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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.08.2021	12.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.7845 OF 2018

AND

CRL.M.P.NO.4034 OF 2018

V.P.Raju

... Petitioner

- Vs -

1. State by
The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai - 40.

2. V.S.Muthu Pandian

... Respondents

PRAYER:-

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to call for the records in C.C.No.5105 of 2016 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.Sunder Mohan

For Respondents : Mr.C.E.Pratap,
Government Advocate
(Crl. Side)
For R-1

Mr.K.N.Nataraj for R-2

ORDER

The present petition has been filed by the petitioner for quashment of the case pending on the file of the V Metropolitan Magistrate, Egmore, Chennai, in C.C.No.5105 of 2016.



2. It is the case of the petitioner that he is a practising advocate and while he was having discussion with one Kumar relating to sale of land belonging to him and his minor children, which was to be sold to the 2nd respondent herein, the petitioner had rendered some legal advice to the said Kumar and the said Kumar had called upon the 2nd respondent to come over to the office of the petitioner and pursuant to the same, the 2nd respondent came to the office of the petitioner and on hearing the legal advice given by the petitioner, the 2nd respondent had spoken ill of the petitioner and other members of the legal community, which enraged the petitioner and the petitioner had hit the 2nd respondent which resulted in injuries to the 2nd respondent. Thereafter, the 2nd respondent, calling upon his son and other persons known to him, had barged into the office of the petitioner and had indulged in violent acts against his juniors, which resulted in the petitioner calling upon the law enforcing agency. The law enforcing agency came to the place and after pacifying the parties, the petitioner and the 2nd respondent were taken to the police station, where the 2nd respondent petitioner gave a complaint, which was registered as Crime No.3646/05 and only after much persuasion and effort, the complaint given by the petitioner was registered as Crime No.3647/05.

3. Thereafter, the law enforcing agency had filed two charge sheets relating to the above crime numbers and in the crime registered by the petitioner, charge sheet was filed in C.C. No.1250/06. It is the stand of the petitioner that the charge sheet relating to crime No.3646/05, registered at the instance of the 2nd respondent, is totally contrary to the charge sheet filed in C.C. No.1250/06. Being aggrieved in which the investigation is being conducted, the petitioner filed W.P.No.37768/05 before this Court for the purpose of transfer of investigation and this Court, vide order dated 22.11.05 granted interim stay and also further nominated an Inspector General of Police to continue the investigation in Crime No.3647/05 and file a report. Pursuant to the said direction, the said Inspector General of Police had conducted investigation and filed report holding that the 2nd respondent and the other persons, who were shown in the complaint of the petitioner in Crime No.3647/05 are the aggressors. In the meanwhile, the 2nd respondent herein had filed Crl. O.P. No.7374/07 for quashment of the case in C.C. No.1250/06, which was dismissed by this Court. This Court had further directed that if there is any difficulty in conducting both the cases simultaneously, liberty was granted to the Magistrate to proceed with C.C. No.1250/06.

4. In the above backdrop, the present charge sheet in C.C. No.5105/16 has been filed by the 1st respondent for the offences u/s 341, 294 (b), 323 and 506 (i) IPC against the petitioner,



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(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 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.]”

9. Section 469 Cr.P.C. enumerates the time when the period for counting the limitation commences and for better understanding the relevant provision of law is quoted hereunder :-

“469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(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 ; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

10. Sections 468 and 469 Cr.P.C. are self-explanatory and there is no necessity for this Court to amplify anything on the same. Subject to the term of punishment, varying prescriptions of limitation for taking cognizance has been prescribed. Equally, it is evident from Section 469 Cr.P.C., sub-section (a) comes into play, as on the date when the offence was committed, the respondents were well within the knowledge of the said



offence and, therefore, the period of limitation commences from the date of the offence.

11. A perusal of the sections of offences with which the petitioner has been charged, it is abundantly clear that the maximum punishment for the charge envisaged under one of the section is one year and for the rest of the offences, the period of punishment prescribed vacillates between one month to one year. From the above, it is clear that the period of limitation, in the present case, would be one year, where the offence is punishable with imprisonment for a term not exceeding one year.

12. The occurrence is alleged to have taken place on 19.11.05, which has resulted in the filing of the complaints leading to the registration of the crime. The petitioner had filed W.P. No.37768/05 in which an interim order of stay was passed by this Court on 22.11.05 and investigation was directed to be conducted by Inspector General of Police and report was directed to be submitted. Pursuant to the said direction, investigation was taken up and report dated 30.12.05 was filed before this court, which resulted in the prosecution of 2nd respondent herein and other persons for offences u/s 448 and 352 r/w 34 IPC.

13. The 2nd respondent herein, pursuant to the filing of the charge sheet, filed Crl. O.P. No.7374/07 for quashment of C.C. No.1250/06, which ended in dismissal of the said case and certain directions were issued. The said order has attained finality as no further appeal has been filed by the 2nd respondent. In effect, the complaint filed by the petitioner herein, which culminated in the filing of the charge sheet in C.C. No.1250 of 2006 against the 2nd respondent herein and others has been directed to be proceeded with and orders were issued directing the police to file final report in the complaint filed against the petitioner by the 2nd respondent within a period of three months. This order has been passed in Crl.O.P.No.7374/07 vide order dated 21.09.2012.

