



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P. (MD)No.9254 of 2020

and

Crl.M.P. (MD) .No.4335 of 2020

WEB COPY

Abishek Soorya .. Petitioner / Petitioner / Sole Accused

Vs.

1.State represented through
the Inspector of Police,
Vellichanthai Police Station,
Kanyakumari District.
(Crime No.104 of 2017) ... Respondent No.1 / Respondent No.1 /
Complainant

2 Arumugam ...Respondent No.2/ Respondent No.2 /
De facto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records of the proceedings in Crime No.104 of 2017, on the file of the first respondent and quash the same against the petitioner herein.

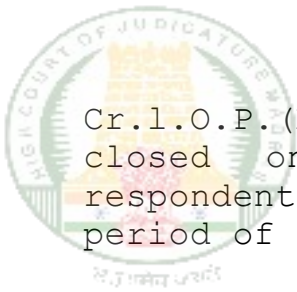
For Petitioner : Mr.P.T.Ramesh Raja

For R-1 : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

By consent of both parties, this Criminal Original Petition is taken up for final disposal at the admission stage itself.

2. The grievance of the petitioner is that though the First Information Report came to be registered way back in 24.07.2017, the investigation has not yet been completed till date. According to the learned counsel appearing for the petitioner, the petitioner has been charged for the offence punishable under Sections 279 and 338 of I.P.C. The learned counsel appearing for the petitioner would submit that the offence committed by the petitioner was barred by limitation, in view of Section 468 of Cr.P.C. The petitioner claims that in view of the bar of limitation laid down in the said Section, the Magistrate could not have competently taken cognizance of the offence, as the same was barred by limitation. The petitioner has already filed



Cr.1.O.P.(MD).No.3529 of 2020 before this Court and the same was closed on 26.02.2020 by recording the statement of the respondent / Police, that they would file a final report within a period of two weeks.

3. The petitioner has filed the present petition, seeking to quash the First Information Report in Crime No.104 of 2017 on various grounds, one of which relates to bar of limitation, as provided under Section 468 of Cr.P.C.

4. Per contra, the learned Additional Public Prosecutor would submit that the complaint has already been duly enquired into and otherwise, though the first respondent herein has filed an affidavit in the month of February 2020 and in the affidavit, it is stated that the investigation has been completed and the final report will be filed by the first respondent / Police before the concerned Court within a period of two weeks. But, so far, he has not filed the Final Report before the Judicial Magistrate, Nagercoil.

5. It is seen that the mere presentation of charge-sheet will not amount to filing of final report, unless and until, it is taken on file by the learned Judicial Magistrate and therefore, it would constitute that the charge-sheet has not been taken on file in the present case. While that being so, the submissions made by the learned counsel appearing for the petitioner is that the complaint itself is barred by limitation, in view of Section 468 of Cr.P.C. In this regard, Section 468 of Cr.P.C., reads as follows:-

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

(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."



6. The petitioner herein have been charged for the offences punishable under Sections 279 and 338 of I.P.C., and the maximum punishment can be imposed for these offences is two years. Since the complaint is pending for more than three years, this Court is unable to appreciate as to why the cognizance of a charge sheet would be quashed in view of Section 468 of Cr.P.C. In view of laches as well as the bar under Section 468 of Cr.P.C., this Court is of the view that the petitioner is entitled to succeed in this case. Accordingly, the Crime No.104 of 2017 impugned herein as against the petitioner is quashed.

7. One other aspect is to be decided by this time in this Criminal Original Petition is when at the time of enquiry, the first respondent herein had filed an affidavit before this Court on 03.02.2020, stating that the investigation has been completed in Crime No.104 of 2017 and the final report will be filed before the Court concerned, within a period of two weeks. Now, on considering the circumstances, it is apparent to note that the first respondent herein had violated the undertaking given before this Court. Hence, in such circumstances, it is appropriate to issue some directions for taking disciplinary action as against the first respondent. The Superintendent of Police, Kanyakumari District, is directed to initiate disciplinary proceedings as against the concerned officer, who had filed an affidavit before this Court, for violating the undertaking given by him.

8. With the above direction, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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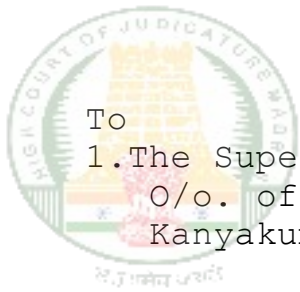
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Sub Assistant Registrar (CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Superintendent of Police,
O/o. of the Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Vellichanthai Police Station,
Kanyakumari District.

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

Order made in
Crl.O.P. (MD)No.9254 of 2020

Dated:
02.09.2020

KM (15.09.2020) 4P 4C