

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Cr1.O.P.No.26032 of 2019

Irudaya Arul Selvam

.. Petitioner

/Vs./

1.The State rep by
The Sub Inspector of Police,
TIW - Chrompet Police Station,
Chennai. : Respondent/Complainant

2.A.Dawn William : Respondent/Defacto Complainant

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Crime No.389 of 2017 on the file of the first respondent police and quash the same.

For Petitioner : Mr.J.Nagarajan

For Respondents : Mr.C.Iyyapparaj for R1
Additional Public Prosecutor

Mr.G.Balasubramanian &
Mr.V.Shym for R2

ORDER

This Criminal Original Petition is filed to call for the records pertaining to the FIR in Crime No.389 of 2017 on the file of the first respondent police and quash the same.

2. The petitioner herein has been implicated for the offences under Sections 279, 429, 289 and 268 of IPC.

3. Insofar as the offence under Section 429 of IPC is concerned, the petitioner has been charged for committing mischief by killing three buffaloes. The learned counsel for the de-facto complainant would submit that in view of the rash and negligent manner of driving the car by the petitioner, three buffaloes came to be killed and therefore, the FIR should not be interfered.

4. The learned Additional Public Prosecutor would submit that no proper ground is raised to quash the FIR and hence, seeks for dismissal of this petition.

5. Admittedly, the complaint is to the effect that the petitioner was driving the car rashly and negligently and had hit the buffaloes and three buffaloes had died. Sections 425 and 429 of IPC defines mischief as follows:

'425. Mischief :

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees — Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either

description for a term which may extend to five years, or with fine, or with both.'

6. One of the main ingredients of Section 425 IPC is that the offender should have had the intention to cause or likely to cause injury to the public or to any person or any property. In the instant case, the rash and negligent driving of the petitioner has caused the death and the petitioner had no intention to kill the buffaloes. Even as per the statement in complaint, such negligence, apparently, will not amount to an intention to cause damage or that the offender is likely to cause damage. As such, the offence under Section 429 of IPC may not be made out.

7. Insofar as the offence under Sections 279 and 289 IPC are concerned, there is a bar on the jurisdictional Court to take cognizance of these offences in view of the lapse of the period of limitation provided under Section 468 Cr.P.C. The maximum punishment provided for both these offences under Sections 279 and 289 IPC is a period of six months. Under Sections 468 and 469 Cr.P.C., the period of limitation for taking cognizance by the Court is one year commencing from the date of the offence.

8. In the instant case, the occurrence took place on 18.06.2017, which came to be registered through the impugned FIR on 19.06.2017. Till date, the investigation is pending. When the final report has not been filed within a period of one year, the jurisdictional Court may not be in a position to take cognizance of these offences in view of the bar under Section 468 Cr.P.C. As such, permitting the investigating Officer continuing with the investigation for these two offences would only be a futile exercise.

9. There is yet another aspect to this case, which requires interference by this Court under Section 482 Cr.P.C. The FIR came to be registered in the year 2017 and though more than 2 years have lapsed, there is no effective progress in the investigation. The Hon'ble Apex Court in the decision of Abdul Rehman Antulay and others vs. R.S.Nayak and another reported in (1992) 1 SCC 225 has held that, right to speedy trial, flowing from Article 21, encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision, and retrial. By applying this ratio to the facts of the present case, it requires to be necessarily held that the delay of more than two years in completing the investigation would amount to denial of the right to a speedy trial and on this ground of laches also, the impugned FIR would be liable to be struck out.

10. In the light of the above discussions, FIR in Crime

No.389 of 2017 on the file of the first respondent stands quashed. This Criminal Original Petition stands allowed accordingly.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

vkr/jas

To

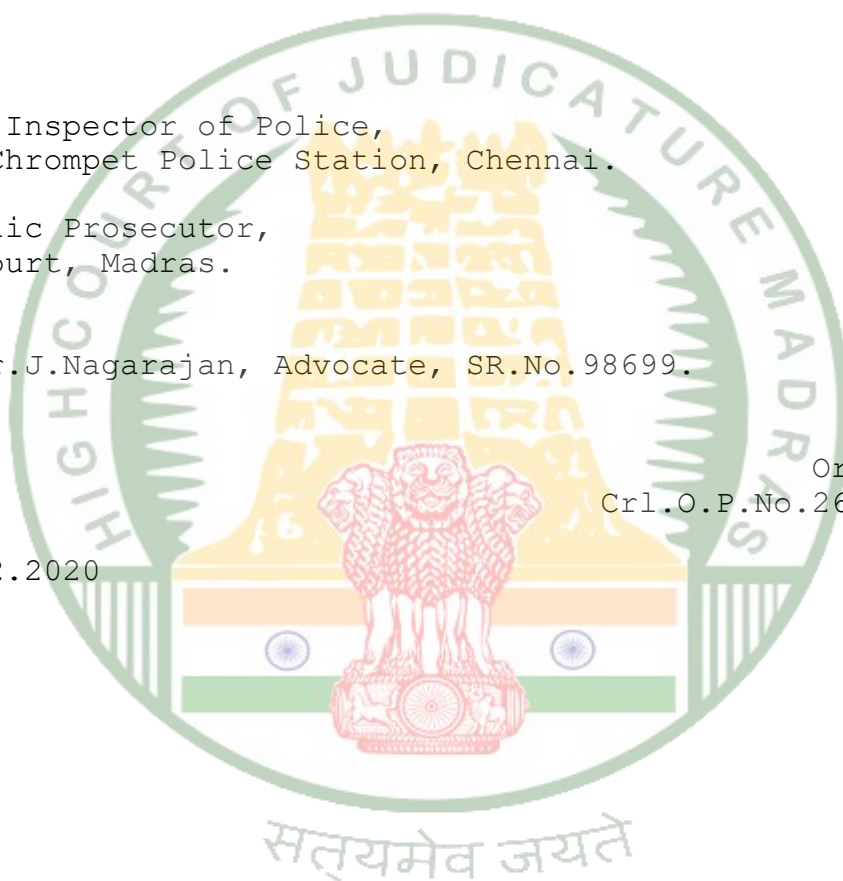
1.The Sub Inspector of Police,
TIW - Chrompet Police Station, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Nagarajan, Advocate, SR.No.98699.

VSN II(CO)
CSR: 13.02.2020

Order made in
Crl.O.P.No.26032 of 2019



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