14. However, inspite of the orders of this Court in the above Crl.O.P.No.7374/07, for completion of investigation and filing of final report within a period of three months, it transpires from the records that the final report has been filed only on 30.06.2016, which has been taken cognizance of in C.C.No.5105/2016.

15. It is to be pointed out that stay was granted by this Court vide order dated 22.11.05 and the said writ petition in W.P. No.37768/05 attained finality on 5.6.07. The said order evidences the report of the Inspector General of Police, which



reveals that though there was some exaggeration on the part of the petitioner herein, however, culpability was fastened on the 2nd respondent and others, which led to the prosecution being launched against them. Further, the criminal original petition at the instance of the 2nd respondent herein ended in dismissal on 21.9.12 in which three months time was given for filing of final report in the case filed by the 2nd respondent against the petitioner. However, report has been filed only 30.6.2016 which has been taken cognizance of.

16. From the date of commission of offence on 19.11.05, even if it is to be presumed that stay of operation was granted by this Court, the same ended on 5.6.07 when this Court finally disposed the writ petition. However, the 1st respondent has not taken any steps to file any charge sheet against the petitioner in Crime No.3646/05. Even after dismissal of CrI.O.P.No.7374/07 on 21.9.12 in and by which the 1st respondent was granted time by three months to file the final report, yet no report has been filed and only out of blue, on 30.6.16, report has been taken cognizance by the court below, which report was approved on 30.3.16. In the above backdrop of the facts as narrated above, the bar envisaged u/s 468 Cr.P.C. stands squarely attracted, as the limitation stood commenced immediately on 19.11.05, the date of commission of offence.

17. Even assuming for the sake of argument that the operation of stay rendered the 1st respondent from not being able to file the report, once the writ petition in W.P. No.37768/05 stood finally disposed of on 5.6.07, the 1st respondent ought to have filed the report. The act of the 1st respondent in not filing the report within the time not only reveals that due diligence has not been exercised, but the filing of the report after the passage of a decade's time clearly shows that all is not well with the attitude of the 1st respondent in proceeding against the petitioner herein. Further, it is to be pointed out that the limitation having already expired and there being a bar for taking cognizance after the period of limitation, the exclusion of time provided u/s 470 (2), in respect of grant of stay/injunction by the courts would also be of no use to the 1st respondent for the reasons aforesaid.

18. In this regard, useful reference can be had to the decision of the Hon'ble Apex Court in Ramesh Chandra Sinha - vs - State of Bihar, (2003 (7) SCC 254), wherein, in identical circumstances, the Court held as under :

"12. There is no dispute that cognizance was taken of the offences by the learned Magistrate long after a period of three years. The Magistrate condoned the delay on the ground that



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the proceedings were stayed by the High Court till 5-10-1999. On 11-11-1994, further proceedings had been specifically stayed but by the order dated 6-2-1995, the order dated 11-11-1994 was modified in effect to vacating the earlier order staying further proceedings. This position is abundantly clear by a bare perusal of the orders dated 11-11-1994 and 6-2-1995 extracted above. When the order of 11-11-1994 was specifically modified, there was no reason to understand the orders otherwise. It was not correct for the learned Magistrate to say that there was stay of further proceedings till 5-10-1999 in the face of order dated 6-2-1995 read with the order dated 11-11-1994. No other reason or ground is given in the order of the Magistrate to condone the delay under Section 473 of the Code. If the discretion is exercised on relevant considerations, possibly no fault could be found with such discretion. The High Court although noticed in the impugned order as to the effect of the order dated 6-2-1995 and found that there was an error committed by the Magistrate but took the view that it was not a serious one. Added to this, the proceedings are of the year 1994. Having regard to the facts and circumstances of the case, the CJM as well as the High Court committed serious error in upholding taking cognizance when it is clearly barred by Section 468(2) of the Code."

19. As observed and held by the Hon'ble Apex Court above, in the case on hand as well, W.P.No.37768/05 in which order of stay was granted was finally disposed of on 5.6.07 and the CrI.O.P.No.7374/07 at the behest of the 1st respondent herein was also dismissed by this Court on 21.9.12. That being the admitted position, the charge sheet itself has been alleged to be filed only on 30.3.16, which has been taken cognizance of on 30.6.16, the bar envisaged u/s 468 Cr.P.C. stands squarely attracted and, therefore, there is no escape for the respondents by taking shelter under the order of stay passed by this Court in the writ petition.

20. For the reasons aforesaid, this Court is of the considered view that the cognizance taken by the Magistrate culminating in C.C. No.5105/16 does not merit acceptance and, accordingly, the same deserves to be quashed. Accordingly, the criminal original petition is allowed and C.C.No.5105/2016 pending on the file of the learned V Metropolitan Magistrate,



Egmore, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The V Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
K-4, Anna Nagar Police Station,
Chennai - 40.
3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.Sunder Mohan, Advocate, S.R.Nos.39239 & 39857

CRL.O.P.NO.7845 OF 2018

GPL(CO)
PBS/15/09/2021