeding one year but not exceeding three years."

5. The learned counsel for the petitioner also relied on the decision in Sarah Mathew V. Institute of Cardio Vascular Diseases by its Director Dr.K.M. Cherian and others reported in (2014) 2 SCC 62, in which the period of limitation for filing the final report has been extensively dealt with by the Apex Court. He would contend that though the alleged offence took place during 21.05.1999 and 11.05.1999 and the complaint was given on 20.12.2001, the final report was filed only in the year 2007 which is beyond the period of limitation. He therefore would contend that the entire proceedings in C.C.192 of 2007 is liable to be quashed.

6. The constitution Bench of the Hon'ble Supreme Court in the case of Sarah Mathew V. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others reported in (2014) 2 SSC 62, has held that the period of limitation should be determined on the basis of the date of filing of the charge sheet or on the basis of the complaint before the Court

and not from the date of the court, taking cognizance of the offences. The Hon'ble Supreme Court in the said decision has further observed as under:-

> "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 complainant can make an application for condonation of delay under Section 473 Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainants 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 Cr.P.C 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 he 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 ASG submitted that use of disjunctive "or" in Section 473 Cr.P.C suggests that for the first part i.e to find out whether the delay has seen explained or not, notice will have to be issued to the accused and for the latter 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 Cr.P.C has to be bifurcated or not. But, we do find this situation absurd. It is aburd 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 an order condoning or not condoning the delay. The law cannot be reduced to such absurdity. Therefore, the only harmonious construction which can be placed on Sections 468, 469 and 470 Cr.P.C 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. Further, a Single Bench of this Court in Crl.O.P.Nos.12128 of 2016 and 19471 of 2014 dated 29.06.2016 has observed as follows:-

> “In a case of this nature, it is not expedient for this Court to quash the entire prosecution u/s 482 Cr.P.C. On the ground of limitation. Limitation is a question of fact which cannot be decided by this court u/s 482 Cr.P.C. Based on the assertion of the parties. Whenever a Final Report is made ready by the Police, the same is given to the Assistant Public Prosecutor incharge of the Court for his opinion. The Assistant Public Prosecutor is enjoined to maintain a Charge Sheet. Register in terms of G.O.Ms.No.2937 Home dated 30.10.71, under which he is required to make an entry in the Register the date on which he cleared the charge sheet for filing. When a charge sheet or a complaint is presented to the Magistrate, unlike the civil Court where there is a filing section which receives petitions and enters the same in the filing register, in criminal court, the complaints/Final Reports are presented to the Presiding Officer directly, who is required to put his initials on receipt of the same. Therefore, it is for the trial Court to decide as to when the present Final Report was presented by the Police.”

8. The learned Government Advocate (Crl.Side) would contend that though the seal of the learned Magistrate contains the date as 11.04.2007, the final report was actually filed only on 28.08.2003, which is within the period of limitation and therefore the proceedings in C.C.No.192 of 2007 cannot be quashed.

9. Mr.S.Sithirai Anandam, learned counsel appearing for the petitioners would contend that the date mentioned in the final report beneath the signature of the Sub-Inspector of the Police, District Crime Branch cannot be accepted as gospel truth as there are possibilities of the Investigating Officer putting the date, but not presenting the same to the Court.

10. It is settled law that the delay in approaching the Court of Law would not be accepted for dismissing the case, under Section 482 Cr.P.C though it may be a relevant circumstance in reaching the final verdict. The general rule of Criminal Justice is that “crime never dies”.

11. The allegations raised by the learned counsel for the petitioners are all disputed questions of facts, which cannot be

decided by this court under Section 482 of Cr.P.C. However, the trial court is directed to determine the date of final report, which was presented before it. It is also open to the learned Magistrate to consider the final report under Section 473 of the Cr.P.C in the light of the law laid down by the Hon'ble Supreme Court in the case in Sarah Mathew V. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others reported in (2014) 2 SCC 62.

12. In the facts and circumstances of the present case, I do not find any reason to quash the proceedings in C.C.No.192 of 2007. Hence, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Sup-Inspector of Police,
District Crime Branch,
Coimbatore District.

2. Assistant Manager,
Tamilnadu Industrial,
Investment Corporation Ltd.,
Tiruppur.

3. The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate-II,
Tiruppur.

+1cc to Mr.S.Sithirai Anandam, Advocate sr.no.54405

CRL.O.P.No.7426 of 2016

vba(co)
nr 28/08/2018