IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. O.P. NO.26023 OF 2013
AND
M.P. NO.1 OF 2013

Murugan ... Petitioner/ Accused 1

- Vs -

The State, represented by
The Inspector of Police,
New Town Police Station,
Cudalore District. ... Respondent/Complainant
(Crime No.623/2010)

Prayer:Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.243 of 2013 on the file of the Judicial Magistrate No.II, Cuddalore and quash the same as illegal.

For Petitioner : Mr.R.Sankarasubbu
For respondent : Mr.C.Iyyapparaj, APP

ORDER

This Criminal Original Petition is filed seeking to call for the records in C.C.No.243 of 2013 on the file of the Judicial Magistrate No.II, Cuddalore and quash the same.

2. The petitioner, who is A-1, along with one other accused, against whom complaint was filed by the defacto complainant and after investigation, the final report was filed by the investigating agency before the learned Judicial Magistrate No.II, Cuddalore and taken on file in C.C. No.243 of 2013. Final report was also filed against both the accused in C.C. No.241 of 2013 in which A-2 filed Crl. M.P. No.5609of 2013 seeking discharge, which was dismissed by the trial court and aggrieved by the said order, A-2 filed revision before this Court in Crl. R.C.No.506 of 2014, and this Court, vide order dated 07.12.2017, allowed the said revision.

3. The case of the prosecution in brief is that the defacto complainant in the case before the trial court is the owner of the property situate in Cuddalore. He proposed to construct a row of shops in the above said land. A-1 approached the defacto complainant and requested him to let out commercial space in the shops on lease to him for the purpose of running a textile

business. On 05.03.2007, A-1 and the defacto complainant entered into an agreement in writing and A-1 paid a sum of Rs.10,00,000/- as advance to the defacto complainant. Subsequently, A-1 thought of running a hotel business instead of textile business. He, therefore, made a request to the defacto complainant to alter the construction to suit his convenience. Whileso, there arose dispute between A-1 and the defacto complainant. Therefore, the defacto complainant decided to cancel the lease agreement. As per the advice of one Shri Ravindran (L.W.2) an auditor, they sought the assistance of A-2, who was known to the said Ravindran, and was the auditor for the petitioner and A-2 assured the defacto complainant that he would get the matter settled between A-1 and the defacto complainant. A.2, after contacting A-1, informed the defacto complainant that A-1 is willing to have the lease cancelled on condition that a sum of Rs.3,00,000/- over and above the sum of Rs.10,00,000/- paid by him to be paid to A-1 for which the defacto complainant also agreed.

4. Pursuant to the above arrangement, on 22.08.2007, the defacto complainant, L.W.2 and L.W.3, an Advocate by profession, went to the office of A-2 along with the amount of Rs.13,00,000/- in cash and the cancellation agreement prepared by defacto complainant. After waiting for sometime, as A-1 did not turn up, the defacto complainant contacted A-1 over phone from the office of A-2 and A-1 assured him that he would come there shortly and sign the cancellation deed and collect the cash from the defacto complainant. Since the A-1 did not turn up, the defacto complainant left the cash as also the cancellation deed with A-2 for A-1 to sign the cancellation deed and also to return back the original lease agreement. A-2 left the deed along with the money with his Manager (L.W.9) for A-1 to sign the same. After two days, the defacto complainant received the signed cancellation deed along with the original lease agreement from A-2. However, after receipt of the signed cancellation deed and lease agreement, the defacto complainant later found out that what has been handed over to him are forged documents with clear intent to defraud him. In the interregnum, based on the documents in possession of A-1, a suit was filed against the defacto complainant in O.S.No.484 of 2007 on the file of Additional District Munsif, Cuddalore, necessitating the defacto complainant to file a complaint before first respondent/Police in Cr.No.623 of 2010 for the offences under Sections 465, 468, 471 and 420 of IPC. The case was investigated and charge sheet was also filed. Challenging the said charge sheet, the present petition has been filed.

5. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submits that though the transaction relating to the lease agreement had taken place on 5.3.07, however, dispute between the parties led to the filing of the suit in O.S. No.484 of 2007 by A-1, which ultimately got decreed in his favour. It is the further submission of the learned counsel for the

petitioner that though the suit was of the year 2007 in which the defacto complainant had filed written statement way back in the year 2.1.08, however, curiously, only on 7.11.10, the defacto complainant had lodged the complaint with the police claiming forgery of the alleged deed of cancellation. It is the further submission of the learned counsel that it is not the case of the defacto complainant that he had knocked on the doors of the investigating agency at the earliest point of time. The act of the defacto complainant clearly reveals that only to wreak vengeance against the petitioner for filing the suit, the defacto complainant, after a lapse of almost three years, had laid the complaint on 07.11.2010.

