

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.No.27155 of 2013

and

CrI.M.P.No.1 of 2013

S.Murali

...Petitioner/Accused No.3

Vs.

The State by its Inspector of Police,
Gudiyattam Town Police Station,
Crime No.713 of 2006,
Vellore District.

...Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the criminal case in C.C.No.36 of 2012 on the file of the Judicial Magistrate, Gudiyattam quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.36 of 2012 on the file of the Judicial Magistrate Court, Gudiyattam.

2.The petitioner is the 3rd accused in C.C.No.36 of 2012 for the offence under Sections 279, 304A and 201 of IPC. The case of the prosecution is that on 12.03.2006 at about 01.30 a.m., one P.Ganesan, Head Constable of the respondent Police station along with other police personnel were in the night round, at that time the petitioner along with other accused were driven the two wheeler in rash and negligent manner and dashed the vehicle against one Jagannathan and escaped from the scene of occurrence. Initially, a case was registered and final report was filed on 01.12.2011, but the learned Magistrate has returned the final report on 05.12.2011 with an endorsement that "the final report was prepared on 25.03.2006, but, filed with delay, therefore, furnish reasons for the delay". Thereafter, the respondent has represented the final report on 15.02.2012 with an endorsement that "the vehicle was not produced before the

Court, therefore, in order to produce the vehicle, time has been taken for filing the filing report" and finally the case was taken on file as C.C.No.36 of 2012.

3.The learned counsel for the petitioner would submit that the alleged occurrence took place on 12.03.2006 and the final report was filed only on 05.12.2011 for the offence under Sections 279, 304A of IPC. He would further submit that the punishment for both the offences are less than three years, if so, no Court shall take cognizance of the offences after the expiry of three years as per Section 468(1) and 468(2)(c) of Cr.P.C. Section 468 of Cr.P.C bars a Court from taking cognizance of any offence if it is beyond the prescribed period of limitation laid down under Section 468(2) of Cr.P.C.

4.He would further submit that Section 468 of the Cr.P.C. prohibits taking of cognizance after expiry of period of limitation. Section 469 of the Cr.P.C. provides that the period of limitation commences on the date of the offence. The learned Magistrate took cognizance of offences under Sections 279, 304A of IPC beyond the prescribed period of limitation without assigning any reason. In the absence of any reason, as contemplated under Section 473 of the Cr.P.C. the order of cognizance is not sustainable and the criminal proceeding is liable to be quashed. It was further argued that continuation of criminal proceeding on the basis of vague allegations shall amount to abuse of process of the Court.

5.The learned Additional Public Prosecutor appearing for the respondent has not disputed the fact as submitted by the learned counsel for the petitioner.

6.Earlier this Court directed the learned Judicial Magistrate, Gudiyatham to file a report whether any order has been passed for taking the final report on file after the period of limitations as per Section 473 of Cr.P.C. On receipt of the same, the learned Judicial Magistrate, Gudiyatham forwarded a letter dated 07.02.2020 in Dis.No.549 of 2020/HC by stating that no separate order has been passed for compliance under Section 473 of Cr.P.C. The F.I.R came to be registered on 12.03.2006 and the charge sheet was filed on 05.12.2011 and hence, the charge sheet has been filed beyond the period of limitation and the learned Magistrate has taken the final report on file without condoning the delay.

7.A reading of the Section 468 of Cr.P.C., makes it very clear that no Court, shall take cognizance of an offence of the

category specified in sub-section (2) after the expiry of the period of limitation. Section 468 of Cr.P.C. is extracted here under:-

"(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 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.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

8.Hence, the cognizance has been taken much after the limitation prescribed under Section 468 Cr.P.C. without condoning the delay and hence, the limitation prescribed under Section 468 Cr. P.C. is applicable in the present case.

9.Further, in the absence of any reason making it manifest that period of taking cognizance has been extended, the order of taking cognizance cannot be legally countenanced and under the facts and circumstances of the case, continuance of the criminal proceeding against the petitioner and co-accused persons shall be an abuse of the process of Court.

10.Accordingly, this Criminal Original Petition is allowed and the proceeding in C.C.No.36 of 2012 pending on the file of the Judicial Magistrate, Gudiyatham is quashed. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate,
Gudiyatham.

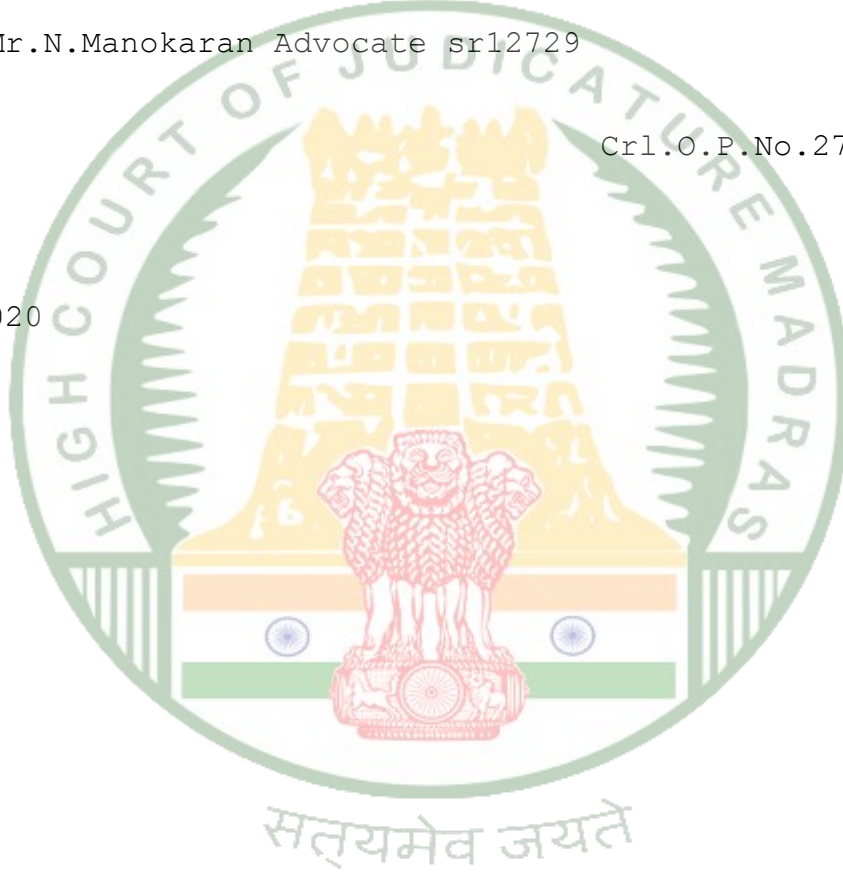
2.The Inspector of Police,
Gudiyattam Town Police Station,
Vellore District.

3.The Public Prosecutor,
High Court,
Madras.

+1 cc to Mr.N.Manokaran Advocate sr12729

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