

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C.No.1169 of 2018
and
Crl.M.P.Nos.13613 and 13615 of 2018

1.S.Pugazhenth
2.R.B.Rajkumar

... Petitioners/Accused No.1 to 2

/versus/

State rep.by,
The Inspector of Police,
Law & Order,
N3-Muthialpet Police Station,
Chennai 600 001.

... Respondent/complainant

Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., praying to call for the records and set aside the order passed by the learned XVI Metropolitan Magistrate at George Town, Chennai in Crl.M.P.No.3637 of 2018 dated 17.09.2018.

For Petitioners : Mr.M.Krishnamoorthy

For Respondent : Ms.S.Thankira,
Government Advocate(crl.side)

सत्यमेव जयते

O R D E R

The petitioners have filed this Criminal Revision against the order passed by the learned XVI Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.3637 of 2018 dated 17.09.2018.

2. Brief facts of the case are that on 29.05.2012, the petitioners had parked the vehicle bearing Reg.No.TN 09 BH 345 Nissan Micra in front of the defacto complainant's house. When the defacto complainant's brother questioned them about the parking of the vehicle, the petitioners had abused and attacked the defacto complainant and his brother with their hands. On the

basis of the complaint given by the defacto complainant, the respondent police has registered First Information Report against the petitioners under Sections 341, 323 of IPC in Crime No.890 of 2012 on 29.05.2012, after conducting enquiry. Subsequently, the respondent police has arrested the first accused on 14.01.2015, as the second accused has absconded.

3. It is further submitted that the defacto complainant had filed a direction petition in CrI.O.P.No.1246 of 2018 before this Court to direct the respondent police to file final report and the same was allowed by this Court on 17.01.2018. But the respondent police has not complied with the order and hence, the defacto complainant has moved a contempt petition in Cont.P.No.1129 of 2018 and the same is pending. In the mean time, the second accused was arrested by the respondent police on 08.09.2018. Thereafter, the respondent police has filed a petition in CrI.O.P.No.3627 of 2018 to condone the delay in filing the final report mentioning the reason that the delay in arresting the second accused is the reason for not filing the final report within the stipulated time. The learned Magistrate, after hearing the case, has condoned the delay on 17.09.2018. Challenging the said order, the present criminal revision case has been filed.

4. The learned counsel appearing for the petitioners also submitted that though the power is vested under Section 473 of Cr.P.C., seeking to condone the delay in filing the final report under Section 173(2) of Cr.P.C., without giving opportunity to the accused, the learned Magistrate has allowed the petition filed by the respondent police.

5. In support of his submission, the learned counsel appearing for the petitioners has relied upon the decision of the Hon'ble Apex Court in State of Maharashtra v. Sharadchandra Vinayak Dongre [1995 SCC (1) 42], wherein para 9 reads as follows:

"9. Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law, after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter. The finding of the High Court that

the CJM could not take cognizance of the offence on the basis of incomplete' police report, for the reasons already recorded, is however, set aside. The Chief Judicial Magistrate shall proceed further in accordance with law, after deciding the application seeking condonation of delay. Nothing said herein above, shall however, be construed as any expression of opinion on the merits of the case."

6. Heard the learned Government Advocate(crl.side) appearing for the State.

7. On perusal of the above decision of the Hon'ble Apex Court cited supra, it is seen that without affording opportunity to the petitioners/accused therein, the learned Chief Judicial Magistrate has condoned the delay for launching the prosecution, which is held as unsustainable in law, accordingly, the Hon'ble Apex Court has remanded the matter back to the Chief Judicial Magistrate, for afresh adjudication.

8. In view of the categorical decision of the Hon'ble Apex Court, this Court is inclined to remand the matter back to the learned XVI Metropolitan Magistrate, George Town, Chennai to consider and pass a fresh order, after affording opportunity to the petitioners. Accordingly, this Criminal Revision Case is allowed and the order of the learned XVI Metropolitan Magistrate in CrI.M.P.No.3637 of 2018 dated 17.09.2018 is hereby set aside and the matter is remanded back to the learned XVI Metropolitan Magistrate, George Town, Chennai to consider and pass orders afresh, after affording opportunity to the parties. The said exercise should be completed within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the Court below shall dispose of the matter in accordance with law, without being influenced by any of the observations made by this Court. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The XVI Metropolitan Magistrate,
George Town,
Chennai.

2.The Inspector of Police, Law & Order,
N3-Muthialpet Police Station,
Chennai 600 001.

+lcc to Mr.M.Krishna Moorthy, Advocate, S.R.No.74197

Cr1.R.C.No.1169 of 2018
and
Cr1.M.P.Nos.13613 & 13615 of 2018

RSI (CO)

rrs 14/11/2018



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