6. Learned counsel for the petitioner drew the attention of this Court to Section 468 Cr.P.C., which mandates the period of limitation for the trial court to take cognizance and for the offences charged against the petitioner, the period of limitation prescribed is three years. However, the charge sheet was filed only in the year 2013, almost after six years from the date of the occurrence and, therefore, the trial court is not justified in taking cognizance of the case, as the same is hit by the period of limitation. The delay in filing the complaint by the defacto complainant coupled with the delay in filing the FIR as well as charge sheet vitiates the entire case.

7. Learned counsel for the petitioner also placed the copy of the decision of this court in Crl. R.C. No.5609 of 2014, wherein, the discharge application filed by A-2 before the trial court in Crl. M.P. No.5609 of 2013 was dismissed against which the above revision was preferred and this Court, vide order dated 7.12.17 allowed the said revision. It is therefore the categorical submission of the learned counsel for the petitioner that the delay in filing the complaint as also the delay in filing the FIR and the charge sheet vitiates the prosecution and the trial court is not empowered to take cognizance of the case, as the same is barred by limitation. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Apex court in M/s.Thermax Ltd., & Ors. - Vs - K.M.Johny & Ors. (CDJ 2011 SC 1035).

8. Per contra, learned Additional Public Prosecutor appearing for the State countered the contentions raised and submitted that all the allegations raised in the petition are triable issues, which cannot be decided at this stage, when the charge sheet is pending before the trial court. It is the submission of the learned Addl. Public Prosecutor that at the present stage, the Court is ordained only with the task of finding out whether a prima facie case has been made out and the Court is not to proceed any further to find out whether a case for conviction has been made out against the accused. Since the issues are triable in nature and it is purely in the realm of the trial court to proceed further to examine the issues, learned Addl. Public Prosecutor prays this Court to dismiss the

present petition.

9. This Court paid its anxious consideration to the entire materials available on record as also the vociferous contentions advanced by the learned counsel appearing on either side. This Court also considered the proposition of law as laid down by the court in matters of limitation as also the scope of this Court to deal with matters which are at the stage of charge sheet.

10. The Hon'ble Supreme Court, in the case of Sajjan Kumar - Vs- CBI, (2010) 9 SCC 368, held as under

> "19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.
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> * * * * * * * *
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> 21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
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> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
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> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and

> cons of the matter and weigh the evidence as if he was conducting a trial.
>
> (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
>
> (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
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> (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
>
> (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."
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> (Emphasis supplied)

11. This Court is in respectful agreement with the proposition of law as laid down by the Hon'ble Apex Court. However, this Court should also not lose sight of the fact that the trial court is clothed with power to sift through the materials placed before it to form an opinion as to the satisfaction of a prima facie case made out against the accused and it is not for the trial court to act as a post office and also to accept whatever the prosecution tables as gospel truth as opposed to common sense.

12.Keeping in mind the above parameters laid down with regard to appreciation, this Court now proceeds to analyse the materials available on record.

13. There is no dispute with regard to the entering into the lease agreement between the defacto complainant and the petitioner and also the payment of the money by the petitioner to the defacto complainant. Equally there is no dispute with regard to the payment of amount made by the petitioner to the

defacto complainant towards the lease agreement as also the further dispute that arose between them which led to mediation. The whole issue that arise for consideration is only after the entering into of mediation. The allegation of the defacto complainant is that subsequent to receiving the money, instead of giving the original lease deed and cancellation deed, forged documents were given to the defacto complainant.

14. Whether the said allegation is borne out by records even at the threshold of framing charges by the trial court is the moot question that falls for consideration before this Court.

