

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.09.2020

Pronounced On : 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.4307 of 2017

and

CrI.M.P.No.3220 of 2017

D.Senthilkumar,  
S/o.Durairaj

... Petitioner

Versus

The Inspector of Police,  
Prohibition Enforcement Wing,  
T.Nagar Unit, M.G.R.Nagar Police Station,  
Chennai - 600 083,  
(P.E.W.Crime No.205 of 2015)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records relating to case in Crime No.205 of 2015 dated 25.06.2017 registered against the petitioner for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, pending on the file of the respondent Police and quash the same

For Petitioner : Mr.K.A.Mariappan

For respondent : Mr.K.Prabakar  
Additional Public Prosecutor

ORDER

The petitioner, who is an accused in Crime No.205 of 2015 for an offence under Section 4(1)(a) of Tamil Nadu Prohibition Act, has filed this quash petition.

2. The gist of the case is that on 25.06.2015, the Sub-Inspector of Police, MGR Nagar Police Station ordered to close the liquor shop in Chennai and Thiruvallur District from 25.06.2015, 5.00pm till 27.06.2015 due to the Bye-Election for R.K.Nagar MLA Constituency. The Police while having Surveillance at about 2.30pm near the burial ground at Erikari Street, Virugambakkam found the petitioner in an auto bearing registration No.09-BK-9655, with 12 bottles of Brandy each of 750ml. The auto driver Senthilkumar was enquired, he was unable to give any valid reason for the possession and transportation of liquor bottles. Therefore, the vehicle and the liquor bottles were seized.

3. The contention of the learned counsel for the petitioner is that on 25.06.2015 at about 2.30 p.m the Inspector of Police, M.G.R Nagar Police Station, stopped the petitioner when he was driving his brother's APE auto bearing Registration No.TN-09-BK-9655 from Allappakkam to Chrompet and the took the petitioner to M.G.R Nagar Police Station. Later the respondent Police released the petitioner after getting the signature from the petitioner in white paper and the petitioner informed the same to his brother. On 23.09.2015, the respondent Police demanded a sum of Rs.1,00,000/- from the petitioner's brother, owner of the vehicle to release the vehicle. On 05.10.2015, under the Right to Information Act, the petitioner sent notice to the Additional Deputy Commissioner of Police to know about the nature of case. Thereafter, the petitioner came to know that the case was filed against him in Crime No.205 of 2015, for committing the offence of transporting liquor without proper permit.

4. The learned counsel for the petitioner further submits that without making any proper enquiry the respondent Police had registered false case against the petitioner and also seized the vehicle. On registration of the case the vehicle was not produced before the concerned Magistrate Court and even FIR was produced on 15.10.2015 after the order of the concerned Court. The petitioner received a notice for confiscating proceedings and since the petitioner and his brother already approached the Magistrate Court they failed to respond to the confiscating proceedings. He would submit that the case against the petitioner is liable to be quashed for the reason that the period of limitation for filing charge sheet for the offence under Section 4(1)(a) of Tamil Nadu Prohibition Act already expired and as per Section 468 of Cr.P.C, there is bar in taking cognisance. The case was registered on 25.06.2015, as such the respondent Police ought to have filed charge sheet and final report on or before 24.06.2016, in this case no charge sheet is filed till date. Hence, the quash petition has been filed.

5. The Additional Public Prosecutor filed the status report and made his submission that the TATA APE auto bearing Registration No.TN-09-BK-9655 was seized on 25.06.2015, for the reason of possession and transportation of liquor bottles when the closure of liquor shops was in force due to the Bye-Election to RK Nagar Constituency. The petitioner was found in possession of 12 bottles of brandy each 750 ml kept in box. Hence, he was arrested and the vehicle and the liquor bottles were seized. The seizure report was filed to the Additional Deputy Commissioner of Police to initiate confiscation proceedings. The Additional Deputy Commissioner of Police issued show cause notice to initiate the confiscation proceedings. The petitioner failed to send explanation for the show cause notice. Thereafter, the office obtained value of the seized vehicle as Rs.1,00,000/- from Automobile Engineer, GCAWS, Velacherry and served final notice to the

