



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.(MD)No.5366 of 2019

and

CrI.M.P.(MD)Nos.3401 and 3402 of 2019

- 1.C.S.Sekar
- 2.Sridhar
- 3.Arun
- 4.Gopalan @ Gopalraj
- 5.Radhakrishnan
- 6.Aravid
- 7.Sajin
- 8.Sajan
- 9.Jegathees

... Petitioners /

Accused Nos.1 to 4 & 6 to 10

Vs.

- 1.The State represented by
The Inspector of Police,
Marthandam Police Station,
Marthandam (Cr.No.184/2015)
Kanyakumari District.

... 1st Respondent / Complainant

- 2.K.Jeyakumar

... 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet in C.C.No.171 of 2019 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai under Sections 147, 148, 427, 294(b) & 506(ii) IPC and quash the same as against these petitioners.

For Petitioners : Mr.B.Rajesh Saravanan

For R1 : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

ORDER

This petition is filed to quash the charge sheet in C.C.No.171 of 2019 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai under Sections 147, 148, 427, 294(b) & 506(ii) IPC.

2.The defacto complainant is an Ex-Service Man and residing in Raduveli Veedu Village along with other relatives. There was a dispute with regard to maintaining the Library in the locality in between the petitioners' family and the defacto complainant's



family. Due to above dispute, at about 8.15 p.m., on 28.03.2015, the accused persons came in Bolero and Swift Desire Car with deadly weapons and parked the same in front of the house of the defacto complainant. When the first accused tried to attack the defacto complainant with Vettukathi, the defacto complainant in order to escape from the first accused went inside the house and locked the door, thereafter, the accused persons pelted stone on the house. Thereby, the defacto complainant has filed complaint before the respondent police, in which, the Law Enforcing Agency has registered the case and after conducting investigation filed final report. Thereafter, the learned Judicial Magistrate No.I, Kuzhithurai has taken cognizance and assigned C.C.No.171 of 2019. Aggrieved against the same, the present quash petition is filed.

3.The learned counsel appearing for the petitioners would submit that in fact the second respondent and others have committed offences under Sections 147, 294(b) and 506(ii) IPC. Accordingly, the petitioners filed a complaint before the respondent police, in which the Law Enforcing Agency has registered a case in Crime No.183 of 2015. In order to defeat earlier crime, the defacto complainant filed this complaint before the respondent police, in which the respondent police registered this case in Crime No.184 of 2015.

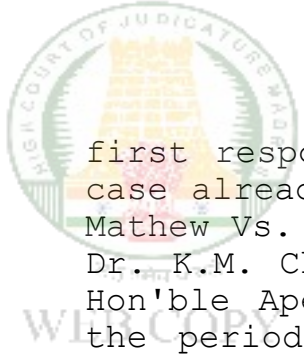
4.He would further submit that the date of occurrence is 28.03.2015. However, the respondent filed a complaint on 29.03.2015 before the respondent police. Thereafter, on the same day, the first respondent had registered the case in Crime No.184 of 2015 under Sections 147, 148, 427, 294(b) and 506(ii) IPC. Though the defacto complainant and the petitioners filed complaints and both cases were registered on the same day, the Law Enforcing Agency has conducted investigation and filed final report only on 15.03.2019. Hence, the aforesaid case is barred for limitation in terms of Section 468(2) Cr.P.C. Though the necessary ingredients required under Sections 147, 148, 427, 294(b) and 506(ii) IPC are not established in the charge sheet, the Law Enforcing Agency has not conducted investigation within the time stipulated under Section 468 (2) Cr.P.C and filed final report after four years, which is not maintainable.

5.In respect of his contention, he relied upon the judgment rendered in AIR 2007 SUPREME COURT 2762 (Japani Sahoo Vs. Chandra Sekhar Mohanty). The relevant portion of the said judgment reads as follows:-

"....(1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent. So far as complaint is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him

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6.The learned Additional Public Prosecutor appearing for the



first respondent police would submit that the issue raised in this case already settled by the Hon'ble Apex Court in the case of Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & Ors. reported in (2014) 2 SCC 62, in which, the Hon'ble Apex Court clearly 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 the present case, the date of occurrence is 28.03.2015. However, the complaint was lodged on 29.03.2015 and on that day itself, the same was registered. Hence, there is no delay for institution of the criminal proceedings against the persons. Accordingly, he prayed for dismissal.

7. In such circumstances, the learned counsel for the petitioners would submit that the date of filing of the charge sheet alone has to be considered for calculating the limitation mentioned under Section 468(2) Cr.P.C.

8. The main issue involved in this case is whether the complaint is filed in time as required under Section 468 Cr.P.C. In such circumstances, it is necessary to refer the following provisions under Sections 468 and 2(d) Cr.P.C.

"468. Bar to taking cognizance after lapse of the period of limitation-

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

"2. Definitions

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

9. In the present case, the Law Enforcing Agency received the complaint from the defacto complainant on 29.03.2015 and thereafter, the criminal law set in motion for the purpose of investigation. In view of the above, there was a difference of opinion whether for the purposes 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 or whether the relevant date is the date on which a Magistrate takes cognizance of the offence. The said issue was already settled in Sarah Mathew case (stated supra), wherein the Hon'ble Apex Court framed issues, which are as

"2. No specific questions have been referred to us. But, in our opinion, the following questions arise



for our consideration:

A. Whether for the purposes of computing the period of limitation under Section 468 of the Cr.P.C the relevant date is the date of filing of the complaint or the date of institution of prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?"

10. In such circumstances, it is necessary to extract the relevant portion of the judgment passed in Sarah Mathew case (stated supra):-

"40. Having considered the questions which arise in this reference in light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C., primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 of the Cr.P.C. in that judgment. It does not refer to Sections 4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay 1984 Case, in our opinion, was not apt. In Antulay 1984 Case, this Court was dealing inter alia with the contention that a private complaint is not maintainable in the court of Special Judge set-up under Section 6 of the Criminal Law Amendment Act, 1952 (the 1952 Act). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 of the Cr.P.C. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947, by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would



thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 of the Cr.P.C. or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay 1984 Case: Since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 of the Cr.P.C. at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai while construing provisions of Chapter XXXVI of the Cr.P.C. For all these, we are unable to endorse the view taken in Krishna Pillai.

41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the 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. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C."

11. On perusal of the above decision makes it clear 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 the present case, the date of occurrence is 28.03.2015, the complaint is lodged on 29.03.2015. Hence, there is no substance in the argument of the learned counsel for the petitioners.

12. In view of the same, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

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E-Filed by the Magistrate No.I,
Kuzhithurai.



2.The Inspector of Police,
Marthandam Police Station,
Marthandam (Cr.No.184/2015)
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-61302[F] dated
16/04/2019)

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DS:07/05/2019/6P/5C