15. The complaint was laid by the defacto complainant 7.11.10, whilst the written statement in the suit, O.S. No.484 of 2007, was filed by the defacto complainant on 2.1.08. There is a gap of about three years between the written statement filed in the suit and the lodging of the complaint. A perusal of the written statement filed by the defacto complainant in the suit in O.S. No.484 of 2007 reveals that no allegations of this nature relating to forgery and cheating, as has been raised in the present case, has been averred in the written statement. As stated above, while the written statement has been filed on 2.1.08, the complaint has been filed only on 7.11.10. A parallel reading of the written statement and the complaint categorically reveals that what is given in the complaint is definitely an improvement from what is given in the written statement. There is no whisper in the written statement about any forgery of the documents. After a lapse of about three years from the filing of the written statement, the present complaint is filed in the year 2010, which led to investigation and filing of the charge sheet in the year 2013, almost after a lapse of 6 years from the date of initial transaction between the petitioner and the defacto complainant.

16. Be that as it may. Not only improvements galore between the two sets of documents, viz., the written statement and the complaint, but the period of lapsation between the two instances leading to the filing of the charge sheet is of much importance and carries much weight in deciding the case.

17. In State of Punjab - Vs - Sarwan Singh (1981 (3) SCC 34), the Supreme had dealt with the bar on prosecutions u/s 468 (2) (c) of the Criminal Procedure Code and in this regard, held as under :-

> "Section 468(2) (c) may be extracted thus:
>
> "three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."
>
> Section 469 (1) (a) and (6) may be extracted thus:
>
> "(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier;"

In the instant case as the charge-sheet clearly mentions that the offence was committed on the 22nd August, 1972, the bar of limitation contained in s. 468 (2) (c) clearly applies and the prosecution therefore, is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would be so according to charge-sheet on January 5, 1973, the date when the audit report was made. Even if this extreme position be accepted, the prosecution would still be barred by limitation under s. 469(b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab was unable to assail the point of law derived by the High Court regarding the interpretation of s.468. The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art. 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non-est .....”

(Emphasis Supplied)

18. The above proposition of law has found favour with the Constitution Bench in the decision in Sarah Mathew – Vs- Institute of Cardio Vascular Diseases & Ors. (2014 (2) SCC 62), wherein the Hon'ble Supreme Court has adumberated the proposition as to the computation of period of limitation and in

this context, held as under :-

> "37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra [(2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000] .)"

19. From the above proposition of law, as laid down by the Constitution Bench, it is amply clear that the interests of justice must be the hallmark of the justice delivery system and it is not the parties, who are before the court. Diligent complaint and prosecution cannot be put against the complainant for the delay in taking cognizance and equally so, delay in the complaint beyond the period of limitation and prosecution cannot also be put against the accused to detriment, more so, when the lawmakers have, in their wisdom, enacted Section 468 Cr.P.C., which acts as mutual safeguard to both the parties.

20. In the present case, the initial lease agreement had been entered in the year 5.3.0 and, thereafter, disputes arose, which led to mediation and alleged settlement on 22.8.07. However, the suit for recovery of money has been laid by the petitioner in the year 2007 itself in which the defacto complainant had filed written statement on 2.1.08. However, the complaint had been laid only on 7.11.10 and in the complaint, the date of occurrence of the transaction also clearly finds a mention and cognizance of the case has been taken only in the year 2013. From the date of occurrence, i.e., on 22.8.07, not only the complaint had been laid after a period of three years, cognizance has been taken after a period of three years therefrom, in all a period of six years has been taken for taking cognizance of the case. The taking of cognizance by the trial court after a period of six years from the alleged date of settlement, i.e., 22.8.07, is clearly barred by limitation. Coupled with the delay is the infirmities and laches in the complainant's act, which is evident from the written statement vis-a-vis the complaint, which are both self-contradictory and mutually destructive. The complaint, as held supra, is definitely an improvement from the written statement and the above act of the complainant coupled with the delay definitely affects the substratum of the charge sheet and, as rightly contended by the learned counsel for the petitioner, the charge sheet deserves to be quashed.

21. For the reasons aforesaid, this criminal original petition is allowed and the charge sheet in C.C. No.243 of 2013 on the file of the Judicial Magistrate No.II, Cuddalore, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrm/GLN

To

1. The Judicial Magistrate No.II,Cuddalore.

2. The Inspector of Police,
New Town Police Station,
Cudalore District.

3.The Public Prosecutor,High Court,Madras.

4.The Additional District Munsif,Cuddalore.

5.Do thro the Chief Judicial Magistrate,Cuddalore District.
+1cc to Mr.R.Sankarasubbu , Advocate SR.No. 6234

CRL. O.P. NO.26023 OF 2013

A.SK(06/08/2020)