owner of the vehicle on 08.10.2013 and acknowledgement received. Since the owner of the vehicle failed to come forward to take back the vehicle, the vehicle is in the custody of PEW unit. This being the case, the petitioner without disclosing any of these facts filed the petition before XXIII Magistrate Court, Saidapet vide C.M.P.No.4384 of 2015 praying for return of the vehicle. The Magistrate Court passed an order for return of vehicle on 26.11.2015. Aggrieved by the order, the Additional Deputy Commissioner of Police has filed a Revision Petition before the Principal Sessions and District Judge in R.C.No. 74 of 2015 in CrI.M.P.No.4384 of 2015. The Sessions Court, Chennai, called for records in PEW Cr.No.205 of 2015 from XXIII, Magistrate Court, Saidapet, Chennai for the enquiry and original records were submitted to the Additional Sessions Court, Chennai. Thereafter, the criminal revision was disposed of on 31.07.2018 allowing the revision, setting aside the order of the learned XXIII Metropolitan Magistrate, Chennai.

6. He would further submit that after detailed investigation, the respondent Police prepared charge sheet as early as on 29.01.2016 within the stipulated time without any delay, however the same could not be submitted since the FIR and other documents were with the Principal Session District Judge, Chennai and hence the delay, which was neither intentional nor deliberate. The respondent further submits that the limitation under Section 468 Cr.P.C will not apply on the facts and circumstance of the case. Further, the concerned Magistrate are empowered to take the case on their file on condoning delay for valid reasons. In this case though the charge sheet was made ready on 29.01.2016, it could not be filed till disposal of the criminal revision. Hence, the limitation point raised as per Section 468 of Cr.P.C will not at all apply to the present case. Hence, prayed for dismissal of the quash petition.

7. Considering the rival submissions, it is seen that FIR was registered on 25.06.2015 on the same day the vehicle was seized for offence under Section 4(1)(a) Tamil Nadu Prohibition Act, 1937, for this offence the imprisonment is fixed for a term which may extended to three months or with fine which may extended to one thousand. As per Section 468 (2) of Cr.P.C, the period of limitation for filing final report expires on or before 24.06.2016. Auto which was seized was ordered to be returned to the petitioner in C.M.P.No. 4384 of 2015 by order dated 26.11.2015 by XXIII Magistrate Court, Saidapet, Chennai, against which CrI.RC.No.74 of 2015 was filed by the respondent Police before the Additional Sessions Judge, Chennai. It is seen that the Additional Deputy Commissioner of Police sent notice for confiscating the Vehicle on 08.10.2015, since the owner of the vehicle failed to make any objection the vehicle was confiscated and is in custody PEW unit and from 26.11.2015 to 31.07.2018 revision case was pending. It is seen that the respondent had filed

the original documents during enquiry before them Additional Session Court, Chennai and due to which the charge sheet which was made ready on 21.09.2016, could not be filed before the concerned Magistrate Court. This is an explanation offered by the learned counsel for the respondent. There is no reason given why after disposal of criminal revision on 13.07.2018 till date the charge sheet is yet to be filed and numbered. Though as per 470 of Cr.P.C, exclusion of time in certain cases are available, in this case no such grounds are available. Further, no petition or reason given seeking condonation of delay as per Section 473 Cr.P.C is made. The valuable right accrued to an accused person cannot be allowed to be taken away except by strictly satisfying the conditions prescribed under Section 473 Cr.P.C. In any case, the exercise of power under Section 473 Cr.P.C., extending the period of limitation by condoning the delay in launching prosecution should precede the taking cognizance of the offence. This Court following the case of "Kathamuthu Versus Balammal reported in 1985 CrL.L.J 360", finds the facts of the case no cognisance would be taken in Criminal No.205 of 2015 since it would be bar beyond the period of limitation. In view of the same the proceedings in Crime No.205 of 2015 is quashed.

8. Accordingly the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Inspector of Police,  
Prohibition Enforcement Wing,  
T.Nagar Unit, M.G.R.Nagar Police Station,  
Chennai - 600 083.

2.The Additional Public Prosecutor,  
High Court, Madras.

CrL.O.P.No.4307 of 2017  
and CrL.M.P.No.3220 of 2017

NRL (CO)  
GN (21/10/2020)

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